

## **TOOL AND EQUIPMENT RENTAL AGREEMENT**

This Tool and Equipment Rental Agreement (this “**Agreement**”) is made and entered into as of the effective date listed below (the “**Effective Date**”), by and between the **Company** and **Customer** identified below. For purposes of this Agreement, **Company** and **Customer** may be individually referred to as a “Party,” and, together, as the “Parties.”

### **TERMS OF AGREEMENT**

**1. Rental.** **GATOR** agrees to rent to **Customer**, and **Customer** agrees to rent from **GATOR**, the tools and equipment (the “Equipment”) described in each Schedule executed from time to time pursuant to this Agreement (each, a “Schedule”). Each Schedule shall incorporate all of the terms and conditions of this Agreement, shall contain such additional terms as **Customer** and **GATOR** shall agree upon, and shall constitute an agreement separate and distinct from this Agreement and any other Schedule. In the event of a conflict between the provisions of this Agreement and a Schedule, the provisions of the Schedule shall prevail. A sample Schedule is attached as **Exhibit A**.

**2. Term.** The term of the rental applicable to Equipment referenced in the Schedules shall commence upon the date, and continue for the period, specified in the applicable Schedule (each rental term applicable to a particular item of Equipment, together with any extensions, automatic or otherwise, is referred to herein as the “**Term**”). This Agreement may be terminated by either Party effective upon no less than **twenty-four (24) hours** notice to the other Party. Upon termination, no additional Schedules shall be entered into or become effective under this Agreement. Rentals in effect pursuant to Schedules approved prior to the termination of this Agreement shall continue in full force and effect following such termination for their respective Terms, unless otherwise agreed to by the Parties.

**3. Use of Equipment.** **Customer** shall use the Equipment (a) solely in connection with **Customer’s** business and for the purpose for which the Equipment was designed and intended, and (b) in a careful and proper manner in accordance with all applicable laws, regulations, and ordinances promulgated by any federal, state, or local governmental body, agency, or authority, including Texas occupational safety laws. Furthermore, **Customer** shall not (i) sublease the Equipment without **GATOR’s** prior written consent, or (ii) directly or indirectly create, incur, or suffer to exist any lien, security interest, or other encumbrance on the Equipment. **Customer** is responsible for ensuring that the Equipment is operated and used only by individuals who have the proper licenses, training, and qualifications to do so. **Customer’s** use of the Equipment shall not exceed the **Hours Allowed** set forth in the Schedule; in the event that **Customer’s** use of the Equipment exceeds the Hours

allowed set forth in the Schedule, **Customer** will pay the **Overage Rate** set forth in the Schedule for such additional use.

**4. Rental Payments; Late Charges.** Upon commencement of a Term, **Customer** agrees to pay to **GATOR** rent for the Equipment ("Rent") at the rates and at the times specified in the applicable Schedule for the duration of the Term. Rent payments will be made by credit card or any other means agreed to by the Parties. **Customer** agrees to pay **GATOR** interest at the rate of **eighteen percent (18%) per annum** (or the maximum rate allowable under applicable Texas law, if less) on any past-due amounts.

**5. Taxes.** Unless otherwise agreed to by **GATOR**, **Customer** shall (a) pay all taxes, assessments, and any other fees or expenses associated with or resulting from **Customer's** possession, use, or operation of the Equipment during the Term, including without limitation Texas sales and use taxes, toll fees, and parking tickets; (b) file all returns required of **Customer** in that regard; and (c) furnish, upon **GATOR's** request, verification that payment has been made before said taxes, assessments, or fees become delinquent.

**6. Title to Equipment.** Title to the Equipment shall at all times remain with **GATOR** during the Term. In the event that **GATOR** deems it advisable at any time to prepare or file notices, filings, or other documents (e.g., UCC-1 or other forms of financing statements) in order to protect its interest in and to the Equipment, **Customer** shall cooperate fully with **GATOR** and shall sign each such document.

## **7. Maintenance and Return of Equipment.**

(a) **Customer** shall, at its own cost and expense and at all times during the Term, maintain the Equipment in good operating order, repair, condition, and appearance in accordance with the manufacturer's recommended procedures and **Gator's** instructions. **Customer** has a duty to inspect the Equipment regularly to ensure that it remains clean and in good working order at all times; provided, however, that **Customer** shall not undertake any significant repairs to the Equipment without **GATOR's** prior written consent. **Customer** shall promptly notify **GATOR** of any Equipment malfunctions or defects so that **GATOR** can make the necessary and proper repairs in a timely manner.

(b) Upon expiration or other termination of the Term, **Customer** shall return to **GATOR** the Equipment in good operating order, repair, condition, and appearance, **normal wear and tear excepted**, as it was at the commencement of the Term. **Customer** shall be liable for a **fueling fee** for a full tank of fuel (if applicable) at posted rates at the conclusion of the Term if the Equipment is not returned with a full tank of fuel, and **Customer** shall be liable for an **additional cleaning fee** as detailed in the Schedule. Equipment must be returned to

**GATOR's** office, branch, or location where the Equipment was originally located at the time it was rented, must be returned during **GATOR's** regular business hours, and must be acknowledged by an authorized representative of **GATOR** with a signed receiving report; **GATOR** is not responsible for Equipment **Customer** returns to **GATOR** outside of **GATOR's** regular business hours, and applicable late charges, lost item, or abandonment fees will be applied to any Equipment returned outside of **GATOR's** regular business hours in the event it is lost, stolen, or not properly attributed to **Customer**.

**8. Alterations of Equipment.** **Customer** shall make no alterations to the Equipment without obtaining prior written permission from **GATOR**. Any approved alterations to and improvements of the Equipment of any kind (except for alterations or additions that do not impair the value or performance of the Equipment and are readily removable without damage to the Equipment) shall immediately become the property of the **GATOR** and subject to the terms of this Agreement.

**9. Risk of Loss.** **Customer** is responsible for all risk of loss, theft, damage, or destruction to the Equipment, from any and every cause, while such Equipment is in the custody or care of **Customer**. In the event the Equipment is lost or damaged, **Customer** will provide **GATOR** with prompt written notice of such loss or damage and will, if the Equipment is repairable, put or cause the Equipment to be put in a state of good repair, appearance, and condition. Loss or damage to the Equipment shall not relieve **Customer** of its ongoing obligation to pay Rent. In the event the Equipment is lost or stolen, or suffers damage that is either not repairable or the cost of the repairs would exceed the **Insured Value** of the Equipment (as specified in the Schedule), **Customer** will provide **GATOR** with prompt written notice thereof and will pay to **GATOR** the sum of all unpaid Rent currently outstanding plus the **Insured Value** of the Equipment set forth in the Schedule.

**10. Location of Equipment; Right of Inspection; GPS Tracking.** **Customer** shall not:

(a) move the Equipment from the address specified in the applicable Schedule to another location within the State of Texas without prior written notice to and acknowledgment from **GATOR**; or

(b) move the Equipment to any location outside the State of Texas without **GATOR's** prior written consent.

Upon **GATOR's** request, **Customer** shall inform **GATOR** of the exact location of the Equipment. Upon reasonable prior notice, **GATOR** shall at all times during business hours have the right to enter on the premises where the Equipment is located for the purpose of inspecting it or observing its use but shall not unreasonably interfere with **Customer's** business.

**GPS Tracking Devices.** **Customer** acknowledges and agrees that **GATOR** may, at its sole discretion, install GPS tracking devices or other location-monitoring technology on any or all items of rented Equipment for the purposes of asset protection, theft recovery, and operational management. **Customer** shall not disable, remove, tamper with, or interfere with any such device. **Customer** consents to the collection and use of location data generated by such devices during the Term of this Agreement and until the Equipment is returned to **GATOR**. **GATOR** will use such data solely for legitimate business purposes and in compliance with applicable law. Disclosure of collected data will be restricted to service providers, law enforcement, or as otherwise legally required.

## **11. Representations, Warranties, and Acknowledgments.**

(a) **Customer** acknowledges and agrees that each item of Equipment listed on any Schedule has been selected by **Customer** for inclusion in this Agreement, based solely upon **Customer's** own judgment and without reliance upon any representations or warranties by **GATOR**.

(b) **CUSTOMER** ACKNOWLEDGES AND AGREES THAT (i) **GATOR** IS NOT THE MANUFACTURER OF THE EQUIPMENT; (ii) **GATOR** HAS NOT MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS, OR SUITABILITY OF THE EQUIPMENT FOR THE PARTICULAR PURPOSES OR INTENDED USES OF **CUSTOMER**; (iii) **GATOR** MAKES NO REPRESENTATIONS AND SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT; (iv) THE ONLY APPLICABLE WARRANTIES SHALL BE WARRANTIES, IF ANY, PROVIDED BY THE MANUFACTURER OF THE EQUIPMENT, WHICH WARRANTIES MAY OR MAY NOT BE TRANSFERABLE TO **CUSTOMER**; (v) CERTAIN PIECES OF THE EQUIPMENT MAY BE USED, AND ARE PROVIDED, WITHOUT WARRANTY; (vi) **GATOR'S** SOLE RESPONSIBILITY WITH REGARD TO ANY CLAIM OF DEFECT OR BREACH OF MANUFACTURER'S WARRANTY WILL BE TO LEND REASONABLE ASSISTANCE TO **CUSTOMER** IN THE PROSECUTION OF A CLAIM AGAINST THE MANUFACTURER; AND (vii) **GATOR** SHALL HAVE NO LIABILITY TO **CUSTOMER** OR ANY USER OF THE EQUIPMENT FOR ANY CLAIM, LOSS, OR DAMAGE CAUSED OR ALLEGEDLY CAUSED DIRECTLY, INDIRECTLY, INCIDENTALLY, OR CONSEQUENTIALLY BY THE EQUIPMENT, BY ANY INADEQUACY THEREOF OR DEFECT OR DEFICIENCY THEREIN OR BY ANY INCIDENT WHATSOEVER THEREWITH, WHETHER ARISING IN TORT, STRICT LIABILITY, NEGLIGENCE, CONTRACT, OR OTHERWISE, OR IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT. NOTHING IN THIS AGREEMENT LIMITS LIABILITY TO THE EXTENT CAUSED BY **GATOR'S** WILLFUL MISCONDUCT OR TO THE EXTENT SUCH LIMITATION IS PROHIBITED BY APPLICABLE LAW.

(c) **GATOR** hereby assigns to **Customer** any warranties, covenants, and representations of the manufacturer or seller of the Equipment, to the extent assignable. Neither

Party will take any actions or fail to take any action the effect of which would be to invalidate any such warranty. Any amounts received by **Customer** as payments under any warranty or as the result of the prosecution of any claim against any manufacturer shall be applied first to the repair, restoration, or replacement of the Equipment, with any balance, less out-of-pocket expenses of **Customer**, being paid to **GATOR**.

**12. Site Conditions.** **Customer** is solely responsible for performing all necessary inspections and taking all necessary measures to ensure that the operating area for the Equipment is suitable for the use of the Equipment, including, without limitation, taking into account proximity to power lines, slopes, and underground utilities.

**13. Indemnification.** To the fullest extent permitted by law, **Customer** shall indemnify **GATOR** against, and hold **GATOR** harmless from, all claims, actions, proceedings, costs, damages, and liabilities, including attorneys' fees, asserted by any person or persons for property damage, bodily injuries, or death caused by or sustained due to **Customer's** use or possession of the Equipment, in accordance with Texas indemnity laws. **Customer's** indemnity does not apply to the extent claims are caused by **GATOR's** own negligence, gross negligence, or willful misconduct, except to the maximum extent permitted by law.

**14. Events of Default.** Each of the following shall constitute an "Event of Default" under this Agreement:

- (a) Non-payment by **Customer** of any sum required hereunder (including Rent), which non-payment shall continue beyond five (5) days after notice from **GATOR**;
- (b) **Customer** making an assignment for the benefit of creditors or filing any petition or action under any bankruptcy, reorganization, or insolvency law or laws for the relief of, or relating to, debtors; or
- (c) Any other circumstance of non-performance by a Party of any covenant or condition of this Agreement applicable to such Party, which non-performance continues beyond **\*\*thirty (30) days\*\*** after notice from the non-defaulting Party, unless the non-defaulting Party is satisfied that the defaulting Party is diligently pursuing a cure of such non-performance.

**15. GATOR's Remedies upon Customer's Default.** In the case of an Event of Default with respect to which **Customer** is the defaulting Party, **GATOR** may take any of the following actions:

- (a) proceed by appropriate court action, in law or equity, to enforce performance by

**Customer** of the applicable covenants of this Agreement or to recover damages for the breach thereof;

- (b) take possession, by summary proceedings or otherwise, of the Equipment;
- (c) terminate this Agreement; and/or
- (d) avail itself of any other remedy that might be available under applicable Texas law.

In addition, **Customer** shall pay all costs, charges, and expenses, including **reasonable attorneys' fees**, incurred in retaking possession of the Equipment or in the collection of any sums which **Customer** may owe **GATOR**, including but not limited to the defense of any action brought against **GATOR** for damages caused by the Equipment to any person while the Equipment is or was in the possession of **Customer**.

**16. Optional Damage Waiver.** **Customer** is responsible for all damage to the Equipment until the Equipment is returned to **GATOR**, regardless of whether a third party caused the damage or the cause is unknown. For equipment with a replacement value over \$5,000.00, **GATOR** will give **Customer** the option to purchase Tool Damage Protection as specified in the Schedule. If **Customer** purchases said Tool Damage Protection, **CUSTOMER** will be responsible for a \$2,500.00 deductible in the event of any covered loss. **CUSTOMER** will remain liable for any losses not covered by the optional Tool Damage Protection. The Tool Damage Protection will not reduce **Customer's** responsibility for any damage or losses resulting from **Customer's** intentional, willful, or reckless conduct.

**17. Security Deposit.** On all rentals for equipment with a replacement value of less than \$5,000.00, and for all rentals where the **CUSTOMER** declines the optional Tool Damage Protection, **CUSTOMER** agrees to a \$5,000.00 security deposit to apply towards any damages to the equipment, cleaning fees, and/or fueling costs as applicable and described herein. Any Security Deposit funds remaining after all applicable charges will be refunded to **CUSTOMER**.

**18. Time is of the Essence.** Time is of the essence as to **Customer's** payment of Rent and other charges and fees under this Agreement and **Customer's** performance of all other obligations under this Agreement.

**19. Assignment.** **Customer** shall not assign, transfer, or sublet this Agreement or any interest in the Equipment without **GATOR's** prior written consent. The grant by **Customer** of a sublease of any Equipment shall not affect or diminish any of **Customer's** obligations under this Agreement. **GATOR** may at any time assign or transfer any part of its right, title,

or interest in the Equipment or this Agreement, at which point **Customer** will be obligated to such assignee as the new **GATOR** under this Agreement. Subject to the above, the rights and obligations under this Agreement shall inure to, and be binding on, their respective successors and assigns.

**20. Notices.** Any required notices under this Agreement must be in writing and be hand delivered, electronically mailed, or sent by registered mail return receipt requested to the Party receiving such communication at the address specified on the first page of this Agreement or such other address as either Party may in the future specify in writing to the other Party. Notices shall be deemed received upon actual receipt or refusal of delivery.

**21. Entire Agreement.** This Agreement, together with the Schedules attached hereto, constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes all prior agreements pertaining to its subject matter. This Agreement shall not be altered or amended except by a writing signed by both Parties.

**22. Governing Law; Venue.** This Agreement shall be governed by the laws of the State of Texas, without regard to conflict of laws principles. Any claim or dispute under this Agreement must be resolved by a court located in **Comal County, Texas**.

**23. Severability.** If any provision of this Agreement is held by a court or other tribunal to be invalid or unenforceable, the remaining portions of this Agreement shall remain in full force and effect, and such invalid or unenforceable provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties.

**24. Counterparts.** The Parties may execute this Agreement in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. **Electronic signatures are binding and enforceable** to the same extent as written signatures.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the Effective Date.