1. Agreement. These Rental Agreement Terms and Conditions and the Rental Agreement, Proposal, Invoice, Quote, or other document(s) incorporating them by reference, including all documents, exhibits, schedules, and addendums attached thereto or specifically incorporated by reference by them, constitute the sole and entire agreement ("Agreement") between Hawthorne Machinery Co. or its applicable subsidiary, affiliate, or related entity ("Hawthorne") and the purchasing customer ("Customer") (together with Hawthorne, the "Parties") with respect to the rental or leasing of products, services, or other property ("Equipment") by Hawthorne on behalf of or to Customer ("Services"). This Agreement supersedes all prior and contemporaneous understandings and agreements, both written and oral regarding the Services. No purchase order, work order, or statement of work issued in connection with the Services by Customer or a third party shall be binding on Hawthorne unless accepted by Hawthorne in writing. The terms and conditions of this Agreement shall control. The Parties agree that the Services will be governed by the following documents in this order of precedence: the Rental Agreement, Proposal, Invoice, Quote, other document(s) issued by Hawthorne incorporating these terms and conditions by reference, these Rental Agreement Terms and Conditions, other writings signed by the Parties.

2. Acceptance. Acceptance of any portion of the Services, providing payment in whole or in part, taking possession of any Equipment to which this Agreement applies, or acceptance of the Agreement in any form (whichever occurs first) shall constitute acceptance of these Rental Agreement Terms and Conditions and any terms set forth in the document(s) issued by Hawthorne incorporating them by reference.

3. Change. Hawthorne may make efforts to meet any performance dates specified in the Agreement. Customer agrees that any such dates shall be estimates only.

4. Change in Services. If Customer wishes to change the scope of the Services, it shall submit details of the requested change to Hawthorne in writing. Hawthorne 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, the fees, or any performance dates set forth in the Agreement.

5. Customer Warranties. Customer warrants that (i) if an entity, it is duly organized and validly existing in good standing; (ii) it is duly authorized to execute, deliver, and perform its obligations under this Agreement; (iii) it is not insolvent and is paying all of its debts as they become due; (iv) any payments made pursuant to the Agreement are intended by it to be a substantially contemporaneous exchange for new value given to it; (v) each payment made of a debt incurred by it under this Agreement is or was in the ordinary course of its business or financial affairs, and (vi) all information supplied by Customer is complete and accurate.

6. Customer Obligations. Customer shall pay, or reimburse Hawthorne for all prices, fees, expenses, or charges related to the Services when they become due, cooperate with Hawthorne in all matters relating to the Services, and provide such access to Customer’s premises and facilities as may reasonably be requested by Hawthorne for the purposes of performing the Services. Customer shall provide all direction, information, approvals, authorizations, notes, contracts, security agreements, financing statements, decisions or materials requested by Hawthorne to perform the Services. Customer shall maintain the premises on and around which the Services will be performed in a reasonably safe condition and shall notify Hawthorne in advance of any hazards, dangerous conditions and defects. Failure to comply with any portion of this section will constitute a material breach ("Material Breach") of the Agreement, alleviate Hawthorne of any responsibility to perform the Services, and enable Hawthorne to terminate the Agreement.

7. Compliance with Laws. Customer has and shall continue to comply fully, at its sole cost, with all applicable federal, state and local laws, rules and regulations.

8. Customer’s Acts or Omissions. If Hawthorne’s performance under the Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Hawthorne shall not be deemed in breach of its obligations under the Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer to the extent arising directly or indirectly from such prevention or delay.

9. Fees and Expenses. Customer shall (i) reimburse Hawthorne for all reasonable costs and expenses incurred in connection with the Services or in collecting any late payments and (ii) pay all other amounts due within thirty (30) days of receipt of an invoice from Hawthorne unless specified otherwise in a written document at the time of the applicable document(s) issued by Hawthorne incorporating these terms and conditions by reference, in which case the terms of payment specified by Hawthorne in the incorporating document will control. Failure to notify Hawthorne in writing of any dispute regarding an invoice within sixty (60) days of receipt of said invoice waives Customer’s right to dispute such invoice. Customer shall obtain, if practicable, a Preliminary Notice Information ("Preliminary Notice Information") as required by law. Customer will pay, or reimburse, per annum from the day payment is made by Hawthorne through the day Hawthorne is reimbursed by Customer.

10. Late Payments. All late payments shall bear interest at the lesser of the rate of 1.5% per month (18% per annum) or the highest rate permitted under applicable law, calculated daily and compounded monthly, from the date such payment was due until the date paid in full as reimbursement to Hawthorne for clerical and other expenses incurred as a result of the delayed payment. In addition, it shall be the sole right and remedy of Hawthorne for such damages, interests, deficiencies, judgments, settlements, in terest, awards, fines, causes of action, damages, costs, penalties, taxes, assessments, charges, punitive damages and expenses of whichever nature or amount incurred by Hawthorne, whether or not anticipated to be incurred, by Hawthorne from or related to customer’s use, operation, possession, condition, or storage of Equipment, customer’s failure to perform any portion of the Agreement, Customer’s breach or non-fulfillment of any representation, warranty or covenant under the Agreement, Customer’s negligence or more culpable act or omission (including any reckless or willful misconduct) in performing its obligations under the Agreement, or failure to comply with any applicable federal, state or local laws, regulations or codes, which losses include but are not limited to (a) loss of or damage to Equipment for any cause; (b) injury to or death of any person; and (c) damage to real or personal property, excepting those losses that arise from Hawthorne’s sole negligence or willful misconduct. In no event shall Hawthorne be liable to Customer or any third party for any special, exemplary, incidental, punitive or consequential damages, or any liquidated damages of any kind and is not bound by any agreement containing the same.

11. Normal Wear and Tear. Customer agrees to return Equipment to Hawthorne in the same condition in which it was leased and, at Hawthorne’s discretion, agrees to compensate Hawthorne for any damage in excess of normal wear and tear. At Hawthorne’s discretion, a cleaning charge for the rental or repair of a equipment which has been damaged, will be charged to Customer and charged in addition to any other accrued and actual expenses. In addition to all other remedies available to it (which Hawthorne does not waive by the exercise of any rights hereunder), Hawthorne shall be entitled to suspend the provision of any Services if Customer fails to pay any amounts due. If Customer fails to pay any amounts when due, all unpaid sums shall become immediately due and payable. Additionally, Hawthorne shall have the right, but not the obligation, to apply any funds paid by Customer to Hawthorne at any time to satisfy unpaid amounts. Customer also expressly agrees to pay the charges mentioned in this section as liquidated damages and not as penalty representing reasonable and fair compensation for the foreseeable losses/expenses resulting therefrom. Customer agrees to pay Hawthorne a $25.00 Service Charge on each dishonored check or returned check. It is a condition precedent to the obligation to file a Preliminary Notice if payment is not received. Failure to provide any Preliminary notice information when requested could constitute a revocation of extension of credit.

12. Taxes. Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state or local governmental entity unless specifically paid by Hawthorne hereunder, excluding any taxes imposed on, or with respect to, Hawthorne’s income, revenues, gross receipts, personnel or real or personal property or other assets unless otherwise specified in writing.

13. Disclaimer of Warranty. HAWTHORNE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY, (ii) WARRANTY OF SATISFACTORY QUALITY, (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. HAWTHORNE IS NEITHER A MANUFACTURER OF THE PARTS USED IN THE SERVICES, NOR AN AGENT THEREOF.

14. Normal Use. Any rental rate quoted to Customer covers normal use only, not to exceed eight (8) hours per day, forty (40) hours per week or one hundred and sixty (160) hours per four week period. Any excess use will be pro-rated against the appropriate rate and charged to Customer.

15. Limitation of Liability. CUSTOMER ASSUMES ALL RISK AND LIABILITY FOR THE RESULT OF, DAMAGE TO, DEATH OF, OR INJURY TO ANY PERSON OR PROPERTY CAUSED BY THE USE, CONDITION, POSSESSION, OR STORAGE OF PROPERTY LEASED FROM HAWTHORNE AS WELL AS ALL OTHER RISKS AND LIABILITIES ARISING FROM THE SAME. IN NO EVENT SHALL HAWTHORNE BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, WORK ISSUED IN CONNECTION WITH THE SERVICES BY CUSTOMER OR A THIRD PARTY SHALL BE BINDING ON ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING ATTORNEYS’ FEES AND COSTS AND EXPERT-WITNESS FEES AND COSTS) OF ANY NATURE WHATSOEVER WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (i) THE FEES PAID TO HAWTHORNE PURSUANT TO THE AGREEMENT IN THE ONE-YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR (ii) $25,000. UNLESS SPECIFICALLY AGREED TO IN WRITING, HAWTHORNE WILL NOT BE LIABLE FOR ANY LIQUIDATED DAMAGES OF ANY KIND AND IS NOT BOUND BY ANY AGREEMENT CONTAINING THE SAME.

16. Duty to Indemnify. Customer will indemnify, defend, and hold harmless Hawthorne, its agents, employees, affiliates and their respective owners, officers, directors, employees, agents, successors and permitted assigns from any and against any and all claims, losses, expenses, liabilities, deficiencies, judgments, settlements, interest, awards, fines, causes of action, damages, costs, penalties, taxes, assessments, charges, punitive damages and expenses of whatsoever nature or amount, whether or not anticipated to be incurred, by Hawthorne from or related to customer’s use, operation, possession, condition, or storage of Equipment, customer’s failure to perform any portion of the Agreement, Customer’s breach or non-fulfillment of any representation, warranty or covenant under the Agreement, Customer’s negligence or more culpable act or omission (including any reckless or willful misconduct) in performing its obligations under the Agreement, or failure to comply with any applicable federal, state or local laws, regulations or codes, which losses include but are not limited to (a) loss of or damage to Equipment for any cause; (b) injury to or death of any person; and (c) damage to real or personal property, excepting those losses that arise from Hawthorne’s sole negligence or willful misconduct. In no event shall Hawthorne be liable to Customer or any third party for any special, exemplary, incidental, punitive or consequential damages, or any liquidated damages of any kind and is not bound by any agreement containing the same.

A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
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Customer's towing vehicle. Customer further acknowledges that the Equipment is suitable for Customer's needs and understands (without further instructions) its proper operation and use.


22. Insurance and Rental Protection Plan. If Customer does not purchase Hawthorne’s Rental Protection Plan (“RPP”), Customer is responsible for the Equipment up to its value, and the Equipment must be insured as required in the Agreement. Customer shall deliver to Hawthorne, within 20 days after the end of each Rental Period, a certificate of insurance showing that the Equipment is insured for its value and that the insurance is in effect for the remainder of the Rental Period. If Customer fails to provide Hawthorne no less than two days before the date on which the Services are to begin and no less than five days before the expiration date of existing insurance an Accord certificate by an “A” rated admitted carrier evidencing the required insurance coverage with Hawthorne Machinery Co. as follows: A) Certificate Holder: Hawthorne Machinery Co., Attention: Risk Management, 16945 Camino San Bernardo, San Diego, CA 92127. B) General Liability: Limits Required: $1,000,000 Per Occurrence/$2,000,000 Aggregate per year. Endorsement: Additional Insured: Hawthorne Machinery Co., its Affiliated Companies, Directors & Officers, Agents and Employees. Primary Insurance: Primary Insurance is required. The insurance must be primary and non-contributory. C) Business Auto (if Applicable): Limits Required: $1,000,000. D) Physical Damage: Limits must equal or exceed the value of the item(s) leased or rented.

Additional Insured: If renting or leasing licensed, on-highway vehicles, such as water trucks, dump trucks or trailers, Hawthorne Machinery Co., its Affiliated Companies, Directors & Officers, Agents and Employees must be named as Additional Insured on your Auto Policy. Physical Damage: Limits must equal or exceed the value of the item(s) leased or rented. Form: Coverage is required to be written on Special Form, including theft. Endorsement: Hawthorne Machinery Co. must be named as Loss Payee. Customer must provide Hawthorne a valid Physical Damage certificate or purchase Hawthorne's RPP to be eligible to receive the Services.

23. Rental Protection Program. By entering into this Agreement, Customer agrees to purchase RPP and pay the then current rate or fee for Hawthorne’s RPP in effect at the time of this Agreement or obtain, and provide Hawthorne satisfactory evidence of, the insurance required by this Section, before the Equipment is delivered to Customer, or at the time the Equipment begins. If Customer purchases RPP, Hawthorne agrees to waive its rights of subrogation against Customer for all losses covered under the RPP, which terms are specifically incorporated by this reference and are available at www.hawthornecat.com/terms and in hard copy upon request. Customer expressly agrees and understands that the RPP is NOT insurance and does not offer coverage for risk, exclusion, or liability not covered by insurance. A) HAWTHORNE: Commercial General Liability, General Liability, General Liability - Products, General Liability - Premises, General Liability - Employees, Motor Vehicle Liability, Auto Liability, General Liability, or Workers Compensation. Customer shall be liable to Hawthorne for any loss or damage (1) caused by use of Equipment in violation of any of the terms of this Agreement or of any law or ordinance, (2) to crane, dragline, or other heavy equipment, (3) to vehicle damages resulting from loading or unloading the owner, (4) to equipment used outside of the Continental limits of the United States of America, Hawaii, or Puerto Rico, territories of the United States of America, (5) to equipment damaged or lost to blowouts, bruises, cuts or other causes inherent in the use of Equipment, and/or (6) to equipment damaged or lost to God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether declared or not), (7) to equipment damaged or lost to restraint or delay in obtaining supplies of adequate or suitable materials, telecommunications breakdown or power outage.

24. Return of Damage or Loss of Equipment. Customer is responsible to Hawthorne for any loss or damage to Equipment, except for ordinary wear and tear. If the Equipment is stolen, lost or damaged, Customer shall be liable to Hawthorne for the full value of the Equipment, together with interest at the highest legal rate on such value, plus all of Hawthorne's expenses related to said loss or damage, including, but not limited to, loss of use, appraisal fees, or cost of recovery. Only if Customer has met all of the conditions as outlined in Section 17 titled “Refusal of RPP,” if Customer fails to meet the requirements of the RPP, then Hawthorne may terminate the Agreement at its sole option. However, if Hawthorne elects to continue the Agreement, the RPP will not be effective and Customer shall be fully responsible for all loss and damage to Equipment as specified in the Section titled “Loss or Destruction of Equipment.”

25. Damage or Destruction of Equipment. Except for ordinary wear and tear. If the Equipment is stolen, lost or damaged, Customer shall be liable to Hawthorne for the full value of the Equipment, together with interest at the highest legal rate on such value, plus all of Hawthorne's expenses related to said loss or damage, including, but not limited to, loss of use, appraisal fees, or cost of recovery. Only if Customer has met all of the conditions as outlined in Section 17 titled “Refusal of RPP,” if Customer fails to meet the requirements of the RPP, then Hawthorne may terminate the Agreement at its sole option. However, if Hawthorne elects to continue the Agreement, the RPP will not be effective and Customer shall be fully responsible for all loss and damage to Equipment as specified in the Section titled “Loss or Destruction of Equipment.”

26. Hawthorne’s Right to Inspection. Hawthorne shall have the right during business hours to enter Customer's premises for the purpose of inspecting the Equipment and making any repairs and adjustments necessary to ensure the proper and safe operation thereof. Hawthorne at its sole discretion may remove the Equipment and replace it with similar Equipment or Equipment that is good and suitable for the purpose for which it is intended. Customer shall deliver to Hawthorne, within 20 days after the end of each Rental Period, a certificate of insurance showing that the Equipment is insured for its value and that the insurance is in effect for the remainder of the Rental Period.

27. Confidentiality. From time to time during the term of the Agreement, either Party (as “Disclosing Party”) may disclose or make available to the other Party (as “Receiving Party”) non-public proprietary and confidential information that, if disclosed in writing or otherwise tangible form is clearly labeled as “confidential,” or if disclosed orally, is identified as confidential. The receiving Party (as “Receiving Party”) will treat any Confidential Information received hereunder as confidential (“Confidential Information”); provided, however, that Confidential Information does not include any information that (i) is or becomes generally available to the public other than as a result of Receiving Party’s breach of this section; (ii) is or becomes available to Receiving Party on a non-confidential basis from a third party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was in Receiving Party’s possession prior to Disclosing Party’s disclosure hereunder; (iv) was or is independently developed by Receiving Party without using any Confidential Information; or (v) is disclosed to a third person by Disclosing Party without similar restrictions. Except as otherwise specified in these Service Terms and Conditions, the receiving Party agrees to keep all Confidential Information in strict confidence, use it only for the purposes for which it was disclosed and not disclose any such Confidential Information to any person or entity except to Receiving Party’s representatives who need to know the Confidential Information to assist Receiving Party, or act on its behalf, to exercise its rights or perform its obligations. If Receiving Party is required by applicable law or legal process to disclose any Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to notify Disclosing Party of such requirements to afford Disclosing Party the opportunity to seek, at Disclosing Party’s sole cost and expense, a protective order or other remedy. Each Party shall be entitled to injunctive relief for any violation of this Section.

28. Term. This Agreement shall commence on the date specified in the applicable Rental Agreement, Service Authorization, Proposal, Quote, or other document(s) incorporating these terms and conditions by reference, or, if no such date is specified, as of acceptance of any portion of the Services by Customer, the Customer providing payment in whole or in part, or Customer taking possession of any Equipment to which this Agreement applies, shall continue until the completion of the Services unless sooner terminated pursuant to this Agreement, and shall automatically renew at the end of each term for successive terms equal in duration to the initial term.

29. Force Majeure. If Customer fails to make any of the payments required by this Agreement, fails to keep the Equipment in proper working condition, misuses the Equipment in any manner, does not keep or perform or any of the conditions set out herein, breaches this Agreement or if Customer becomes insolvent, files a petition for bankruptcy, commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, insolvency, moratorium, assignment for the benefit of creditors, reorganization or assignment for the benefit of creditors, Hawthorne may terminate the Agreement and Customer rights under the Agreement, declare the balance of all unpaid amounts and all other charges of any kind required of Customer under the Agreement to be payable immediately, and be entitled to the balance due together with interest at the rate of 10% per annum from the date of notification, and repossess the Equipment without legal process or proceeding. Customer shall, at the request of Hawthorne, make such arrangements as may be required to enable Hawthorne’s agent to enter onto any premises where the Equipment is located and repossess and remove it. Customer specifically waives any right of action Customer might otherwise have arising out of the aforementioned entry and repossession and releases Hawthorne of any claim for trespass or damage caused by reason of the entry, repossession, or removal.

30. Applicable Law/Venue.

31. Communications. All notices, requests, consents, claims, demands, waivers and other communications (each, a “Communication”) must be in writing and addressed to the Disclosing Party at the address provided in the Rental Agreement, Proposal, Invoice Quote, or other document(s) incorporating these terms and conditions by reference, or other such address that the receiving Party has designated in accordance with this Section. Unless otherwise agreed to in writing, all Communications must be delivered by facsimile, e-mail, personal delivery, courier or certified or registered mail (return receipt requested, postage prepaid). A “Communication” is deemed received (i) if given by facsimile or e-mail, on the date of transmission if sent prior to 3:00 p.m. (PST) on a business day and otherwise on the following business day, (ii) by courier or personal delivery, on the date of delivery, and (iii) if by mail, two (2) days after the date of mailing.

32. Applicable Law/Venue. This Agreement (and all matters arising out of or relating to it) will be governed in all respects by the laws of the State where the Services are performed without regard to any choice or conflict of law provisions. When applicable, each party hereby irrevocably submits to the exclusive jurisdiction of the courts situated in San Diego County, California and each party hereby irrevocably agrees to the exclusive exercise of all such claims that such venue is in an inconvenient forum.

33. Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, IRRECOVOCABLY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BREACH OF DUTY, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS), AND WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY (i) UNDERSTANDS THAT THIS IS A WAIVER OF A LARGER FONT COPY OF THESE TERMS AND CONDITIONS IS AVAILABLE UPON REQUEST.
IMPORTANT LEGAL RIGHTS AND (ii) ACKNOWLEDGES HAVING HAD A REASONABLE OPPORTUNITY TO DISCUSS THIS WAIVER AND ITS EFFECT WITH LEGAL COUNSEL.

34. Dispute Resolution. Any dispute or controversy arising under or in connection with this Agreement shall first be resolved by informal discussion between senior management of the Parties. If informal discussion fails to produce a resolution, the Parties must then attend non-binding mediation in the State of California or in the District of Hawaii in accordance with the American Arbitration Association’s rules for the resolution of disputes. Each Party shall share equally the cost of the mediation and shall bear its own attorneys’ fees, unless the arbitrator awards such fees and costs to a Party. The arbitrator shall not have the power to award any punitive damages.

35. Enforcement. Subject to Section 34 titled “Dispute Resolution,” Customer shall pay all costs Hawthorne may incur in enforcing or exercising its rights under this Agreement, whether or not suit is filed.

36. Severability. If any provision of this Agreement shall be deemed invalid, illegal, or unenforceable by any court of competent jurisdiction, such provision shall be automatically modified to the minimum extent necessary to render the same valid and enforceable, giving due consideration to the purpose and economic substance of this Agreement, or if no such modification shall be possible, deleted, and the remainder of this Agreement will remain valid and enforceable.

37. Amendments. This Agreement shall only be modified or amended by an instrument in writing signed by the Parties. Any changes, additions, stipulations or deletions, by Customer, shall not be deemed to be agreed to or binding upon Hawthorne unless agreed to in writing in the form of an amendment signed by Hawthorne and Customer.

38. No Waiver. No exercise, nor any failure or delay by either Party in the exercise of, any right or remedy available hereunder, at law or in equity, shall be deemed an election of remedies or a waiver of any such rights and/or remedies. 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, any check or draft received from or on behalf of Customer shall 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)

39. Assignment. Hawthorne may assign any of its rights or obligations under the Agreement without the prior written consent of Customer. If an assignee agrees to assume the obligations of Hawthorne, Customer agrees that Hawthorne shall be released from all further liability hereunder. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement or sublet or hire out the Equipment without the prior written consent of Hawthorne. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Customer of any of its obligations under this Agreement. Customer agrees to keep the Equipment free from any lien and encumbrance of any kind.

40. No Third Party Beneficiaries. This Agreement benefits solely the Parties and their respective permitted successors and assigns. Nothing in this Agreement, whether express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

41. Headings. Headings are for reference only and do not affect the interpretation of the Agreement.

42. Time to Bring Claim. No claim which concerns a dispute arising under this Agreement may be commenced by Customer more than one year after the Services are performed.

43. Equipment Management Electronic Data Sharing Product Link™ and VisionLink® User Agreement/Privacy Notice. For Equipment equipped with Product Link™ and VisionLink®, Customer understands that data concerning the machine, its condition, and operation will be transmitted to Caterpillar Inc. and/or its dealers to better serve Customer and improve upon Caterpillar Inc. products and services. The information transmitted may include but is not limited to: Machine serial number, machine location, operational data, fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments. Caterpillar Inc. recognizes and respects customer privacy. Caterpillar Inc. and/or its dealers will not sell or rent collected information to any third party and will exercise all reasonable efforts to keep the information secure. Customer, by executing the Agreement, understands the disclosures in this Section and grants permission to allow the referenced data to be accessed by Caterpillar Inc., and/or its dealers.

44. Title to Goods. Hawthorne retains title to goods. Customer hereby grants to Hawthorne a security interest in any purchased goods and all proceeds thereof described in this agreement to secure the performance of all of Customer’s obligations under this Agreement.

45. Equipment. Should the Agreement include the purchase of machinery from Hawthorne, when the machinery has been identified and appropriated, Customer agrees on demand to execute and deliver to Hawthorne all notes, contracts, security agreements, and financing statements required by Hawthorne to evidence the transaction. In the event Customer fails to execute and deliver said notes, contracts, security agreements and financing statements to Hawthorne, the entire balance of the purchase price of the equipment shall be immediately due and payable.

46. Transportation. Customer understands and consents to Hawthorne’s use of third party vendors to provide transportation services (“Transportation Company”). Customer also agrees that Hawthorne’s responsibility for shipment of any goods ceases upon delivery of said goods to a Transportation Company, and any claims for shortages, delays or damages occurring thereafter shall be made timely by Customer directly to the Transportation Company.

47. Used Goods. Should the Agreement include the purchase of used machinery, parts, or other equipment, said used machinery, parts, and other equipment are sold “AS IS” AND “WITH ALL FAULTS.” HAWTHORNE MAKES NO WARRANTY RELATED TO THE TITLE OF THE GOODS FOR SALE UNDER THIS AGREEMENT, NOR TO THE RIGHTFUL TRANSFER OF THE GOODS, NOR TO THE EXISTENCE OF SECURITY INTERESTS, LIENS, OR OTHER ENCUMBRANCES AGAINST THE GOODS. HOWEVER, HAWTHORNE WARRANTS THAT, AT THE TIME OF SALE, HAWTHORNE DID NOT KNOW OF ANY HOSTILE CLAIM OF TITLE OR ANY ENCUMBRANCES AGAINST THE GOODS FOR SALE UNDER THIS AGREEMENT.