

This Agreement is subject in all respects to the Terms and Conditions as set forth below.

Any Equipment returned late will be charged late fees as set forth in the Terms and Conditions. You must return equipment cleaned or incur cleaning fee as set forth in the Terms and Conditions.

You must return all Equipment full of fuel or incur \$9 per gallon fill-up charges as set forth in the Terms and Conditions.

NEXT EQUIPMENT RENTAL AGREEMENT

1. **Rental:** NEXT Equipment, L.L.C. (“Next”) hereby rents to the customer (“Customer”) named on the face page of this document (the “Face Page”) the equipment described on the Face Page, together with all tools, tires, attachments, additions, and accessories related thereto (collectively the “Equipment”) for the rental period described on the Face Page (the “Minimum Rental Period”) in exchange for the payment of the rental payment set forth on the Face Page (the “Rental Payment”), subject to all terms and provisions contained in this these terms and conditions, the Face Page, and any schedules attached hereto (collectively, the “Agreement”).
2. **Customer Responsibilities:** Customer shall pay all rental rates and other charges set forth in this Agreement when due as set forth herein. Title to and ownership of the Equipment shall remain vested in Next at all times. In addition to the responsibilities set forth herein, Customer shall: (a) ensure that all safety and operating information, including manuals, log books and warning labels supplied with Equipment are attached to or otherwise kept with Equipment and brought to the attention of, and explained to, and reviewed with each and every person operating of otherwise utilizing the Equipment; (b) not alter, deface, erase or remove any identifying mark, plate, or number on or in Equipment or otherwise interfere with Equipment; (c) not alter, fix, or attach anything to Equipment; and (d) not permit the key(s) to be left in the ignition while the Equipment is unattended. This is a contract for the rental of Equipment only. Customer shall not sublet any Equipment to any other party
3. **Customer Representations:** By renting the Equipment from Next Equipment, Customer represents and warrants that: (a) upon delivery of the Equipment, (i) Next identified for Customer the weather resistant compartment (for manual storage), (ii) Customer confirmed the manuals, as specified by manufacturer, are included with the Equipment, (iii) Next reviewed the control functions with Customer, (iv) Next reviewed the operating controls, safety devices, and manuals specific to the Equipment with a qualified person or operator of Customer who shall use the Equipment, and who is appropriate age, experience, and properly trained to use the Equipment, (b) the qualified person or operator of Customer who shall use the Equipment is familiarized with location, purpose, and function of all operating controls, safety devices, and manuals specific to the Equipment, (c) prior to each use of the Equipment Customer has or will inspect the Equipment and verify that the Equipment is fully operable and in good working condition, free from defects and fit for Customer’s intended use, (d) any and all operators of the Equipment are authorized by Customer, and are competent, trained, and qualified and licensed to operate the Equipment, and (e) Equipment shall only be used for its stated and intended purpose.

4. **Rental Period; Late Return Charges:** The rental of the Equipment begins on the earlier of (a) the delivery of the Equipment to the Customer and/or the job location described on the Face Page, and (b) when the Equipment is made available to Customer to take possession, and continues in effect until all of the Equipment is returned to or recovered by Next, unless earlier terminated as set forth herein (the “**Rental Period**”). Early returns will not be prorated and no discount or refund will be given for early returns. Any extension of the Minimum Rental Period must be approved in advance by Next and does not guarantee any discounted weekly or monthly rate. All Equipment must be returned within 24 hours to be considered a 1-day rental, or 6 hours to be considered a half-day rental (and any such Equipment that is returned after more than 6 hours will automatically be converted to a daily rental). For any Equipment that is returned later than the expiration of the Minimum Rental Period, the Customer will be charged the greater of (a) \$55 per item of Equipment for each hour after the expiration of the Minimum Rental Period, or (b) an additional day’s rent per item of Equipment pursuant to Next’s standard daily rates for each additional day after the expiration of the Minimum Rental Period, and such charges will be included as part of the Fees (as defined below).

5. **Payment:** Customer shall pay Next all rental payments, fees, and other charges due pursuant to this Agreement (“**Fees**”) in full within 1 day of the date of invoice. If Customer has directed charges to be billed to another person and such person shall fail to pay any Fees in full, Customer shall be responsible to pay such Fees. All Fees due hereunder and not timely paid shall bear interest at the rate of 3% per month, or the maximum rate permitted by law, until paid in full. In addition, Customer shall pay Next all time and mileage, service, fuel, or other charges at the rates set forth or otherwise computed in this Agreement, which shall constitute part of the Fees. Next may, at its option, demand that the Customer make a non-refundable deposit of the greater of (a) \$75, or (b) 10% of the Rental Payment, or reserve against Customer’s credit card, to secure payment of the Rental Payment. Next may use the deposit or reserve to pay all Fees. Next will authorize the release of any excess reserve or set aside upon the completion of a rental, and Customer’s payment card issuer’s rules will apply to the credit of the excess to Customer’s account and may not be immediately released by Customer’s card issuer. Customer agrees that Next may charge the Customer’s credit card or bank account on file for any damages, unpaid balances, missing items or equipment, or monies owed to Next by Customer, including additional rental fees incurred by Customer keeping the Equipment beyond the Minimum Rental Period. Next will make no special provisions or offer any explicit or implied discounts to Customer for retaining the Equipment past the Minimum Rental Period, and Customer agrees to pay Next’s standard daily rate for all such Equipment for each day beyond the Minimum Rental Period that Customer retains possession or fails to return the Equipment to Next, unless otherwise authorized in advance by Next in writing.

6. **Return of Equipment:** The Customer shall return the Equipment to the location at which the Equipment was rented, during normal business hours, at the end of the Minimum Rental Period, together with all tools, tires, and accessories, and in the same condition as when received, normal wear and tear expected. Notwithstanding anything to the contrary contained herein, Next at its discretion may demand the return of the Equipment at any time during the Minimum Rental Period in Next’s reasonable discretion. As authorized by applicable law, a breach of this Agreement and/or Prohibited Use (as defined below) shall grant Next the right (but not

obligation) to physically repossess the Equipment. The repossession of the Equipment may be pursued by Next in one or more ways either separately or in conjunction with one another. If Equipment is not returned when due under this Agreement, there is a Prohibited Use or other breach of this Agreement, a Vehicle is stored or parked illegally, or appears abandoned; or Fees are not paid as required by this Agreement, (a) Customer authorizes Next to report that the Equipment as stolen to law enforcement authorities, for the issuance of warrants for the arrest of the Customer and/or any driver of the Equipment, and (b) Customer authorizes Next to repossess the Equipment with or without notice and the Customer will be charged for all fees, charges, costs and expenses associated with the repossession. Customer agrees that any action taken hereunder in the judgment of Next is privileged and not actionable at law.

7. **Default:** In addition to any other events that are deemed to constitute a default under this Agreement, Customer shall automatically, without notice or other action required by Next, be in default under this Agreement if: (a) Customer fails to pay any amounts owed to Next when due; (b) makes any misstatement or immaterial fact or claim; (c) fails to timely return Equipment as required hereunder; (d) breaches or fails to perform any other covenant, condition, obligation, representation or provision contained in this or in any other document furnished to Next in connection with this Agreement; (e) or becomes insolvent, makes an assignment for the benefit of creditors, has a trustee or receiver appointed for it or a substantial part of its property, or institutes (or has instituted against it) any bankruptcy, reorganization or insolvency proceedings. Upon any default herein, then, in addition to all rights and remedies available to Next at law or in equity, Next shall have the right to, in its sole discretion, immediately do any one or more of the following things with respect to any Equipment, this Agreement or otherwise: (i) terminate this Agreement upon written notice to Customer; (ii) require Customer to immediately return all Equipment to Next; (iii) enter upon the premises where Equipment is located and take immediate possession of and remove them; (iv) sell the Equipment at private or public sale, without notice to Customer or advertisement, or otherwise dispose of, hold, use, operate, rent to others, or keep such Equipment idle, all free and clear of any rights of Customer and without any duty to account or give notice to Customer for such action or inaction; or (v) exercise any right or remedy which is available to Next under any other applicable state, federal, city or county law, regulation or ordinance. Customer agrees that Next shall not be liable for any claims for damage, loss, and/or trespass arising out of the repossession of Equipment. Customer shall pay all costs and reasonable attorney's fees and collection costs incurred by Next in any of Next's collection efforts and/or actions to recover possession of Equipment, or to enforce any term of this Agreement or to collect any sums of money, damages, or costs from Customer herein. All of Next's rights and remedies that arise from or in connection with this Agreement shall be cumulative and are not intended to be exclusive, and each such remedy shall be in addition to any other remedy available to Next under any applicable law, regulation or ordinance or in equity.
8. **Damages:** Regardless of fault, Customer is responsible for all damage to or loss or theft of the Equipment during the Rental Period and resulting from any cause, including, without limitation, damage caused by collisions, weather, vandalism, road conditions and acts of nature. Subject to applicable law, Customer's responsibility includes: (a) all physical damage to the Equipment measured as follows: (i) if Next determines that the Equipment is a total loss, the fair market

value of the Equipment, less salvage; (ii) if Next determines that the Equipment is repairable: (A) the difference between the value of the Equipment immediately before the damage and the value immediately after the damage; or (B) the estimated retail value or actual cost of repair plus means the actual cash value of the Equipment just prior to damage or loss less the value of the Equipment after repair or replacement; (b) the loss of Next's ability to use the Equipment for any purpose due to damage to it or loss of it during this rental, including uses other than for rental, such as display for rent, display for sale, opportunity to sell, or transportation of employees, which shall be measured by multiplying the standard daily Rental Payment for such Equipment either by the actual or estimated number of days from the date the Equipment is damaged until it is replaced or repaired ("**Loss of Use**"), which Customer agrees represents an estimate of such damages and not a penalty. The estimated number of days of Loss of Use shall be calculated as follows (assuming that all Loss of Use begins on a Monday and that one repair day is equal to 4 labor hours): the total number of labor hours in the repair estimate divided by 4 hours to determine the number of repair days, plus 2 weekend days for every 5 repair days, plus 3 administrative days to obtain a repair estimate, deliver and retrieve the Equipment for repairs. Loss of Use shall be payable regardless of whether Next has other Equipment available to rent, the Equipment would have been used but for the damage, or Next suffered lost profits as a result of the damage; (c) an administrative fee in an amount up to 25% of total damages, or as otherwise permitted under applicable law; (d) towing, storage, and impound charges and other incidental and consequential damages; and (e) all costs associated with Next's enforcement of this Agreement or collection of Fees, including attorneys' fees, collection fees, and costs whether or not litigation is commenced. Customer shall not permit any repairs to any Equipment without Next's prior written consent.

9. **Assumption of Risk**: Customer is fully liable for proper unloading and loading of the Equipment, as well as connections to any trucks, vehicles, and trailers, including compliance with all weight and hauling limits for any of Next's, Customer's or other vehicles when transporting Equipment, and assumes any and all damages or injuries due to improper use and technique. Although Next staff may help Customer with loading or unloading, Customer assumes all risk and liability for personal or bodily injury, property damages, etc., and holds Next blameless in all respects. Customer also assumes all liability to damages caused to sidewalk, asphalt, lawn, personal vehicles or equipment and other property damage as a result of unloading and loading or equipment by Next's drivers and staff. During the Rental Period, Customer hereby assumes any and all risk arising out of or in any way related to this Agreement and or Customer's use, misuse, possession, operation of, and responsibility for the Equipment, including without limitation, losses, damages, injury, death, and rental charges. Customer shall immediately notify Next, the police or other governmental authorities, if applicable, and Customer's insurer if any theft, vandalism, accident, casualty, loss, death, injury, damage, fire, or any other damages to person or property occurs in connection with the Equipment and shall submit any and all copies or reports, possess, pleading, notices, etc. or papers of any kind received by Customer regarding in the same to Next. This provision shall survive the termination or expiration of this Agreement. Next is not responsible or liable for loss of or damage to personal property left, stored, loaded or transported by the Customer or any other person in or upon any Equipment. Customer releases Next, its agents, and its employees from all claims for loss of or damage to personal property that was left with Next or carried in any Equipment. If Customer fails to claim property left in any

Equipment for more than 30 days, Next may dispose of that property in a manner that Next chooses. Notwithstanding anything to the contrary in this Agreement, if lost Equipment is later recovered, Next retains ownership of the Equipment regardless of any payments made by Customer or Customer's insurance company with respect to such Equipment, all of which payments are non-refundable. Customer agrees to promptly return any Equipment that is recovered. Next shall be subrogated to Customer's rights to recover against any person or entity relating to any loss, theft, damage or destruction to the Equipment. Customer shall cooperate with, assign Next all claims and proceeds arising from such loss, theft, damage or destruction, execute and deliver to Next whatever documents are required and take all other necessary steps to secure in Next such rights, at Customer's expense.

10. Insurance: Without limiting Customer's responsibilities, indemnifications, or other obligations contained within this Agreement, Customer shall, at its own expense, secure and maintain the following insurance in effect during the Rental Period; (a) general liability insurance with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (b) property insurance against damage and/or loss by or to Equipment; and (c) workers compensation covers and employer's liability coverage on a primary basis for workers compensation benefits incurred or claimed by Customer's agents, employees, and representatives. All insurance set forth herein shall be primary, non-contributory, and name Next as additional insured. Upon Next's request, Customer shall provide evidence of such coverage. The Customer's insurance will be primary. Any insurance Next may have that would apply will apply to claims of bodily injury and property damage only and is secondary to any other valid and collectable insurance whether it is primary, secondary, excess, or contingent. Next's policy contains exclusions, conditions, and limitations applicable to anyone claiming coverage. Customer agrees to cooperate with our insurer if any claim is made.

11. Equipment Protection Program:

- a. If Customer elects the option to apply an Equipment Protection Plan ("EPP") for the Equipment rented hereunder and pays the 15% charge for such EPP, Customer's responsibility to pay all costs and expenses for the repair or replacement of the Equipment ("**Repair Damages**") pursuant to this Agreement is modified by this Section 11. In such event, Next shall limit the amount that Next collects from Customer for any loss, damage, or destruction to the Equipment as follows (unless such Repair Damages are excluded from coverage as set forth herein):
 - i. Next will cover the costs and expenses related to any repairs that covered under the Equipment Protection Program in accordance with the terms of this brochure up to the aggregate amount of \$10,000 (the "**Coverage Cap**"), provided, however, that such coverage shall be effective only upon the Customer's full satisfaction of a \$2,500 deductible for each claim, which deductible shall be borne solely by the Customer; and
 - ii. Next shall be entitled to collect, and Customer shall be fully responsible, for all Repair Damages in excess of the Coverage Cap.

- b. Notwithstanding the foregoing, this EPP liability reduction only applies if the Conditions (defined below) are satisfied and an Exclusion (defined below) does not apply. The EPP is NOT INSURANCE and does NOT protect Customer from liability to Next or others arising out of possession, control or use of the Equipment, including injury or damage to persons or property. THE EPP IS A CONTRACTUAL MODIFICATION OF CUSTOMER'S LIABILITY. All of the following "Conditions" must be satisfied for the EPP and the corresponding liability reduction to apply: (i) Customer accepts the EPP in advance of the rental; (ii) Customer pays 12% of the gross rental charges as the fee for the EPP (plus applicable taxes); (iii) Customer fully complies with the terms of this Agreement; (iv) Customer's account is current at the time of the loss, theft, damage or destruction of the Equipment; and (v) none of the Exclusions apply.
- c. Customer assumes the Exclusion risks, meaning that if any Exclusion occurs, the EPP does NOT reduce the liability of Customer to Next for the loss, theft, damage or destruction resulting from such Exclusion. "**Exclusions**" shall mean loss, theft, damage or destruction of the Equipment: (A) due to intentional misuse or gross negligence; (B) caused by lost equipment not reported by Customer to the police within 48 hours of discovery, and substantiated by a written police report (promptly delivered to Next); (C) due to floods, water level changes, wind, storms, earthquakes or acts of God; (D) accessories or Equipment for which Customer is not charged the EPP fee; (E) loss or damage resulting from dishonest or criminal activity of the Customer or any of its representatives; (F) any damage to glass or windows for any reason; or (G) overloading or use of the Equipment not in accordance with its operational manual and instructions. THE EXCLUSIONS REMAIN THE LIABILITY OF CUSTOMER AND ARE NOT MODIFIED BY THE EPP.

12. **Vehicle Condition; AS-IS; No Warranties**: Customer acknowledges that the Equipment is the property of Next and is in good condition both physically and mechanically as of the start of the rental of such Equipment. Customer agrees to maintain each Equipment according to the manufacturer's recommended maintenance guidelines. Customer further acknowledges that the owner's manual with the manufacturer's maintenance recommendations was with each piece of Equipment at the beginning of the Rental Period. Customer agrees to maintain and provide to Next all records pertaining to repairs and maintenance that occur while the Equipment is in the Customer's possession and also agrees to obtain Next's prior written consent for all repairs or maintenance. In addition, Customer agrees to keep the Equipment in good operation condition and physical appearance while in their possession. Next reserves the right to physically inspect or have a contracted party of Next physically inspect the Equipment at any time during the Rental Period. CUSTOMER'S ACCEPTANCE OF THE EQUIPMENT SHALL CONCLUSIVELY BE DEEMED TO BE CUSTOMER'S ACCEPTANCE THAT THE EQUIPMENT SHALL BE RENTED ON AN "AS-IS, WHERE-IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY RECOURSE TO NEXT. NEXT DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ALL IMPLIED WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF

DEALING OR USAGE OF TRADE, AND ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NEXT HEREBY DISCLAIMS ANY OF ITS OBLIGATIONS OR LIABILITIES ARISING FROM THE STATUTE, WARRANTY CONTRACT, TORT OR NEGLIGENCE. CUSTOMER IS NOT RELYING ON ANY REPRESENTATIONS OF NEXT THAT EQUIPMENT IS SUITED FOR CUSTOMER'S INTENDED USE, OR IS FREE FROM DEFECTS IN ITS DESIGN, CAPACITY, MATERIALS USED, PERFORMANCE, OR WORKMANSHIP. NEXT FURTHER DISCLAIMS ANY LIABILITY WHATSOEVER FOR LOSS, DAMAGE, OR INJURY TO CUSTOMER OR THIRD PARTIES AS A RESULT OF ANY SUCH DEFECTS, BLATANT OR OTHERWISE IN EQUIPMENT.

13. **Environmental Charge**: Next shall retain the right to impose an additional environmental charge in a reasonable amount to help offset costs associated with environmental safety and compliance (i.e., inspections, permits, registrations, classes, training, etc.). Amounts collected hereunder may be used by Next at its own discretion and do not constitute a tax, surcharge, or fee mandated by the government or regulating agency.
14. **Indemnification**: Customer agrees that all Equipment and persons operating the Equipment are under its exclusive control, custody, and supervision during the Rental Period. To the fullest extent permitted by law, Customer shall indemnify, release, defend, and hold harmless Next, its parent, and its affiliates and their respective members, officers, directors, shareholders, employees, agents or insurer, from and against any and all liabilities, losses, causes of action, judgments, penalties, demands, and claims of every kind and character, however arising or incurred, for injuries, death, or damage to or loss of property, including Equipment, claimed for or against Next, including but not limited to losses caused in part by the active or passive negligence or faults of Next, its officers, agents, and employees, arising out of or relating to (a) Customer's usage, possession, operation, storage, or control of Equipment during the Rental Period; (b) Customer's failure to comply with the terms and conditions of this Agreement, including, without limitation, Customer's representations herein. With respect to claims by employees of Customer or its suppliers that indemnity obligations created under this Section shall not be limited by the fact of, amount, or type of benefits or compensation payable by or for Customer or its suppliers under any worker's compensation, disability benefits, or other employee benefits, acts or regulations, and Customer waives any limitation of liability arising from workers compensation or such other acts or regulations. If any action or proceeding is brought against Next, its parent, and its affiliates and their respective members, officers, directors, shareholders, employees, agents or insurer by reason of any of the matters set forth in the preceding sentence, Customer, on written notice from Next, shall defend Next at Customer's expense with counsel reasonably satisfactory to Next. Customer shall in no way act as agent of Next in authorizing or allowing repair to Equipment without written consent of Next. Customer agrees to pay all unauthorized charges in connection with any liens or repairs. Customer's indemnity obligations created under this Section shall survive the expiration or termination of this Agreement.
15. **Limitation of Liability**: In no event shall Next be liable for any incidental indirect, special, impact or consequential damages, or in the cumulative aggregate, for any damages in excess of

the total Rental Payment paid by Customer under this Agreement as set forth on the Face Page. Customer's sole and exclusive remedy shall be limited to repair or replacement, at Next's discretion, of any defects in Equipment, which Next determines occurred during normal use.

16. **Taxes, Tolls, and Other Charges:** Customer shall be responsible for all taxes imposed by applicable government authorities. Customer is responsible for paying the charging authorities directly all tolls (“**Tolls**”) and parking citations, photo enforcement fees, fines for toll evasion, and other fines, fees, and penalties (each a “**Violation**”) assessed against Customer, Next, or any Equipment during the Rental Period. If Next is notified by charging authorities that it may be responsible for payment of a Toll or Violation, Customer will pay Next or a processing firm (“**Processor**”) of Next's choosing an administrative fee of up to \$50 for each such notification. Customer authorizes Next to release Customer's rental and payment card information to a Processor for processing and billing purposes. If Next or the Processor pay a Toll or Violation, Customer authorizes Next or the Processor to charge all such payments, service fees and administrative fees to the payment card Customer used in connection with this rental or, at its sole option, use a deposit or reserve to satisfy all such charges

17. **Equipment Owned by Third Party:** In the event any Equipment is leased to Next pursuant to any lease agreement with any third party, Customer acknowledges and agrees that all of its rights under the Agreement in and to the use of the Equipment, including Customer's rights to its possession, are subordinate and subject to the rights and claims of the such third party. Next and such third party shall have the right to take possession of the Equipment, without any liability of the third party or Next to the Customer. In the event the third party or Next takes possession of the Equipment, Next shall take commercially reasonable efforts to provide to Customer substitute Equipment reasonably similar to Equipment, and in the event such substitute equipment cannot be provided, Customer shall have the right, as its sole and exclusive remedy hereunder, to receive a refund pro rata for the period of time remaining in the Minimum Rental Period.

18. **Usage Limits; Other Fees:** The Customer shall not use the Equipment leased under this Agreement for more than eight (8) hours per 24-hour day, forty (40) hours per 7-day week, and one hundred and twenty (120) hours per 28-day month. Any Equipment that is used by the Customer for more than such time limits, will be charged, in addition to the daily, weekly, or monthly rate, at a rate of \$30 per hour over the applicable time limit, respectively. Mileage charges, when applicable, shall be calculated using the odometer on Equipment, in addition to time charges. Equipment shall be provided to Customer with a full tank of fuel, and Customer, at its expense, shall return Equipment with a full tank of fuel. Next reserves the right to charge Customer for less than full tanks of fuel upon return of Equipment at a rate of \$12 per gallon. A cleaning fee of the greater of (a) \$50, and (b) \$50 per hour will be applied for any Equipment returned dirty and not properly cleaned. Under no circumstances is Next responsible for damages to glass, and the Customer Protection Program shall under no circumstances cover glass repair or replacement. For any repair or service call required by Next to repair or service the equipment either in the field or in Next's facilities, Customer will be charged the current shop rate and/or service call rate and applicable mileage.

19. **Mechanics Lien or Residence Lien:** In the event of default by Customer and failure to pay any Fees owed to Next, Customer agrees that Next has the right to impose a mechanic's liens, residence liens, or any other lien allowed by applicable law against the Customer in order to collect any Fees owed to Next.
20. **No Relationship:** Neither this Agreement nor the use or operation of any Equipment of Next constitutes the creation of any agency, employment, joint employment, or other legal relationship for which Next may be vicariously responsible for this rental and/or use of the Equipment by the Customer or any operator at any time.
21. **Remedies and Waiver of Jury Trial:** All rights and remedies provided in this Agreement for Next are cumulative and not exclusive, and the exercise by Next of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties, or otherwise. The prevailing party or substantially prevailing party in any dispute, action, or attempt to enforce or collect any amounts due under this Agreement shall be entitled to all of its costs, fees and expenses in connection with the same including, without limitation, reasonable attorneys' fees and court costs. Customer acknowledges that a breach or threatened breach by Customer of any of its obligations under this Agreement would give rise to irreparable harm to Next for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by Customer of any such obligations, Next, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond). EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
22. **Governing Law and Venue:** This Agreement and all disputes between the parties will be governed by the laws of the State of Utah (without reference to its principles of conflicts of law). Each party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other party in any way arising from or relating to this Agreement, including, but not limited to, contract, equity, tort, fraud, and statutory claims, in any forum other than the State of Federal Courts located in Salt Lake County, Utah, and any appellate court from any thereof. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only as set forth in this Section 22.
23. **Miscellaneous:** No term of this Agreement can be waived or modified except by a writing signed by both parties. This Agreement constitutes the entire agreement between Customer and Next. All prior representations and agreements between Customer and Next regarding the use of the

Equipment are void. A waiver by Next of a breach of this Agreement is not a waiver of an additional breach or waiver of the performance of Customer's obligations under this Agreement. Customer waives all recourse against Next for criminal prosecutions Next takes against Customer for breach of this Agreement. Next's acceptance of payment from Customer or Next's failure, refusal or neglect to exercise Next's rights under this Agreement does not constitute a waiver of another provision of this Agreement. TO THE FULLEST EXTENT PERMITTED BY LAW, CUSTOMER RELEASES NEXT FROM ALL LIABILITY FOR CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS TRANSACTION OR THE RESERVATION OF A EQUIPMENT. If a provision of this Agreement is deemed void or unenforceable, all remaining provisions shall remain valid and enforceable. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

24. **Prohibited Uses of Equipment**: The Equipment shall not, under any circumstances, be used for any of following purposes or under any of following conditions, and any such use is without Next's permission: (a) by anyone without first obtaining Next's written consent; (b) by anyone under age 21; (c) by anyone who is not a qualified and licensed operator of such equipment; (d) by anyone whose driver's license in any state has been revoked or suspended within the previous 3 years, even if he or she now possesses a valid driver's license; (e) to carry persons or property for hire; (f) to propel or tow any vehicles, trailers or other object; (g) in any race, test or contest; (h) for any illegal purpose or commission of a crime; (i) to instruct an unlicensed person in operation of Equipment; (j) if Equipment is obtained from rental company by fraud or misrepresentation; (k) to carry persons other than in passenger compartment of Equipment; (l) loading Equipment beyond its rated capacity; (m) while under the influence of alcohol or other intoxicants like drugs or narcotics or under any other physical or mental impairment which adversely affects operator's ability to operate the Equipment; (n) intentionally causing damage to or loss of the Equipment; or (o) in an unsafe, reckless, grossly negligent, or wanton manner. Customer agrees that Equipment rented under this Agreement will be used only in the day-to-day operation of Customer's business or project; and will be driven only by authorized operators in the ordinary course. The Customer is responsible to remove keys and lock all doors and close all windows before leaving the Equipment. CUSTOMER UNDERSTANDS THAT USE OF EQUIPMENT IN VIOLATION OF THIS SECTION IS A "PROHIBITED USE". ANY PROHIBITED USE OF EQUIPMENT VIOLATES THIS AGREEMENT, VOIDS ALL LIABILITY AND OTHER INSURANCE COVERAGE (WHERE PERMITTED BY LAW), MAKES EQUIPMENT SUBJECT TO IMMEDIATE RECOVERY BY NEXT, AND MAKES CUSTOMER RESPONSIBLE FOR ALL LOSS OF OR DAMAGE TO OR CONNECTED WITH EQUIPMENT, REGARDLESS OF CAUSE, INCLUDING BUT NOT LIMITED TO NEXT'S DAILY EXPENSES, INCLUDING LOSS OF USE.

PERSONAL GUARANTY

The undersigned Guarantor, absolutely, unconditionally and irrevocably guarantees the prompt payment and performance of, and agrees to pay and perform as primary obligor, all liabilities and obligations of Customer (as defined in the Rental Agreement) under that certain Equipment Rental Agreement between Customer and NEXT Equipment L.L.C., a Utah limited liability company (“Next”) dated of even date herewith (including all schedules, exhibits, amendments, and modifications thereto, the “**Rental Agreement**”). All capitalized terms used herein without definition shall have the same meanings herein as provided in the Rental Agreement. Guarantor acknowledges that Customer is owned directly or indirectly by Guarantor and that this Guaranty is entered into in consideration of the direct and material benefits that will accrue to Guarantor, and for the purpose of inducing NEXT, to enter into the Rental Agreement with Customer.

Guarantor’s obligations are independent of Customer’s obligations under the Rental Agreement. This is a Guaranty of full and complete payment and not of collection. All sums payable to NEXT under this Guaranty shall be payable on demand and without reduction for any offset, claim, counterclaim or defense. This Guaranty shall be a continuing guaranty and the liability of Guarantor shall in no way be affected, modified or diminished by reason of any amendment, renewal, supplement, modification, assignment, transfer or extension of the Rental Agreement or by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Rental Agreement, or by reason of any extension of time that may be granted by NEXT to Customer, its successors or assigns, or by reason of any dealings or transactions or matters or things occurring between NEXT and Customer, its successors or assigns, whether or not notice thereof is provided to Guarantor.

Any payment received from Guarantor on account of the liabilities and obligations under the Rental Agreement (the “**Obligations**”) may be applied by NEXT, in its sole and absolute discretion, to any obligations of Guarantor under the Rental Agreement then due and payable, regardless of whether such payment was identified by Guarantor as a payment on specific amounts due and payable by Guarantor. The liabilities of Guarantor shall not be limited by the amount on the face page of the Rental Agreement, but shall be determined solely by the Obligations and any other amounts payable to NEXT pursuant to this Guaranty.

Notice of acceptance of this Guaranty as well as all demands, presentations, notices of protest and notices of every kind or nature, including those of any action or non-action on the part of Customer, NEXT or any other party, are hereby fully waived by Guarantor. Upon any default of Customer under the Rental Agreement, NEXT may, at its option, proceed directly and at once, without notice of such default, against Guarantor to collect and recover the full amount of the liability hereunder or any portion thereof without proceeding against Customer or any other party or foreclosing upon, selling or otherwise disposing of or collecting or applying any property, real or personal, NEXT may then have as security for the performance by Customer under the Rental Agreement. Guarantor hereby waives the right to require NEXT to proceed against Customer or to pursue any other remedy NEXT may have, waives the right to plead or assert any election of remedies NEXT may have, waives the pleading of any statute of limitations as a defense to the obligation hereunder, and waives any other defense arising by reason of any disability or other defenses of Customer or by reason of the cessation from any cause whatsoever of the liability of Customer.

THIS GUARANTY AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF UTAH APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. GUARANTOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS GUARANTY.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST NEXT OR GUARANTOR ARISING OUT OF OR RELATING TO THIS GUARANTY SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN UTAH AND GUARANTOR WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING

If NEXT is required to institute an action or suit to enforce this Guaranty, Guarantor shall pay all costs provided by statute and reasonable attorney's fees and court costs as may be awarded by any court of competent jurisdiction.

Until the Customer's Obligations are indefeasibly paid in full, Guarantor expressly postpones and subordinates in favor of NEXT any and all rights which Guarantor may have to (a) assert any claim against any Customer based on subrogation rights with respect to payments made under this Guaranty, and (b) any realization on any property of the Customer, including participation in any marshaling of assets of the Customer.

No delay or omission on the part of NEXT to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power or any acquiescence therein, nor will the action or inaction of NEXT impair any right or power arising hereunder. NEXT's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which NEXT may have under other agreements, at law or in equity.