

MAR 26 2018

### REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

**SUBMITTED BY:** Ralph McBroom

**TODAY'S DATE:** March 15, 2018

**DEPARTMENT:** Purchasing

**DEPARTMENT HEAD:** Ralph McBroom

**REQUESTED AGENDA DATE:** March 26, 2018

**SPECIFIC AGENDA WORDING:** Consider and approve Master Rental Agreement and Johnson County Contract Terms Addendum to Rental Contract and ROMCO's Rental Agreement for rental of equipment.

**PERSON(S) TO PRESENT ITEM:** Ralph McBroom C.P.M.

**SUPPORT MATERIAL:** (See attached)

**TIME:** 5 min

(Anticipated number of minutes needed to discuss item)

**ACTION ITEM:** X

**WORKSHOP**

**CONSENT:**

**EXECUTIVE:**

**STAFF NOTICE:**

**COUNTY ATTORNEY:** X

**AUDITOR:**

**PERSONNEL:**

**BUDGET COORDINATOR:**

**IT DEPARTMENT:**

**PURCHASING DEPARTMENT:**

**PUBLIC WORKS:**

**OTHER:**

\*\*\*\*\*This Section to be completed by County Judge's Office\*\*\*\*\*

ASSIGNED AGENDA DATE: \_\_\_\_\_

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE \_\_\_\_\_

COURT MEMBER APPROVAL \_\_\_\_\_ Date \_\_\_\_\_

**MASTER RENTAL AGREEMENT AND  
JOHNSON COUNTY CONTRACT TERMS  
ADDENDUM TO RENTAL CONTRACT**

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This Master Rental Agreement And Johnson County Contract Terms Addendum to Rental Contract, (hereinafter referred to as the "AGREEMENT") is between **Johnson County, Texas**, a political subdivision of the State of Texas, (hereinafter referred to as "COUNTY"), and ROMCO Equipment Co, LLC (hereinafter referred to as "VENDOR"), collectively referred to as the "PARTIES", and is a master rental agreement and an addendum to the Rental Contract of Vendor between the Parties for the rental of equipment and together this AGREEMENT and the Rental Contract shall constitute the entire and complete contract between the Parties.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree and understand as follows:

1. This Agreement is to apply to each and every Rental Contract for the rental of equipment by County from Vendor after the date this Agreement is approved by the Parties and shall continue to be effective until April 30 20 19. A signed copy of this Agreement shall be attached to and become part of each Rental Contract between the Parties as though said copy of this Agreement were an original. In the event a signed copy of this Agreement is not attached to a Rental Contract, the Parties agree that the terms and conditions of the Agreement will apply to the Rental Contract as though said Agreement had been attached.
2. This Agreement is to clarify, limit, modify or delete terms and provisions of the Rental Contract and in the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of those contractual provisions tendered to Johnson County in the Rental Contract, this Agreement shall control and amend the contractual provisions of the Rental Contract and any provisions in the Rental Contract to the contrary are hereby deleted.
3. This Agreement is being executed in order to facilitate County being able to rent equipment from Vendor on an "as needed" basis and that when a representative of County signs the Rental Contract upon taking possession of the equipment, the representative of County is acknowledging the tender or delivery of Vendor's equipment, the rate to be charged and the time period of the rental; however, the representative of County is not agreeing to or binding the County to any terms and conditions that conflict with this Agreement.
4. Each Rental Contract with a signed copy of this Agreement attached will be an effective agreement between the Parties upon the Purchasing Agent of County issuing a Purchase Order for the rental of equipment listed on the Rental Contract and a representative of County signing the said Rental Contract.

5. Either Party may cancel this Agreement by providing written notice to the other Party thirty (30) days prior to cancellation.
6. This Agreement will be governed by and construed according to the laws of the State of Texas. Venue for any action or claim arising out of the Agreement will be in the state district courts in Johnson County, Texas or the federal district courts in Dallas County, Texas. Any provision in the Rental Contract stating that County agrees to waive any right to trial by jury is hereby deleted.
7. Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision in the Rental Contract to the contrary is hereby deleted.
8. Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term in the Rental Contract which provides for such a claim is hereby deleted.
9. Under the Texas Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references in the Rental Contract of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.
10. County is a political subdivision of the State of Texas, and therefore has certain governmental/sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said insurance coverage is limited to the statutory maximum limits of the Texas Tort Claims Act (Chapter 101, Texas Civil Practice and Remedies Code); therefore, any provisions in the Rental Contract requiring County to provide and maintain any insurance in excess of the statutory maximum limits are hereby deleted.
11. County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled; therefore any provisions in the Rental Contract to the contrary are hereby deleted.
12. County will provide property insurance covering the replacement (fair market value) cost of the equipment rented and will provide Vendor with a certificate of insurance.
13. County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions in the Rental Contract to the contrary are hereby deleted.

14. County does not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provisions in the Rental Contract to the contrary are hereby deleted.
15. County does not agree to waive any rights and remedies available to County under the Texas Deceptive Trade Practices-Consumer Protection Act; therefore, any provisions in the Rental Contract to the contrary are hereby deleted.
16. Except for a heavy equipment tax, County does not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Rental Contract, the equipment or its use; therefore, any provisions in the Rental Contract to the contrary are hereby deleted.
17. Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31<sup>st</sup> day after the later of:
  - a. the date the governmental entity receives the goods under the contract;
  - b. the date the performance of the service under the contract is completed; or
  - c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions in the Rental Contract to the contrary are hereby deleted.

18. To the extent, if any, that any provision in this Agreement is in conflict with Chapter 552 of the Texas Government Code (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act.
19. Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

IN WITNESS WHEREOF, intending to be legally bound, the Parties have caused their authorized representative to execute this Agreement. Each representative whose signature appears

on this Agreement represents and does hereby certify that they have the authority to enter into this Agreement for their represented Party.

APPROVED AS TO FORM AND CONTENT:

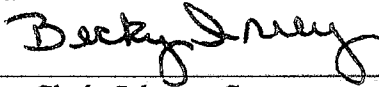
JOHNSON COUNTY:



Roger Harmon  
County Judge

3/26/18  
Date

Attest:

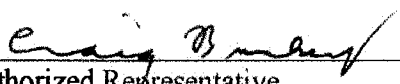


County Clerk, Johnson County



3/26/18  
Date

VENDOR:



Authorized Representative  
Printed Name: Craig Burkert  
Title: CFO

03/08/2018  
Date



## MASTER EQUIPMENT RENTAL AGREEMENT

This Master Equipment Rental Agreement (this "Agreement") is made and entered into as of the effective date listed below (the "Effective Date"), by and between the Lessor and Lessee identified below. For purposes of this Agreement, Lessor and Lessee may be individually referred to as a "Party," and, together, as the "Parties".

<b>Lessee ("Lessee")</b>			
<b>Full legal Name:</b>			
<b>Address:</b>			
<b>City:</b>	<b>State:</b>	<b>Zip:</b>	
<b>Phone:</b>	<b>Schedule Email:</b>		
<b>Lessee Representative</b>			
<b>Name:</b>	<b>Position:</b>		
<b>Address:</b>			
<b>City:</b>	<b>State:</b>	<b>Zip:</b>	
<b>Phone:</b>	<b>Email:</b>		
<b>ROMCO Equipment Co., LLC, a Texas limited liability company ("Lessor")</b>			
<b>Address:</b>	1519 W. Beltline Rd		
<b>City:</b>	Carrollton	<b>State:</b> TX	<b>Zip:</b> 75006
<b>Phone:</b>	(214) 819-4100	<b>Email:</b>	rentals@romco.com
<b>Romco Equipment Representative</b>			
<b>Name:</b>	Lois Mace	<b>Position:</b>	Rental Billing Administrator
<b>Address:</b>	1519 W. Beltline Rd		
<b>City:</b>	Carrollton	<b>State:</b> TX	<b>Zip:</b> 75006
<b>Phone:</b>	(214) 819-4100	<b>Email:</b>	rentals@romco.com
<b>Master Agreement Information</b>			
<b>Master Agreement Number:</b>			
<b>Effective Date:</b>			

### TERMS OF AGREEMENT

1. **Agreement.** Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the equipment and accessories (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 Lessee and Lessor 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.

2. **Delivery; Acceptance.** Lessor shall cause the Equipment to be delivered to Lessee at the Delivery Location specified in the Schedule. The applicable delivery charges and pick-up charges are set forth in the Schedule. Lessee shall be deemed to have accepted the Equipment unless Lessee notifies Lessor in writing within one business day of delivery of its rejection of the Equipment.

3. **Term.** The term of the leases applicable to Equipment referenced in the Schedules shall commence upon the date, and continue for the period, specified in the applicable Schedule (each lease 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 30 days' notice to the other Party. Upon termination, no additional Schedules shall be entered into or become effective under this Agreement. Leases 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.

4. **Use of Equipment.** Lessee shall use the Equipment (a) solely in connection with Lessee'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. Furthermore, Lessee shall not (x) sublease the Equipment without Lessor's prior written consent, or (y) directly or indirectly create, incur or suffer to exist any lien, security interest or other encumbrance on the Equipment. Lessee 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. Lessee's use of the Equipment shall not exceed the Hours allowed set forth in the Schedule; in the event that Lessee's use of the Equipment exceeds the Hours allowed set forth in the Schedule, Lessee will pay the Overage Rate set forth in the Schedule for such additional use.

5. **Rental Payments; Late Charges.** Upon commencement of a Term, Lessee agrees to pay to Lessor rent for the Equipment ("Ren")

at the rates and at the times specified in the applicable Schedule for the duration of the Term. Rent payments may be made by check, electronic transfer (with confirmation) or any other means agreed to by the Parties. Lessee agrees to pay Lessor interest at the rate of 18% per annum (or the maximum rate allowable under applicable law, if less) on any past-due amounts.

6. Taxes. Unless otherwise agreed to by Lessor, Lessee shall (a) pay all taxes, assessments and any other fees or expenses associated, with or resulting from, Lessee's possession use or operation of the Equipment during the Term, (b) file all returns required of Lessee in that regard, and (c) furnish, upon Lessor's request, verification that payment has been made before said taxes, assessments or fees become delinquent.

7. Title to Equipment. Title to the Equipment shall at all times remain with Lessor during the Term. In the event that Lessor 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, Lessee shall cooperate fully with Lessor and shall sign each such document.

8. Maintenance and Return of Equipment.

(a) Lessee 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 Lessor's instructions. Lessee 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 Lessee shall not undertake any significant repairs to the Equipment without Lessor's prior written consent. Lessee shall promptly notify Lessor of any Equipment malfunctions or defects so that Lessor can make the necessary and proper repairs in a timely manner.

(b) Upon expiration or other termination of the Term, to the extent Lessee has not exercised the option to purchase described in Section 20, if applicable, Lessee shall return to Lessor the Equipment in good operating order, repair, condition and appearance, normal wear and tear excepted, as it was at the commencement of the Term. Lessee shall be liable for a fueling fee at posted rates at the commencement of each rental for a full tank of fuel, and Lessee shall be liable for an additional cleaning fee in the event that Lessor is required to spend more than three hours cleaning the Equipment following its return to Lessor. Equipment must be returned to Lessor's office, branch, or location where the Equipment was originally located at the time it was leased, must be returned during Lessor's regular business hours, and must be acknowledged by an authorized representative of Lessor with a signed receiving report; Lessor is not responsible for Equipment Lessee returns to Lessor outside of Lessor's regular business hours, and applicable late charges, lost item or abandonment fees will be applied to any Equipment returned outside of Lessor's regular business hours in the event it is lost, stolen, or not properly attributed to Lessee.

9. Alterations of Equipment. Lessee shall make no alterations to the Equipment without obtaining prior written permission from Lessor, which permissions will not be unreasonably withheld. All additions 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 Lessor and subject to the terms of this Agreement.

10. Risk of Loss. Lessee 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 Lessee. In the event the Equipment is lost or damaged, Lessee will provide the Lessor 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 Lessee 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), Lessee will provide Lessor with prompt written notice thereof and will pay to Lessor the sum of all unpaid Rent currently outstanding plus the Insured value of the Equipment set forth in the Schedule.

11. Insurance. Lessee shall, at its own cost and expense, obtain and maintain throughout the Term (a) general commercial liability insurance against claims for bodily injury, death and property damage with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate, to cover any liability caused by or arising out of activities of Lessee and Lessee's employees with respect to the Equipment; and (b) property insurance against all risk or physical loss or damage to the Equipment with limits of not less than one hundred percent (100%) of the Insured value of the Equipment (as specified in the Schedule). All such policies of insurance shall name ROMCO Equipment Co., LLC as an additional insured, shall be in such form and with such carriers as are reasonably acceptable to Lessor and shall provide that they may not be canceled as to Lessor or altered to lessen the coverage of Lessor, without at least 30 days' prior written notice to Lessor. All such insurance shall be primary, without right of contribution from any other insurance carried by Lessor, and shall provide that all proceeds are to be payable solely to Lessor. Lessee represents that it has workers' compensation insurance in the amounts required by law. Lessee will furnish proof of all such insurance to Lessor upon Lessor's request.

12. Location of Equipment; Right of Inspection. Lessee 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 Lessor; or (b) move the Equipment to any location outside the State of Texas without Lessor's prior written consent. Upon Lessor's request, Lessee shall inform Lessor of the exact location of the Equipment. Upon reasonable prior notice, Lessor 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 Lessee's business.

13. Representations, Warranties, and Acknowledgments.

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

(b) LESSEE ACKNOWLEDGES AND AGREES THAT (I) LESSOR IS NOT THE MANUFACTURER OF THE EQUIPMENT; (II) LESSOR 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 LESSEE; (III) LESSOR 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 LESSEE; (V) CERTAIN PIECES OF THE

EQUIPMENT MAY BE USED, AND ARE PROVIDED, WITHOUT WARRANTY; (VI) LESSOR'S SOLE RESPONSIBILITY WITH REGARD TO ANY CLAIM OF DEFECT OR BREACH OF MANUFACTURERS' WARRANTY WILL BE TO LEND REASONABLE ASSISTANCE TO LESSEE IN THE PROSECUTION OF A CLAIM AGAINST THE MANUFACTURER; AND (VII) LESSOR SHALL HAVE NO LIABILITY TO LESSEE 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.

(c) Lessor hereby assigns to Lessee 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 Lessee 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 Lessee, being paid to Lessor.

14. Site Conditions. Lessee 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.

15. Indemnification. Lessee shall indemnify Lessor against, and hold Lessor harmless from, all claims, actions, proceedings, costs, damages, and liabilities, including attorney's fees, asserted by any person or persons for property damage, bodily injuries, or death caused by or sustained due to Lessee's use or possession of the Equipment.

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

(a) Non-payment by Lessee of any sum required hereunder (including Rent), which non-payment shall continue beyond five days after notice from Lessor;

(b) Lessee 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 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.

17. Lessor's Remedies upon Lessee's Default. In the case of an Event of Default with respect to which Lessee is the defaulting Party, Lessor may take any of the following actions: (a) proceed by appropriate court action, in law or equity, to enforce performance by Lessee 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 law. In addition, Lessee 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 Lessee may owe Lessor, including but not limited to, the defense of any action brought against Lessor for damages caused by the Equipment to any person while the Equipment is or was in the possession of Lessee.

18. Lessee's Remedies upon Lessor's Default. In the case of an Event of Default with respect to which Lessor is the defaulting Party, Lessee may take any of the following actions: (a) terminate this Agreement; and/or (b) avail itself of any other remedy that might be available under applicable law.

19. Non-Waiver. The failure or refusal of a Party to insist upon the strict performance of any provision of the Agreement or to exercise any right shall not be construed as a waiver or relinquishment of such provision or right.

20. Option to Purchase. This section and the Purchase Option described below shall apply only to the extent that the applicable Schedule provides for an option to purchase the Equipment.

(a) General. Provided that Lessee has made all Rent payments to Lessor as required under this Agreement, Lessee shall have the right, at its option, to purchase the Equipment for an amount equal to the Option Payoff Price set forth in Section 20(b) (the "Option Payoff Price") prior to the expiration of the applicable Term (the "Purchase Option"). Lessee shall exercise this Purchase Option by providing written notice to Lessor at any time prior to the expiration of the Term. In the event Lessee exercises this Purchase Option with respect to any Equipment, the following shall occur: (i) the closing shall occur within five days after the date Lessee delivers notice of its intent to exercise the Purchase Option to Lessor, unless extended by the mutual agreement of the Parties, and (ii) at the closing, Lessee shall pay to Lessor the Option Payoff Price by transfer of immediately available funds, and Lessor shall convey to Lessee marketable title to the Purchased Equipment, free and clear of all liens and encumbrances not specifically assumed by Lessee. Except to the extent of any manufacturer's warranties, Lessor's sale of Equipment pursuant to the exercise of a Purchase Option shall be on an "AS IS, WHERE IS" basis, without any representation or warranty by or recourse to Lessor, and Lessor specifically disclaims any warranties of merchantability or fitness for particular use or purpose with respect to the Equipment sold. Upon exercise of the Purchase Option with respect to any Equipment and payment of the Option Payoff Price, the lease Term of such Equipment shall cease.

(b) Option Payoff Price. If Lessee elects to exercise the Purchase Option, the Option Payoff Price shall be equal to the Beginning Payoff Price specified in the applicable Schedule, minus a specified percentage of Rent paid plus interest as specified in the applicable Schedule. Lessor may extend credit to Lessee to enable Lessee to exercise the Purchase Option to the extent Lessee may be eligible and qualified under Lessor's financing programs, as determined by Lessor in its sole discretion.

21. Optional Damage Waiver. Lessee is responsible for all damage to the Equipment until the Equipment is returned to Lessor, regardless of whether a third party caused the damage or the cause is unknown. In the event Lessor gives Lessee the option to purchase a damage



waiver as specified in the Schedule and Lessee purchases such damages waiver, Lessor agrees to waive the right to collect from Lessee for damages or loss to the Equipment up to the percentage of the Insured value specified in the Schedule; provided, however, that the damages waiver is not effective with respect to, and will not reduce Lessee's responsibility for, any damage or losses resulting from Lessee's intentional, willful, or reckless conduct.

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

23. Assignment. Lessee shall not assign, transfer or sublet this Agreement or any interest in the Equipment without Lessor's prior written consent. The grant by Lessee of a sublease of any Equipment shall not affect or diminish any of Lessee's obligations under this Agreement. Lessor may at any time assign or transfer any part of its right, title or interest in the Equipment or this Agreement, at which point Lessee will be obligated to such assignee as the new Lessor 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.

24. 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.

25. 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.

26. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Texas. Any claim or dispute under this Agreement must be resolved by a court located in Dallas County, Texas.

27. 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.

28. 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.

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

**LESSEE:**

**LESSOR:**

\_\_\_\_\_  
Print full legal name of Lessee

ROMCO Equipment Co., LLC

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_