

# RENTAL CONTRACT - STANDARD TERMS AND CONDITIONS

## TERMS AND CONDITIONS OF THIS CONTRACT:

### 1. INTERPRETATION

In construction of the terms and conditions of this Contract (unless the context otherwise requires):

- (a) **"Agreed Price"** means the amount (including AST) payable to Silver Chef by the Hirer to purchase the Equipment from Silver Chef, which will be as specified in **Item 10** of the Schedule with reference to specific timing, or if not specified in **Item 10** of the Schedule, then as set by Silver Chef from time to time in its absolute discretion;
- (b) **"AST"** or **"Applicable Sales Tax"** means the Canadian Goods and Services Tax ("**GST**"), the Canadian Harmonized Sales Tax ("**HST**"), the Québec Sales Tax ("**QST**"), and other applicable provincial sales tax ("**PST**"), and similar sales, value-added, use or consumption taxes to the extent applicable to the transactions contemplated in this Contract, as may be imposed by applicable legislation or regulations from time to time;
- (c) **"AST Rate"** means, in respect of each AST, the applicable percentage set out in the relevant legislation or regulations or any applicable replacement rate that may apply from time to time;
- (d) **"Authorised Signatory"** means each and any person named in **Item 3** of the Schedule as an 'Authorised Signatory' of the Hirer, and any person from time to time nominated by the Hirer as an authorized signatory and accepted by Silver Chef as contemplated in **clause 23(b)**;
- (e) **"Business Day"** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where the event is to occur;
- (f) **"Common Payment Day"** means the day of the week that the Rental Commencement Date fell on or as otherwise specified by Silver Chef from time to time;
- (g) **"this Contract"** means the rental contract between Silver Chef and the Hirer (and the Guarantor (if any)) in relation to the Rental Facility and the Rental;
- (h) **"Date of Contract"** means the date set out in **Item 1** of the Schedule;
- (i) **"Delivery Confirmation"** means notice to Silver Chef:
  - (i) that the Equipment has been delivered; and
  - (ii) of the date of such delivery;
- (j) **"Deposit"** means a deposit in the amount of the Weekly Rent (including AST);
- (k) **"Electronic Communication"** means a communication of information in the form of data, text or images which is created, recorded, transmitted or stored in digital or other intangible form by electronic, magnetic or optical means or by any other similar means;
- (l) **"End of Renting"** has the meaning set out in **clause 29**;
- (m) **"Equipment"** means the equipment described in **Item 4** of the Schedule (including by model number and serial number);
- (n) **"Event of Default"** has the meaning set out in **sub-clause 26(d)**;
- (o) **"Guarantor"** means each person (if any) specified in **Item 3** of the Schedule as a 'Guarantor';
- (p) **"Hirer"** means the party specified in **Item 2** of the Schedule, and its executors, administrators, successors and permitted assigns, and where the context permits, it includes its agents, servants and employees;
- (q) **"Installation Site"** means the premises in which the Equipment is to be installed as described in **Item 9** of the Schedule or such other premises as approved by Silver Chef in writing from time to time pursuant to **clause 8**;
- (r) **"Interest Rate"** means the annual rate of interest announced from time to time by Royal Bank of Canada (or any successor) as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada ("**Prime Rate**") PROVIDED THAT the Interest Rate applicable:
  - (i) from the date of termination of the Rental (or any Month to Month Rental or holding over) pursuant to **sub-clause 26(e)** until the earlier of the date the Hirer pays to Silver Chef all unpaid amounts due and owing pursuant to this Contract or the date of any claim and statement of claim being filed in a court of law in respect of amounts due and owing by the Hirer to Silver Chef pursuant to this Contract, will be the Prime Rate as at the date of termination; and
  - (ii) from the date of any claim and statement of claim being filed in a court of law in respect of amounts due and owing by the Hirer to Silver Chef pursuant to this Contract until judgment is given by the court or the claim and statement of claim is discontinued, will be the Prime Rate as at the date the claim and statement of claim is filed in the court;
- (s) **"Month to Month Rental"** has the meaning set out in **sub-clause 27(a)**;
- (t) **"Original Rental"** has the meaning set out in **sub-clause 1(mm)**;
- (u) **"PPSA"** means Personal Property Security Act (or similar legislation) of the jurisdiction in which the Installation Site is situate;
- (v) **"PPSR"** means the registry for registration of financing statements pursuant to the PPSA;
- (w) **"Recovery Value"** means the amount (including AST) payable to Silver Chef by the Hirer to reimburse Silver Chef for its loss of the Equipment, which will be the Written Down Value of the Equipment at the material time, as evidenced from a statement in writing issued by Silver Chef and signed by an authorised officer of Silver Chef, and such a statement will be conclusive evidence of the Written Down Value at the material time and of all matters set out in the statement;
- (x) **"Rent"** means the amount of rent (including AST) payable by the Hirer pursuant to **clause 13**;
- (y) **"Rental"** means the rental of the Equipment by the Hirer from Silver Chef under and subject to this Contract;
- (z) **"Rental Contract & Invoice"** means the document titled 'Rental Contract & Invoice' which is (or is to be) executed by both parties to this Contract and which refers to these Standard Terms and Conditions;
- (aa) **"Rental Commencement Date"** means the date of delivery of the Equipment as specified in the Delivery Confirmation;
- (bb) **"Rental Expiration Date"** means the date when the time set out in **Item 5** of the Schedule as the minimum term expires starting from the Rental Commencement Date;
- (cc) **"Rental Facility"** means the facility identified by the 'Rental Facility Number' set out in the Schedule, which has been established in order for Silver Chef to:
  - (i) purchase and immediately hire out equipment to the Hirer for its business purposes; and/or
  - (ii) hire out Transferred Equipment to the Hirer for its business purposes;
- (dd) **"Rental Facility Limit"** means the amount set out in the Schedule as the 'Rental Facility Limit' or such other amount as varied by Silver Chef from time to time pursuant to **clause 3**;
- (ee) **"Schedule"** means the schedule of items contained in the Rental Contract & Invoice;
- (ff) **"Security Deposit"** means the amount specified in **Item 7** of the Schedule or such other amount as varied by Silver Chef from time to time pursuant to **clause 3**;
- (gg) **"Security Interest"** has the meaning given to such term in the PPSA and includes, without limitation, any security interest, mortgage, charge or hypothec in or over personal or movable property;
- (hh) **"Silver Chef"** means Silver Chef Rentals Inc. (Inc. No. BC0966048), a company incorporated in the Province of British Columbia, and its successors and assigns, and where the context permits, it includes its agents, servants and employees;
- (ii) **"Special Conditions"** has the meaning set out in **sub-clause 35(a)**;
- (jj) **"Standard Terms and Conditions"** means this document titled 'Rental Contract - Standard Terms and Conditions';
- (kk) **"Term"** means the period from the Rental Commencement Date until the Rental Expiration Date (the Term is set out in **Item 5** of the Schedule as the minimum term);
- (ll) **"Transferred Equipment"** means equipment that is subject to a Transferred Rental;

- (mm) **"Transferred Rental"** means a rental by Silver Chef initially to another hirer (**"Original Rental"**) but which is being or has been transferred to the Hirer;
- (nn) **"Weekly Rent"** means the amount (including AST) of the total weekly rent specified in **Item 4** of the Schedule;
- (oo) **"Written Down Value"** means the amount representing the purchase price (excluding AST) paid by Silver Chef for the Equipment less depreciation at the depreciation rate specified by the *Income Tax Act* (Canada) in respect of the Equipment;
- (pp) words importing the singular number include the plural number and vice versa;
- (qq) words importing the masculine gender include the feminine and neuter genders and vice versa;
- (rr) words importing natural persons include corporations, companies, limited liability companies and partnerships and vice versa;
- (ss) where the Hirer is more than one person, the terms and conditions of this Contract are binding upon such persons jointly and severally;
- (tt) where there is more than one person specified as Guarantor in the Schedule, the terms and conditions of this Contract on the part of the Guarantor are binding upon such persons jointly and severally;
- (uu) **"includes"** in any form is not a word of limitation;
- (vv) **"parties"** (in reference to the parties of or to this Contract) means Silver Chef and the Hirer but, except where there is an express indication to the contrary, excludes any Guarantor;
- (ww) a reference to a document (including this Contract) includes any variation, novation, ratification or replacement of that document from time to time;
- (xx) a reference to winding up or bankruptcy includes bankruptcy, winding up, liquidation and dissolution, and to the circumstances and events giving rise to or constituting such condition or matters;
- (yy) references to any statutes, regulations, ordinances or by-laws include all amendments, consolidations or replacements of those statutes, regulations, ordinances or by-laws;
- (zz) references to clauses and sub-clauses are references to clauses and sub-clauses of this Contract;
- (aaa) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- (bbb) headings of clauses and sub-clauses have been inserted for guidance only and are not taken to form part of this Contract.

## 2. CONTRACT IN PARTS

- (a) This Contract consists of the following parts:
  - (i) these Standard Terms and Conditions; and
  - (ii) the Rental Contract & Invoice.
- (b) Where there is any discrepancy or inconsistency between a part of this Contract and another part, the Rental Contract & Invoice (including any Special Conditions but not including the information set out as 'Important Information' in it) prevails over these Standard Terms and Conditions, and these Standard Terms and Conditions prevail over the information set out as 'Important Information' in the Rental Contract & Invoice.
- (c) Words and expressions defined in these Standard Terms and Conditions shall have the same meaning when used in other parts of this Contract, unless the context otherwise requires.

## 3. RENTAL FACILITY

- (a) The Hirer acknowledges and agrees that:
  - (i) Silver Chef has agreed to make available to the Hirer the Rental Facility up to the maximum amount of the Rental Facility Limit subject to the terms and conditions of this Contract and any other rental contract entered into by the parties in connection with the Rental Facility; and
  - (ii) Under the Rental Facility:
    - (1) the Hirer may select equipment to be used by the Hirer for its business purposes (as approved by Silver Chef); and
    - (2) Silver Chef will purchase the selected and approved equipment; and
    - (3) the Hirer will hire the selected and approved equipment from Silver Chef; and/or
    - (4) the Hirer may have selected Transferred Equipment to be used by the Hirer for its business purposes (as approved by Silver Chef); and
    - (5) the Hirer will hire the selected and approved Transferred Equipment from Silver Chef,
 PROVIDED THAT the total of all purchase prices (including AST) paid by Silver Chef for all such equipment (including any Transferred Equipment) hired by the Hirer under this Contract and any other rental contract entered into by the parties in connection with the Rental Facility, whenever hired, must not exceed the Rental Facility Limit except as provided for in this **clause 3**.
- (b) If the Hirer hires any equipment (including any Transferred Equipment) in connection with the Rental Facility and:
  - (i) duly returns or purchases such equipment; and
  - (ii) pays all the rent and other amounts owing in respect of the rental of such equipment, within the first twelve (12) months of that rental, the purchase price (including AST) paid by Silver Chef for such equipment may then be excluded when determining the total of all purchase prices (including AST) paid by Silver Chef for equipment hired by the Hirer in connection with the Rental Facility (when relating the total to the Rental Facility Limit).
- (c) Upon application in writing by the Hirer to Silver Chef in a manner specified by Silver Chef from time to time, Silver Chef may in its sole and absolute discretion:
  - (i) consent to the Hirer hiring equipment from Silver Chef which exceeds the Rental Facility Limit; or
  - (ii) approve the selection, purchase and rental (and/or, as the case may be, the selection and rental) of a particular item of equipment which causes the Rental Facility Limit to be exceeded.
- (d) Silver Chef may in its sole and absolute discretion:
  - (i) review, vary or increase the Rental Facility Limit upon application in writing by the Hirer to Silver Chef in a manner specified by Silver Chef from time to time; and
  - (ii) require the Hirer to provide information pertaining to its financial position and/or require additional security from the Hirer before Silver Chef considers any variation or increase of the Rental Facility Limit upon the Hirer's application in writing; or
  - (iii) decrease the Rental Facility Limit at any time without prior notice to the Hirer.
- (e) To remove doubt, it does not mean that Silver Chef has increased the Rental Facility Limit merely because the amount owing to Silver Chef by the Hirer in connection with the Rental Facility exceeds the Rental Facility Limit.
- (f) If this Contract is the first rental contract entered into by the parties in connection with the Rental Facility, then the Rental Facility commences upon the execution of this Contract by both parties (which will be on the Date of Contract). From the Date of Contract, the terms and conditions of this Contract relating to the Rental Facility are binding regardless of whether any payment for rent or otherwise has been made or any equipment has been selected by the Hirer or approved or purchased by Silver Chef prior to the execution of this Contract.
- (g) If this Contract is not the first rental contract entered into by the parties in connection with the Rental Facility, then the Rental Facility will have commenced earlier pursuant to the rental contract first entered into by the parties in connection with the Rental Facility.
- (h) In the event of any discrepancy or inconsistency between a provision about the Rental Facility in:
  - (i) an earlier rental contract entered into by the parties in connection with the Rental Facility; and
  - (ii) a later rental contract entered into by the parties in connection with the Rental Facility,
 the provision in the later rental contract prevails to the extent of the discrepancy or inconsistency.
- (i) The Hirer undertakes that it shall at all times duly and punctually comply in all respects with all its obligations under this Contract and every other rental contract entered into by the parties in connection with the Rental Facility.
- (j) The Rental Facility may only be terminated in accordance with **clauses 26** and **30** or pursuant to any other rental contract entered into by the parties in connection with the Rental Facility.

#### 4. RENTAL OF EQUIPMENT

- (a) In connection with the Rental Facility, Silver Chef has agreed to hire out the Equipment to the Hirer for the Term, at the Rent and subject to the terms and conditions of this Contract.
- (b) The Rental commences on the Rental Commencement Date subject to **clause 12**.
- (c) The Rental may only be terminated in accordance with **clauses 26, 27, 28 and 31**.

#### 5. AMOUNTS PAYABLE

The Hirer acknowledges and agrees that:

- (a) all payments payable by the Hirer under this Contract must be made in the manner as Silver Chef may from time to time direct in writing (and such a direction in respect of the payment of Rent may be contained in **Item 6** of the Schedule);
- (b) it is not entitled to withhold any payments or make any deductions from any payments where the Hirer claims to have a right of set-off or counter-claim; and
- (c) if there is a documentation fee set out in **Item 8** of the Schedule, the Hirer will pay the fee as directed by Silver Chef and it will be non-refundable.

#### 6. DEPOSIT FOR RENT

The Hirer must pay to Silver Chef on or before the date it executes this Contract (which must be prior to the delivery and installation of the Equipment), the Deposit to be held and applied by Silver Chef towards the first weekly payment of Rent payable in accordance with **clause 13**.

#### 7. SECURITY DEPOSIT

- (a) The Hirer must pay to Silver Chef on or before the date it executes this Contract (which must be prior to the delivery and installation of the Equipment), the Security Deposit as security for the performance of the Hirer's obligations under this Contract.
- (b) In the event of any default by the Hirer in the payment of the Rent or (without limitation) the payment of any money or the observance or performance of any other obligation on the part of the Hirer contained or implied in this Contract, Silver Chef will be entitled to claim from and apply the whole or a proportionate part of the Security Deposit held by it to compensate Silver Chef for the loss suffered directly or indirectly by Silver Chef as a result of the default by the Hirer and such claim will not constitute a waiver of any such default by the Hirer.
- (c) A claim under **sub-clause 7(b)** may include (without limitation):
  - (i) the cost of repair of damage to the Equipment;
  - (ii) the cost of any necessary replacement of parts of the Equipment;
  - (iii) the cost of insurance claim policy excesses;
  - (iv) the cost of cleaning the Equipment;
  - (v) the amount of the loss of Rent;
  - (vi) the costs for transport and storage;
  - (vii) the costs for arranging the return of the Equipment to Silver Chef; and
  - (viii) the amount of any other money payable under this Contract.
- (d) Silver Chef is entitled to require the Hirer to pay an additional amount to Silver Chef as security for the performance of the Hirer's obligations under this Contract in order to cover any amount claimed and applied from the Security Deposit held by Silver Chef under **sub-clause 7(b)** and to cover any increase in the required amount of the Security Deposit pursuant to **clause 3**. The Hirer must pay the additional amount so required within fourteen (14) days of any request as an essential term of this Contract.
- (e) If after the End of Renting (and any holding over period) all obligations of the Hirer under this Contract in respect of the Rental of the Equipment are discharged and satisfied, Silver Chef must, upon the written request of the Hirer, return the Security Deposit held by Silver Chef to the Hirer or at the Hirer's direction (to the extent not resorted to).
- (f) If the Hirer assigns all or part of the Rental in accordance with **clause 24**, the Security Deposit held by Silver Chef may be dealt with in accordance with **sub-clauses 24(f) and (g)**.

#### 8. DELIVERY AND INSTALLATION OF EQUIPMENT

- (a) Following execution of this Contract by the parties and Silver Chef's acquisition of the Equipment, the Hirer must, at its own cost:
  - (i) arrange for the timely delivery of the Equipment to the Installation Site; and
  - (ii) arrange for the installation of the Equipment at the Installation Site.
- (b) The Hirer must notify Silver Chef of the arranged date of delivery of the Equipment and any changes to that date. The Hirer must notify Silver Chef that the Equipment has been delivered pursuant to **clause 11**.
- (c) The Hirer must ensure that:
  - (i) appropriate energy outlets are available for the Equipment to be connected to at the Installation Site; and
  - (ii) the Installation Site is prepared for the delivery and installation of the Equipment to any standard specified by Silver Chef or the manufacturer of the Equipment.
- (d) Silver Chef is not responsible for the delivery or installation of the Equipment or for any delay in the delivery or installation.
- (e) The Rental is in no way affected by any delay in the installation of the Equipment.
- (f) The Hirer must not relocate the Equipment without first obtaining the written consent of Silver Chef to the change of the Installation Site and the relocation. The Hirer must arrange for the relocation and re-installation of the Equipment at its own cost and take all steps to ensure the Equipment is not damaged as a result of the relocation and re-installation. The Rental is in no way affected by the relocation of the Equipment pursuant to this clause.

#### 9. ACKNOWLEDGEMENT BY THIRD PARTIES

If requested by Silver Chef, prior to delivery of the Equipment and prior to any change of the Installation Site, the Hirer must arrange for all persons who have an interest in the Installation Site (or the building containing the Installation Site) to deliver to Silver Chef an acknowledgement in writing (in a form acceptable to Silver Chef) that Silver Chef:

- (a) has the absolute, unencumbered title to the Equipment (as between Silver Chef and that person); and
- (b) has the right to enter upon the Installation Site (and if necessary, the building containing the Installation Site) to inspect and/or remove the Equipment at any time without the consent of, or any payment to, any person.

#### 10. EQUIPMENT AS A FIXTURE TO LAND

- (a) The Hirer must not at any time attach, affix, secure or incorporate the Equipment upon or to any real or immovable property except as provided for in this clause.
- (b) The Hirer must not at any time attach, affix, secure or incorporate the Equipment upon or to the Installation Site unless its use so requires and the prior written consent of Silver Chef has been obtained. Without limiting the generality of this sub-clause, it is agreed as follows:
  - (i) if the Installation Site is owned by the Hirer, the Equipment is deemed not to be a fixture or an immovable and in those circumstances:
    - (1) the Equipment may be removed by Silver Chef at any time in accordance with this Contract;
    - (2) Silver Chef will be entitled to enter upon the Installation Site at any time for the purpose of inspecting and/or removing the Equipment and will not be liable in respect of loss or damage arising from such entry or from the removal of the Equipment; and
    - (3) if the Installation Site is to become the subject of a mortgage, charge or hypothec then, before the Hirer gives the mortgage, charge or hypothec, the Hirer must, without any request from Silver Chef, obtain for Silver Chef the written acknowledgement of the proposed mortgagee, chargee or hypothecary creditor (as the case may be) that:
      - (a) the Equipment is not a fixture or an immovable for the purposes of the proposed mortgage, charge or hypothec;
      - (b) the mortgagee, chargee or hypothecary creditor consents to Silver Chef's Security Interests in the Equipment and will not make any claim in relation to the Equipment while the same remains subject to Silver Chef's Security Interests; and

- (c) the mortgagee, chargee or hypothecary creditor will permit Silver Chef (whether or not there has been any default under the proposed mortgage, charge or hypothec) to enter upon the Installation Site and to inspect and/or remove the Equipment; and
- (ii) if the Installation Site is not owned by the Hirer, prior to the Equipment becoming attached, affixed, secured or incorporated to the Installation Site, the Hirer, if requested by Silver Chef, must obtain for Silver Chef the written acknowledgment of the owner of the Installation Site (and any other persons having an interest in the Installation Site or the building containing the Installation Site) that the Equipment is deemed not to be a fixture or an immovable and that the owner (or other person) consents to Silver Chef's Security Interests in the Equipment and will not make any claim in relation to the Equipment while the same remains subject to Silver Chef's Security Interests and that Silver Chef has the same rights as set out in **clause 9** to the entry upon the Installation Site (and if necessary, the building containing the Installation Site) and the inspection and/or removal of the Equipment at any time. As between Silver Chef and the Hirer, Silver Chef will have the same rights of entry and inspection and/or removal as set out in **clause 10(b)(i)(2)**.

**11. DELIVERY CONFIRMATION**

- (a) Immediately upon the delivery of the Equipment at the Installation Site, the Hirer must give the Delivery Confirmation by either:-
  - (i) verbal notice by telephone to Silver Chef; or
  - (ii) written notice to Silver Chef (in the form specified by Silver Chef from time to time).
- (b) If the Hirer fails to comply with **sub-clause 11(a)**, the Delivery Confirmation may be given by the supplier of the Equipment or the dealer who was involved with the supply of the Equipment, in which case, the date of delivery specified in such Delivery Confirmation will be conclusive evidence of that date and will be final and binding on the parties to this Contract (except in the case of manifest error). Silver Chef will notify the Hirer of the date of delivery of the Equipment specified in such Delivery Confirmation.
- (c) Silver Chef's receipt of the Delivery Confirmation will, without any further act, irrevocably constitute acceptance of the Equipment by the Hirer for all purposes of this Contract and will bind the Hirer absolutely that the Equipment has been fully and unconditionally accepted by the Hirer for the purposes of this Contract.

**12. CONDITIONS PRECEDENT TO SILVER CHEF'S OBLIGATION TO HIRE OUT EQUIPMENT**

- (a) Silver Chef's obligation to hire out the Equipment to the Hirer is subject to and conditional upon:
  - (i) the Hirer's execution of this Contract; and
  - (ii) the Hirer having paid to Silver Chef the Security Deposit in accordance with **clause 7**.
- (b) Notwithstanding any other term or condition of this Contract, if the conditions precedent in **clause 12(a)** have not been fulfilled and fully satisfied or waived, Silver Chef will be relieved of any obligation to hire out the Equipment to the Hirer under this Contract.

**13. RENT**

The Hirer acknowledges and agrees that:

- (a) it must pay Rent to Silver Chef during the Term in advance by weekly payments of the Weekly Rent and, except where otherwise agreed between the parties, the Hirer agrees to pay the Rent in the following manner:
  - (i) the first weekly payment of the Weekly Rent is to be made on the Rental Commencement Date (and Silver Chef is expressly authorised to apply the Deposit paid by the Hirer pursuant to **clause 6** towards this payment);
  - (ii) the second weekly payment of the Weekly Rent is to be made on the date that is seven (7) days after the Rental Commencement Date; and
  - (iii) all remaining weekly payments of the Weekly Rent are to be made on the Common Payment Day of each week in the remainder of the Term; and,
- (b) except if the Hirer purchases the Equipment before the Rental Expiration Date pursuant to this Contract, the Hirer is obliged to pay the Rent to Silver Chef for the Term up to the Rental Expiration Date (whether by weekly payments in advance or otherwise as agreed by the parties) even if the Hirer returns the Equipment to Silver Chef before the Rental Expiration Date or if the Equipment is damaged beyond repair, lost or stolen, it being the intention of the parties that (unless the Hirer purchases the Equipment before the Rental Expiration Date pursuant to this Contract):
  - (i) the Term is the minimum term of the Rental; and
  - (ii) the total amount of Rent payable during the Term by weekly payments of the Weekly Rent is the minimum amount of rent payable by the Hirer to Silver Chef for the Rental.

**14. TRANSFERRED RENTAL**

In the event the Rental is a Transferred Rental, the terms and conditions of this Contract in relation to the Rental will be deemed to be amended as appropriate to apply to a Transferred Rental, including (but without limiting the generality of this clause) that the parties acknowledge and agree:

- (a) the Rental Commencement Date will be the date the Original Rental commenced;
- (b) the Term (which is specified in the Schedule) is the same as the minimum term of the Original Rental;
- (c) the Original Rental with respect to the Equipment is being or has been transferred to the Hirer for the remaining period of the Original Rental effective from when the Rental is binding on the Hirer;
- (d) Rent is payable by the Hirer in advance by weekly payments of the Weekly Rent in line with the Original Rental (as Silver Chef directs) as soon as the Rental is binding on the Hirer;
- (e) **clause 6** is not applicable, but Silver Chef may require the Hirer to pay an amount for Rent on or before the Hirer's execution of this Contract in order to ensure that Rent is paid up to date and in advance as soon as the Rental is binding on the Hirer;
- (f) the Hirer must pay to Silver Chef on or before the date it executes this Contract the Security Deposit as security for the performance of the Hirer's obligations under this Contract;
- (g) if the Hirer is taking or has taken over occupation of the Installation Site, there will be no need for the Hirer to arrange for delivery and installation of the Equipment and accordingly, no need for the Hirer to give the Delivery Confirmation, however, the Hirer must promptly give Silver Chef confirmation of the date when it effectively will take over or took over occupation of the Installation Site (and all other information about the change of occupation that may be requested by Silver Chef);
- (h) if, with Silver Chef's prior written consent, the Installation Site is or is to be changed and the Equipment relocated, the Hirer must arrange for the relocation and re-installation of the Equipment at its own cost and take all steps to ensure the Equipment is not damaged as a result of the relocation and re-installation, and the Hirer must give the Delivery Confirmation in accordance with **clause 11**; and
- (i) the Rental will be binding on the Hirer upon execution of this Contract and the date when the Hirer effectively took over occupation of the Installation Site in the case of **sub-clause 14(g)** applying or the date of delivery of the Equipment specified in the Delivery Confirmation in the case of **sub-clause 14(h)** applying.

**15. CUSTODY AND USE OF THE EQUIPMENT**

- (a) The Hirer acknowledges and agrees that it does not have any title, right, property or interest in the Equipment other than as a bailee or a lessee under a leasing arrangement, except as provided in this Contract.
- (b) The Hirer agrees:
  - (i) to keep the Equipment under its personal control during the Term (and any Month to Month Rental or holding over);
  - (ii) not to (or attempt to):
    - (1) sell;
    - (2) dispose of;
    - (3) encumber;
    - (4) lend;
    - (5) let or sub-let;
    - (6) assign;
    - (7) pledge;

- (8) mortgage, charge or hypothecate;
  - (9) on-hire;
  - (10) conceal; or
  - (11) part with possession or control of,
- the Equipment or otherwise deal with the Equipment in any way that would adversely affect Silver Chef's ownership of the Equipment or Silver Chef's interests in this Contract, without Silver Chef's prior written consent given pursuant to this Contract;
- (iii) not to remove the Equipment from the Installation Site without the prior written consent of Silver Chef;
  - (iv) not to alter the Equipment or alter or deface any identifying number, name or mark on the Equipment;
  - (v) to comply with all statutory, governmental and other legal requirements (including workplace health and safety and environmental legislation) in relation to the operation of the Equipment, including relating to (without limitation):
    - (1) the Equipment itself;
    - (2) the possession and use of the Equipment;
    - (3) the Installation Site; and
    - (4) the occupation and use of the Installation Site, particularly in relation to the use of the Equipment at the Installation Site; and
  - (vi) to protect the Equipment from any distress, execution, seizure or other legal process and shall indemnify Silver Chef against all losses, costs, charges, damages and expenses incurred by Silver Chef as a result of the Hirer's failure to do so.
- (c) The Hirer undertakes:
- (i) to maintain the Equipment in accordance with **clause 16**;
  - (ii) to use and operate the Equipment in a proper and prudent manner and ensure that only duly qualified competent agents, servants and employees are allowed to use and operate the Equipment;
  - (iii) not to use or operate the Equipment, or permit the Equipment to be used or operated, for a purpose that is unlawful;
  - (iv) to notify Silver Chef immediately if any person attempts to seize the Equipment;
  - (v) to make the Equipment available for inspections, examination and testing by Silver Chef upon reasonable prior written notice by Silver Chef;
  - (vi) to ensure that the Equipment is at all times stored safely and protected from theft, loss or damage (as far as it is practicable);
  - (vii) not to cause or do or permit anything which is likely to endanger the safety or condition of the Equipment or which would adversely affect Silver Chef's interests in the Equipment; and
  - (viii) to use its best endeavours to do everything necessary to protect the rights of Silver Chef in the Equipment.
- (d) The Hirer must notify all agents, servants and employees of the Hirer's obligations and undertakings in **sub-clauses 15(b) and (c)**.
- (e) The Hirer will notify any person attempting to seize the Equipment or any part of it of:
- (i) Silver Chef's ownership of the Equipment and Silver Chef's interest in this Contract;
  - (ii) the extent of the Hirer's interest in the Equipment; and
  - (iii) that the Hirer is obliged to keep the Equipment under its personal control during the Term and that the Hirer is subject to the restrictions in **sub-clause 15(b)(ii)**.
- (f) The Hirer will, if requested by Silver Chef, place and keep displayed on the Equipment a notice in plain and legible print that Silver Chef is the owner of the Equipment and a statement of the restrictions upon the Hirer contained in **sub-clause 15(b)(ii)**.
- 16. MAINTENANCE & REPAIR OF EQUIPMENT**
- (a) Except as otherwise agreed in writing by the Hirer and Silver Chef, the Hirer will, at its own cost, maintain the Equipment in a clean state and in good working order and repair, and in particular:
- (i) the Hirer must maintain the Equipment in the same operational condition and functionality as at the Rental Commencement Date;
  - (ii) the Hirer must only use and operate the Equipment in accordance with:
    - (1) the operating manual for the Equipment (which the Hirer will ensure is delivered with the Equipment); and
    - (2) any other instructions issued by Silver Chef from time to time;
  - (iii) the Hirer must not use or operate the Equipment, or permit the Equipment to be used or operated, in a manner or for a purpose for which the Equipment was not designed or manufactured;
  - (iv) the Hirer must ensure the Equipment is maintained in accordance with the maintenance instructions provided in any manufacturer's express warranty documentation or otherwise in a manner which does not void any manufacturer's express warranty;
  - (v) the Hirer must ensure that no components of the Equipment are removed or exchanged except where defective and in the course of usual and proper service or replacement;
  - (vi) the Hirer must only use genuine parts to maintain the Equipment;
  - (vii) the Hirer must not use or operate the Equipment, or permit the Equipment to be used or operated, when such Equipment is out of proper repair;
  - (viii) the Hirer must not overload, use or operate the Equipment, or permit the Equipment to be overloaded, used or operated, in a manner which, in the opinion of Silver Chef, would be likely to endanger the safety or condition of the Equipment or any part of it or the safety of any person or property;
  - (ix) the Hirer must keep the Equipment in a clean state so as not to cause damage or disruption to the normal functioning of the Equipment;
  - (x) the Hirer must maintain the good overall appearance of the Equipment; and
  - (xi) the Hirer must ensure that all systems and controls of the Equipment are fully operational;
  - (xii) the Hirer must replace all broken or defaced gauges or glass components of the Equipment; and
  - (xiii) the Hirer must not fit any attachments to the Equipment which are not approved by Silver Chef.
- (b) The Hirer will immediately notify Silver Chef in writing of any fault, defect, damage or loss suffered by the Equipment as soon as it is detected.
- (c) The Hirer shall not in any way or by using any means effect repairs to the Equipment without Silver Chef's express consent. Should Silver Chef consent to the Hirer effecting repairs to the Equipment, the Hirer acknowledges that it does not have any authority to pledge Silver Chef's credit or create any lien over the Equipment in respect of any repair or service costs for any reason and the Hirer agrees to advise any potential repairer of this prohibition.
- (d) The Hirer acknowledges and agrees that the Equipment may be covered by a manufacturer's express warranty and repairs to the Equipment may be effected under such warranty. In all other cases, repairs to the Equipment will be at the Hirer's cost.
- (e) If the Hirer fails to strictly comply with **sub-clause 16(a)** then Silver Chef may (without any obligation to do so) effect repairs made necessary as a result of such failure by the Hirer and the cost (plus any AST) of such repairs (which may include travel costs incurred in order for Silver Chef to carry out the repairs to the Equipment) shall be borne by the Hirer and be payable to Silver Chef upon demand.
- 17. RESERVATION OF SILVER CHEF'S RIGHTS**
- (a) The Hirer acknowledges and agrees that by executing this Contract it grants to Silver Chef (as far as it is able) the irrevocable right to enter the Installation Site at any time upon reasonable prior written notice by Silver Chef to the Hirer (which in the case of an emergency, may be little or no notice) in order to gain access to the Equipment for the purposes of, amongst other things:
- (i) locating the Equipment;
  - (ii) affixing to the Equipment identifying plates or marks;
  - (iii) examining and testing the Equipment;
  - (iv) inspecting the state of repair and operating condition of the Equipment;
  - (v) repairing and maintaining the Equipment;
  - (vi) removing or recovering possession of the Equipment; and

- (vii) otherwise exercising Silver Chef's rights, powers, privileges and interests or complying with its obligations under this Contract, and Silver Chef shall not be held responsible for any loss or damage occasioned to the Installation Site (or the building containing the Installation Site), the Equipment, or otherwise sustained by the Hirer by virtue of Silver Chef exercising its rights pursuant to this Contract.
- (b) The Hirer acknowledges and agrees that if an Event of Default exists and Silver Chef takes action to recover possession of the Equipment pursuant to this Contract, Silver Chef may, without notice, liability or legal process, enter upon or into the Installation Site (and the building containing the Installation Site) and for that purpose may break open any gate, door or fastening in order to gain entry with the intent of recovering possession of the Equipment.

**18. CONSUMER PROTECTION LEGISLATION**

- (a) The Hirer is aware that certain legislation, including (without limitation) the PPSA, the *Civil Code of Quebec*, and consumer protection legislation, has the effect of granting certain rights which cannot be excluded, restricted or modified, or if they can be restricted or modified such restrictions and modifications may be of a limited nature only.
- (b) Subject to the qualifications contained in any such legislation, should Silver Chef be liable for any failure to comply with a guarantee or other obligation implied by any such legislation, Silver Chef's liability for such failure is limited to:
  - (i) in the case of the Equipment, any one of the following at the option of Silver Chef:
    - (1) the replacement of the Equipment or the supply of equivalent equipment;
    - (2) the repair of the Equipment;
    - (3) the payment of the cost of replacing the Equipment or acquiring equivalent equipment; or
    - (4) the payment of the cost of having the Equipment repaired; or
  - (ii) in the case of any services supplied by Silver Chef, any one of the following at the option of Silver Chef:
    - (1) the supplying of the services again; or
    - (2) the payment of the cost of having the services supplied again.
- (c) The Hirer warrants that the Equipment is not goods that are used or acquired for use primarily for personal, family or household purposes.

**19. RELIANCE & WARRANTIES**

- (a) The Hirer acknowledges that in deciding to enter into this Contract:
  - (i) it has not relied in any way on Silver Chef's skill or judgment (and it agrees that it would be unreasonable for it to rely on the skill or judgment of Silver Chef to determine whether the Equipment would be reasonably fit for the Hirer's purposes);
  - (ii) it has satisfied itself as to the condition and suitability of the Equipment and its fitness for the Hirer's purposes; and
  - (iii) it has previously examined the Equipment and such examination ought reasonably to have revealed (if such was the case) that the Equipment was not of acceptably quality and it has satisfied itself as to the Equipment's compliance with the specifications required by the Hirer as well as its condition, quality, durability and fitness for its intended purpose and the validity of the express warranties of the manufacturer and/or supplier.
- (b) Any and all guarantees, warranties and conditions expressed by Silver Chef or any representative of Silver Chef as to the condition, suitability, quality, fitness for any purpose, safety or title of the Equipment are hereby negated and excluded to the full extent permitted by law and Silver Chef gives no such guarantee, warranty or condition and the Hirer acknowledges that Silver Chef has not given any such guarantee, warranty or condition.
- (c) The Hirer warrants and declares that the Equipment to be hired by the Hirer from Silver Chef is to be hired wholly (or primarily) for the purpose of a business carried on by the Hirer, and the amounts payable under this Contract are to be claimed by the Hirer as losses or outgoings necessarily incurred in the carrying on of that business.

**20. RISK AND INSURANCE**

- (a) The Hirer assumes and bears the risk of loss or damage to the Equipment immediately upon its execution of this Contract. If the Equipment is damaged, lost, stolen or not returned to Silver Chef when required by this Contract, the Hirer agrees to promptly repair the Equipment at the Hirer's own cost or pay Silver Chef the amount described in **sub-clauses 29(d) to 29(h)** (as the case may be) and shall continue to pay the Rent on the Equipment in accordance with this Contract for the Term up to the Rental Expiration Date (and during any Month to Month Rental or holding over period).
- (b) The Hirer agrees and undertakes:
  - (i) to arrange and maintain in force throughout the Term (and during any Month to Month Rental or holding over period) an insurance policy or policies covering the Equipment against loss and all other risks against which a prudent owner would insure or as notified by Silver Chef, for the full replacement value of the Equipment, and noting Silver Chef as first loss payee ("**Hirer's Insurance Policy**"). Such insurance is to include insurance on the Equipment against:
    - (1) damage or destruction caused by accident;
    - (2) any insurable risk commonly insured against in regard to equipment of a similar nature; and
    - (3) such other insurable risks as Silver Chef may reasonably stipulate;
  - (ii) at Silver Chef's request from time to time, to provide Silver Chef with evidence of the currency of the Hirer's Insurance Policy;
  - (iii) not to do any act or fail to do any act which would allow the insurer to refuse, settle or compromise any claim on the Hirer's Insurance Policy in relation to the Equipment without the prior written consent of Silver Chef; and
  - (iv) not to do any act or fail to do any act which may have the effect of voiding the Hirer's Insurance Policy.
- (c) The Hirer's Insurance Policy must contain an agreement by the insurer to give Silver Chef written notice of its intention to cancel the policy. The Hirer's Insurance Policy must also contain a clause providing that notwithstanding:
  - (i) the lapse of the Hirer's Insurance Policy (except by reason of expiration in accordance with its terms);
  - (ii) any right of cancellation by the insurer; or
  - (iii) any cancellation by the Hirer (whether voluntary or involuntary),
 the Hirer's Insurance Policy will continue in force for the benefit of Silver Chef for at least thirty (30) days after written notice of cancellation has been given to Silver Chef.
- (d) The Hirer must not, without the prior written consent of Silver Chef, permit any reduction in limits or coverage in the Hirer's Insurance Policy affecting or relating to the Equipment or this Contract.

**21. INDEMNITIES**

- (a) The Hirer agrees to use, operate and possess the Equipment at the Hirer's risk. The Hirer agrees that Silver Chef will have no responsibility or liability for any loss or damage to any property of the Hirer. To the full extent permitted by law the Hirer releases and discharges Silver Chef and its agents, servants and employees from:
  - (i) all claims and demands on Silver Chef; and
  - (ii) any loss or damage whatsoever and whenever caused to the Hirer or its agents, servants or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise, arising directly or indirectly from or incidental to a breakdown of, or defect in, the Equipment or any accident to or involving the Equipment or its use, operation, repair, maintenance or storage (whether occasioned by the negligence of Silver Chef or otherwise) or which may otherwise be suffered or sustained in, upon or near the Equipment.
- (b) The Hirer assumes liability for, and indemnifies and will keep indemnified, protected, saved and harmless Silver Chef and its agents, servants and employees from and against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses, legal or otherwise (including court costs and legal fees incurred) and of whatsoever kind and nature (including claims based upon strict liability in tort);

- (i) arising out of or alleged to arise out of the selection, purchase, delivery, acceptance or rejection, ownership, possession, use (including by reason of the use or incorporation of any invention resulting in infringements of patents), operation, repair, maintenance or storage of the Equipment, and by whomsoever used or operated (except where used by Silver Chef or any person on behalf of Silver Chef); or
  - (ii) incurred by Silver Chef in respect of any loss of the Equipment by seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment; or
  - (iii) arising out of any claim for patent, trademark or copyright infringement, for strict liability, or for any other reason being made against Silver Chef in connection with the Equipment or its use and operation.
- (c) The Hirer indemnifies and will keep indemnified, protected, saved and harmless Silver Chef against any liability or additional liability Silver Chef may incur under any statute, instrument, enactment, order, law, by-law or regulation of any jurisdiction making any provision for or in relation to any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and other charges or assessments of any kind whatsoever, by reason of the use of the Equipment by the Hirer for any purpose. If Silver Chef's liability for income tax arises, is increased or is payable earlier because:
- (i) deductions at the depreciation rates which the Hirer may have represented to Silver Chef as applicable to the Equipment or its use or upon which Silver Chef may have relied for calculation of the Rent are not for any reason allowed in full at the times they would normally have been allowed; or
  - (ii) the residual value is not approved by the relevant taxation authorities,
- then the Hirer shall pay to Silver Chef on demand by Silver Chef such amount as will result in the after-tax yield to Silver Chef being the same as it would have been but for such increase or acceleration in liability.
- (d) The indemnities and assumptions of liability contained in **sub-clauses 21(a), 21(b) and 21(c)** will continue in full force and effect notwithstanding the termination of this Contract (or termination of the Rental, any Month to Month Rental or holding over, or termination of the Rental Facility) whether by expiration of time or otherwise, as to any act or omission relating to the Equipment occurring during the continuance of this Contract which at any time is claimed to have created a cause of action against Silver Chef or assumption of liability by the Hirer. The indemnities and assumption of liability against any claims for patent infringements will continue in full force and effect throughout the life of the Equipment, except as to any alterations or modifications to the Equipment occurring after the termination of the Rental, any Month to Month Rental or holding over.

## 22. COSTS AND TAXES

- (a) The Hirer undertakes to pay Silver Chef upon demand, the amount of any liability which Silver Chef may incur pursuant to **clause 21(c)** by reason of the use of the Equipment by the Hirer for any purpose other than that stated by the Hirer to Silver Chef.
- (b) Each party must bear its own legal costs (if any) in the preparation and execution of this Contract.
- (c) The Hirer will pay to Silver Chef upon demand all fees, charges, costs and expenses incurred by Silver Chef in obtaining or attempting to obtain payment of money from the Hirer pursuant to this Contract or in otherwise enforcing the terms of this Contract. Silver Chef's standard fees, charges, costs and expenses may be published by Silver Chef on its website from time to time.

## 23. AUTHORISED SIGNATORY

- (a) At the Date of Contract, the Hirer warrants that it has authorised each Authorised Signatory:
  - (i) to contact, correspond and deal with Silver Chef and to sign and acknowledge any document in relation to this Contract (including the Rental Facility) on behalf of the Hirer; and
  - (ii) to bind the Hirer to the fullest extent as if the Hirer was acting itself or had properly executed and acknowledged such document itself, and Silver Chef consents to such authorisation.
- (b) The Hirer may by notice in writing to Silver Chef substitute or revoke the authorisation of any Authorised Signatory or nominate any replacement or new authorised signatory. Such substitution, revocation, replacement or new appointment (as the case may be) of an Authorised Signatory may only be effective after Silver Chef consents in writing to the substitution, revocation, replacement or new appointment (as the case may be).

## 24. ASSIGNMENT BY THE HIRER

- (a) In this clause, the following words and expressions have the following meanings unless the context otherwise requires:
  - (i) **"Assigned Equipment"** has the meaning given by **sub-clause 24(c)**;
  - (ii) **"Assigned Portion Rent"** means the amount calculated by multiplying the Assignment Factor by the Rent;
  - (iii) **"Assigned Portion Security Deposit"** means the amount calculated by multiplying the Assignment Factor by the Security Deposit;
  - (iv) **"Assigned Rental"** has the meaning given by **sub-clause 24(e)**;
  - (v) **"Assignment Factor"** means the amount calculated by dividing the purchase price (including AST) of the Assigned Equipment paid by Silver Chef by the purchase price (including AST) of all of the Equipment paid by Silver Chef;
  - (vi) **"Operative Date of the Assigned Rental"** means the date when the Assigned Rental is binding on the Assignee;
  - (vii) **"Remaining Equipment"** means that part of the Equipment that is not the Assigned Equipment (if any);
  - (viii) **"Remaining Portion Rent"** means the amount calculated by deducting the Assigned Portion Rent from the Rent; and
  - (ix) **"Remaining Portion Security Deposit"** means the amount calculated by deducting the Assigned Portion Security Deposit from the Security Deposit.
- (b) The Hirer agrees that it will not assign the Rental or any part of it to another person unless the Hirer complies with this clause.
- (c) At any time during the Term, the Hirer may give Silver Chef a written request for consent to assign all or any part of the Rental specifying:
  - (i) details of the proposed assignee (the **"Assignee"**), including its name and contact details;
  - (ii) the part of the Rental the Hirer wishes to assign to the Assignee (by identifying the particular items of the Equipment) (**"Assigned Equipment"**); and
  - (iii) the date (at least thirty (30) days after Silver Chef receives the request) on which the assignment will take effect.
- (d) Silver Chef may, in its absolute discretion, consent to the assignment of the relevant part of the Rental to the Assignee. In exercising its discretion, Silver Chef may (but is not bound to) take into account the following matters:
  - (i) whether the Hirer is in breach of this Contract, including whether there are any outstanding amounts payable by the Hirer to Silver Chef under this Contract;
  - (ii) whether documentation has been provided by the Assignee at the request of Silver Chef, including written confirmation that the Assigned Equipment has been sighted by the Assignee and is in clean and good working condition and is situated at the Installation Site;
  - (iii) whether financial documentation has been provided by the Assignee at the request of Silver Chef in order to satisfy Silver Chef that the Assignee is a respectable and financially responsible person;
  - (iv) if the Hirer only wishes to assign part of the Rental, that the Hirer has agreed in writing to amend this Contract with effect from the Operative Date of the Assigned Rental as follows:
    - (1) the Rent payable under **clause 13** to become the Remaining Portion Rent; and
    - (2) the Security Deposit payable under **clause 7** to become the Remaining Portion Security Deposit.
- (e) Any assignment under this **clause 24** shall be subject to the Assignee entering into a rental contract with Silver Chef for the hire of the Assigned Equipment (**"Assigned Rental"**) on terms satisfactory to Silver Chef, which may include:
  - (i) the provision of guarantees on behalf of the Assignee;
  - (ii) the provision of a security deposit equal to the Assigned Portion Security Deposit by or on behalf of the Assignee (which may include the transfer of the Security Deposit in accordance with **sub-clause 24(g)**); and
  - (iii) the payment of rent equal to the Assigned Portion Rent by the Assignee.
- (f) In the event that Silver Chef consents to the assignment of the Rental in respect of the Assigned Equipment:
  - (i) the Hirer will cease to be liable to Silver Chef under this Contract in relation to the Assigned Equipment from the Operative Date of the Assigned Rental;

- (ii) the Hirer will continue to be liable to Silver Chef under this Contract in relation to the Assigned Equipment prior to the Operative Date of the Assigned Rental;
  - (iii) if the Hirer only assigns part of the Rental to the Assignee, nothing in this clause shall affect the liabilities of the Hirer under this Contract in relation to the Remaining Equipment; and
  - (iv) subject to any transfer of the Security Deposit held by Silver Chef under **sub-clause 24(g)** and any claims on the Security Deposit held by Silver Chef that it may make under **clause 7**, after the Operative Date of the Assigned Rental, Silver Chef will refund to the Hirer:
    - (1) if the Hirer assigned all of the Rental, the Security Deposit held by Silver Chef; or
    - (2) if the Hirer assigned part of the Rental, the amount of the Security Deposit held by Silver Chef in excess of the Remaining Portion Security Deposit.
- (g) If Silver Chef consents to the assignment of all or part of the Rental to the Assignee, the Hirer may agree to transfer to the Assignee all or part of the Security Deposit held by Silver Chef under this Contract and that may be refunded to the Hirer upon the assignment pursuant to **sub-clause 24(f)(iv)**, for use under the Assigned Rental PROVIDED THAT:
- (i) the Hirer gives Silver Chef a written request (“**Transfer Request**”) to transfer all or part of the Security Deposit held by Silver Chef under this Contract specifying:
    - (1) details of the Assignee, including its name and contact details;
    - (2) a date (at least seven (7) days after Silver Chef receives the request) on which the transfer of the Security Deposit held by Silver Chef is to take effect; and
    - (3) the amount or portion of the Security Deposit held by Silver Chef that it wishes to transfer to the Assignee;
  - (ii) the Hirer gives the Assignee a copy of the Transfer Request within seven (7) days; and
  - (iii) Silver Chef (in its sole discretion) agrees to the transfer of that amount or portion of the Security Deposit held by Silver Chef and provides written notice of its agreement to the Hirer and the Assignee. In exercising its discretion, Silver Chef may (but is not bound to) take into account the following matters:
    - (1) whether the Hirer is in breach of this Contract, including whether there are any outstanding amounts payable by the Hirer to Silver Chef under this Contract; and
    - (2) if the Hirer only wishes to assign part of the Rental, whether the remaining Security Deposit held by Silver Chef under this Contract after the transfer will be equal to or greater than the Remaining Portion Security Deposit.

## 25. OTHER ASSIGNMENT

- (a) The Rental Facility is personal to the Hirer and cannot be assigned by the Hirer.
- (b) Silver Chef may, subject to the requirements of any law, assign, transfer, novate or participate to any person, trust or other entity, or otherwise deal in any manner with any of its rights, obligations or interests in the Equipment or under this Contract. The Hirer agrees, at its own cost, to sign or execute any agreement, notice or document produced or provided by Silver Chef addressed to or in favour of any such other person, trust or entity for the purposes of this clause.

## 26. DEFAULT

- (a) If the Hirer is in default of any of its obligations under this Contract, Silver Chef may rectify that default as the Hirer’s agent. All fees, charges, costs and expenses incurred by Silver Chef in rectifying the default will be a liquidated debt payable by the Hirer to Silver Chef on demand.
- (b) The termination of the Rental Facility or the expiration of the Term or the termination of the Rental (or any Month to Month Rental or holding over) shall not prejudice or affect any rights or remedies of Silver Chef against the Hirer on account of any antecedent breach by the Hirer of any of the terms and conditions on the part of the Hirer under this Contract.
- (c) Should the Hirer fail to make any payment required by this Contract, then the Hirer shall pay interest at the Interest Rate to Silver Chef on the amount which is outstanding from the due date for payment until the date it is actually paid.
- (d) Each of the following is an event of default (“**Event of Default**”), namely, if:
  - (i) any money payable to Silver Chef pursuant to this Contract is not paid by seven (7) clear days after the due date for payment;
  - (ii) the Hirer has failed to punctually perform or observe any of the terms and conditions on the part of the Hirer under this Contract and such failure has remained unremedied for a period of seven (7) clear days after notice in writing is served upon the Hirer by Silver Chef specifying the default;
  - (iii) Silver Chef ascertains that the Hirer has made any false, inaccurate or misleading statement having a material effect in relation to the making of this Contract or any related or collateral document;
  - (iv) the Hirer exceeds the Rental Facility Limit without Silver Chef’s prior written consent;
  - (v) in the opinion of Silver Chef, there is a material adverse change in the financial condition of the Hirer, or the Hirer ceases or threatens to cease to carry on its business or any material part thereof, or the Hirer commits or threatens to commit an act of bankruptcy, or the Hirer files a proposal, a notice of intention to file a proposal, or an assignment of the benefit of creditors under, or a petition is filed against the Hirer under, applicable bankruptcy or similar legislation, or any order by any court is made for the Hirer’s bankruptcy or winding up or for any arrangement or composition of its debts;
  - (vi) the Hirer, being a natural person, dies or is convicted upon indictment of a criminal offence or sentenced to a term of imprisonment;
  - (vii) execution or other legal process is levied by any court against the Hirer and such execution or other process is not satisfied within fourteen (14) days;
  - (viii) where the Hirer is a corporation, company, limited liability company or partnership:
    - (1) a resolution for its bankruptcy or winding up is passed or a controller, provisional liquidator, receiver, receiver-manager or receiver and manager or administrator, trustee or similar official is appointed in respect of the Hirer or in respect of the whole or any part of its assets;
    - (2) any director of the Hirer (or of any partner thereof) is convicted upon indictment of a criminal offence or sentenced to a term of imprisonment;
    - (3) without Silver Chef’s prior written consent (which consent will not be unreasonably withheld), the Hirer reduces its share capital or attempts to do so;
    - (4) without Silver Chef’s prior written consent (which consent will not be unreasonably withheld), effective control of the Hirer is altered to any material extent from that subsisting at the Date of Contract and for the purposes of this sub-clause, “**effective control of the Hirer**” means:
      - (a) control of the composition of the board of directors of the Hirer;
      - (b) control of more than one half of the voting power with respect to the Hirer; or
      - (c) control of more than one half of the issued share capital of the Hirer excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital;
  - (ix) where the Hirer is the trustee of a trust (whether or not it is disclosed):
    - (1) the Hirer ceases to be sole trustee of the trust;
    - (2) any part of the capital of the trust is distributed without Silver Chef’s prior written consent (which consent will not be unreasonably withheld);
    - (3) any warranty in **sub-clause 33(i)** is proved to be untrue or incorrect in any material respect;
    - (4) any application or order is sought or made in any court for the removal of the Hirer as trustee of the trust or for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court or under the court’s control;



- (5) any notice is given or meeting summoned or proposal put forward for the removal of the Hirer as trustee of the whole or any part of the assets of the trust or the appointment of any other person as trustee with the Hirer;
- (6) without the prior written consent of Silver Chef (which consent will not be unreasonably withheld), any alteration is made to the terms of the trust deed or through the exercise of any power under such instrument, to the constitution of the trust or any other trust which might in the opinion of Silver Chef detrimentally affect Silver Chef's position under this Contract; or
- (7) if the trust is a unit trust, any unit in the trust is issued, transferred, redeemed, encumbered or otherwise dealt with, without Silver Chef's prior written consent (which consent will not be unreasonably withheld);
- (x) the Equipment is abandoned or condemned or is seized or appropriated by any lawful authority and not released within twenty-one (21) days or is seized, attached, sequestered, impounded, distrained or restrained upon or subject to a similar process and not released within twenty-one (21) days; or
- (xi) any Guarantor:
  - (1) is unable to pay its debts when they are due;
  - (2) commits an act of bankruptcy or is convicted upon indictment of a criminal offence or sentenced to a term of imprisonment;
  - (3) dies; or
  - (4) if a corporation, company, limited liability company, or partnership, is subject to an event stated in **sub-clauses 26(d)(viii)(1) to (4)**.
- (e) Upon the occurrence of any one or more of the events described in **sub-clause 26(d)** Silver Chef may (at its option) by notice in writing to the Hirer terminate the Rental Facility and/or terminate the Rental (or any Month to Month Rental or holding over) and immediately recover possession of the Equipment.
- (f) Upon termination of the Rental Facility pursuant to **sub-clause 26(e)**, Silver Chef is entitled to recover as liquidated and ascertained damages an amount equal to all the fees, charges, costs and expenses incurred by Silver Chef, including legal fees on a full indemnity (solicitor and own client) basis, in enforcing the terms of this Contract in respect of the Rental Facility.
- (g) Upon termination of the Rental (or any Month to Month Rental or holding over) pursuant to **sub-clause 26(e)**, Silver Chef is entitled to recover as liquidated and ascertained damages an amount equal to the sum of the following:
  - (i) any amount of money due and owing to Silver Chef pursuant to this Contract as at the date of termination but unpaid by the Hirer;
  - (ii) interest on such unpaid amounts at the Interest Rate;
  - (iii) the balance of Rent payable for the Term from the date of termination to the Rental Expiration Date; and
  - (iv) all fees, charges, costs and expenses incurred by Silver Chef, including legal fees on a full indemnity (solicitor and own client) basis, in:
    - (1) obtaining or attempting to obtain payment of such unpaid amounts;
    - (2) otherwise enforcing the terms of this Contract;
    - (3) recovering or attempting to recover possession of the Equipment; and
    - (4) arranging for the Equipment to be brought to the state required in **sub-clause 29(c)**.
- (h) Notwithstanding **sub-clause 26(g)(iii)**, Silver Chef may (in its absolute discretion) re-hire the Equipment upon such terms and conditions as a prudent owner could reasonably be expected to obtain for equipment of a similar age and in a similar state of repair as the Equipment at the time of re-hiring and recover from the Hirer as liquidated and ascertained damages the difference between the Rent payable for the Term from the date of termination to the Rental Expiration Date and the amount of rent obtained by Silver Chef on re-hiring the Equipment during the same period.

## 27. RENTAL EXPIRATION AND MONTH TO MONTH RENTAL

- (a) At the Rental Expiration Date, the Rental will convert to a rental on a month to month basis ("**Month to Month Rental**") commencing on the day after the Rental Expiration Date unless:
  - (i) the Rental has been terminated at an earlier date;
  - (ii) the parties have reached an alternate agreement in writing;
  - (iii) a mandatory provision of law operates to prohibit the conversion, in which case the Rental will end at the Rental Expiration Date;
  - (iv) at least four (4) weeks before the Rental Expiration Date the Hirer gives to Silver Chef written notice that it requires the Rental to end at the Rental Expiration Date with no conversion to a Month to Month Rental, in which case the Rental will end at the Rental Expiration Date; or
  - (v) by the Rental Expiration Date Silver Chef gives the Hirer written notice that it does not agree to a conversion of the Rental to a Month to Month Rental, in which case the Rental will end at the Rental Expiration Date.
- (b) Nothing in this Contract shall oblige Silver Chef to agree to a conversion of the Rental to a Month to Month Rental.
- (c) If the Rental is converted to a Month to Month Rental, the Hirer will hire the Equipment from Silver Chef under the Month to Month Rental:
  - (i) at a weekly rent equal to the Weekly Rent;
  - (ii) upon the terms and conditions of this Contract applicable to the Rental (with the necessary changes being made to apply to a month to month term) unless otherwise agreed in writing between the parties; and
  - (iii) the Month to Month Rental may be terminated by the parties in accordance with **clauses 26, 28 and 31**.

## 28. TERMINATION OF THE RENTAL AND MONTH TO MONTH RENTAL

- (a) At any time during the Term, the Hirer may terminate the Rental by giving to Silver Chef four (4) weeks' prior written notice (effective from the Common Payment Day next falling after the notice is given) of its intention to do so and upon Silver Chef accepting the termination. Silver Chef will accept the termination of the Rental when the Hirer has:
  - (i) paid the full amount of the Rent payable for the Term up to the Rental Expiration Date (which may be paid off in one or more lump sums before the Rental Expiration Date); and
  - (ii) paid all other amounts payable under this Contract in respect of the Rental.
- (b) At any time during the Month to Month Rental, the Hirer may terminate the Month to Month Rental by giving to Silver Chef four (4) weeks' prior written notice (effective from the Common Payment Day next falling after the notice is given) of its intention to do so and upon Silver Chef accepting the termination. Silver Chef will accept the termination of the Month to Month Rental when the Hirer has:
  - (i) paid the full amount of the rent payable for the duration of the Month to Month Rental; and
  - (ii) paid all other amounts payable under this Contract in respect of the Month to Month Rental.
- (c) At any time during the Month to Month Rental, Silver Chef may terminate the Month to Month Rental by giving to the Hirer four (4) weeks' prior written notice (effective from the Common Payment Day next falling after the notice is given).

## 29. END OF RENTING

- (a) In this Contract, the "**End of Renting**" means the earliest to occur of:
  - (i) the termination of the Rental before the Rental Expiration Date; or
  - (ii) the Rental Expiration Date (if the Rental is not converted to a Month to Month Rental); or
  - (iii) the termination of the Month to Month Rental (if the Rental is converted to a Month to Month Rental).
- (b) Upon the date of the End of Renting, subject to **clause 31**, the Hirer must return the Equipment to Silver Chef by:
  - (i) delivering the Equipment to Silver Chef in the manner and to the place directed or agreed by Silver Chef; or
  - (ii) instead of complying with **sub-clause 29(b)(i)**:
    - (1) doing all things necessary to facilitate the collection of the Equipment by Silver Chef at the reasonable time required by Silver Chef; and
    - (2) paying to Silver Chef an amount advised by Silver Chef at the relevant time to reimburse it for the collection costs.
- (c) When the Equipment is due to be returned to Silver Chef pursuant to this Contract (including by recovery of possession in the event of termination after default), the Equipment must be returned to Silver Chef in the order and condition required by **clause 16** and:
  - (i) the Equipment must otherwise be free from damage and deficiencies with all accessories and services complete and functioning properly;

- (ii) all labels and signs (other than those applied by the manufacturer or Silver Chef or those required by law) must be removed and the affected area made good; and
  - (iii) the Equipment must be compliant with all statutory, governmental and other legal requirements (including workplace health and safety and environmental legislation) in relation to the continued operation of the Equipment and the Equipment must be capable of being immediately operated by a third party without any repair or replacement required.
- (d) If the Hirer returns the Equipment in a state that is not consistent with the obligations under **sub-clause 29(c)**, Silver Chef may undertake the work necessary to bring the Equipment to the required state as the Hirer's agent and all fees, charges, costs and expenses incurred by Silver Chef in undertaking the necessary cleaning and repair of the Equipment will be a liquidated debt payable on demand by the Hirer to Silver Chef.
- (e) The Hirer may elect to return the Equipment in a state that is not consistent with the obligations under **sub-clause 29(c)** for the purpose of Silver Chef undertaking the work necessary to bring the Equipment to the required state as the Hirer's agent at the Hirer's cost PROVIDED THAT the Hirer must first pay to Silver Chef upon demand an amount advised by Silver Chef at the relevant time to reimburse it for the fees, charges, costs and expenses of Silver Chef undertaking the necessary cleaning and repair of the Equipment.
- (f) If the Equipment is damaged beyond repair at any time so that in Silver Chef's reasonable opinion the Hirer cannot comply with **sub-clause 29(c)** and Silver Chef cannot rectify that default, then at the time the damage occurs the Hirer must pay to Silver Chef the Recovery Value of the Equipment to reimburse Silver Chef for its loss of the Equipment by way of liquidated damages and not as a penalty and in addition to any liquidated claim made by Silver Chef under **sub-clause 26(g)**. To remove doubt, the Hirer will be responsible for the payment of the Rent for the Term up to the Rental Expiration Date (even if the Equipment is damaged beyond repair before the Rental Expiration Date).
- (g) If the Equipment is lost or stolen at any time so that the Hirer cannot return it to Silver Chef when it is due to be returned, then at the time the theft occurs the Hirer must pay to Silver Chef the Recovery Value of the Equipment to reimburse Silver Chef for its loss of the Equipment by way of liquidated damages and not as a penalty and in addition to any liquidated claim made by Silver Chef under **sub-clause 26(g)**. To remove doubt, the Hirer will be responsible for the payment of the Rent for the Term up to the Rental Expiration Date (even if the Equipment is lost or stolen before the Rental Expiration Date).
- (h) If the Hirer does not return the Equipment to Silver Chef upon the date of the End of Renting (where **sub-clauses 29(f)** and **(g)** do not apply), then without limiting Silver Chef's rights and remedies available under **clause 26**, Silver Chef may deem that the Hirer is holding over and if so, the Hirer must continue to pay rent weekly to Silver Chef in the amount of the Weekly Rent and to be bound by the terms and conditions of this Contract applicable to the Rental (with necessary changes to apply to a holding over basis) until either the Equipment is returned to Silver Chef or Silver Chef receives payment of the Recovery Value of the Equipment to reimburse Silver Chef for its loss of the Equipment by way of liquidated damages and not as a penalty.

### 30. TERMINATION OF THE RENTAL FACILITY

Where the total of all purchase prices (including AST) paid by Silver Chef for all equipment (including any Transferred Equipment) hired by the Hirer under this Contract and any other rental contract entered into by the parties in connection with the Rental Facility, whenever hired (subject to **sub-clause 3(b)**) is less than the Rental Facility Limit, either party may give notice to the other of its intention to terminate the Rental Facility and upon the giving of such notice, the parties agree that:

- (a) if the Rental has not been terminated and the Term has not yet expired, the Rental will end at the Rental Expiration Date (with no conversion to a Month to Month Rental);
- (b) if the Rental has converted to a Month to Month Rental which has not yet been terminated, the party giving the notice under this **clause 30** will be deemed to have at the same time also given the notice under **clause 28** for the purpose of terminating the Month to Month Rental in four (4) weeks' time (effective from the Common Payment Day next falling after the notice is given) unless the parties agree to an alternative timing;
- (c) if the Hirer is holding over, the holding over will end in accordance with this Contract;
- (d) the parties will not enter into any further rental contracts for equipment in connection with the Rental Facility;
- (e) any other current rental contract for the rental of equipment in connection with the Rental Facility shall remain in force until the valid end of that rental; and
- (f) the Rental Facility shall be terminated at the last to occur of:
  - (i) the termination of the Rental;
  - (ii) the expiry of the Term;
  - (iii) the termination of the Month to Month Rental (if any);
  - (iv) the end of the holding over period (if any); or
  - (v) the valid end of any remaining rental of equipment under any other rental contract in connection with the Rental Facility.

### 31. OFFER TO PURCHASE

- (a) The Equipment remains the property of Silver Chef at all times during the Term and any Month to Month Rental or holding over period subject to a sale of the Equipment by Silver Chef.
- (b) Silver Chef may advise the Hirer of the Agreed Price of the Equipment as at a particular time upon the Hirer's request at any time during the Term or any Month to Month Rental or holding over period.
- (c) The Hirer may make an offer to purchase the Equipment from Silver Chef for a specified amount at any time during the Term or any Month to Month Rental or holding over period PROVIDED THAT the Hirer is not in breach of this Contract at the relevant time, and such offer ("**Offer**") may (but need not) be made:
  - (i) in writing; and
  - (ii) for the Agreed Price of the Equipment.
- (d) Silver Chef may (but is not obligated to) consider the Hirer's Offer.
- (e) Silver Chef may, in its sole and absolute discretion, accept or decline the Offer. Nothing in this Contract obliges Silver Chef to accept the Offer or guarantees Silver Chef's acceptance of the Offer, nor do the provisions of this Contract apply to any terms of the Offer (other than those stated in **sub-clause 31(f)**).
- (f) The parties agree that any sale by Silver Chef and purchase by the Hirer of the Equipment shall include the following terms:
  - (i) property in and title to the Equipment shall pass free of any encumbrances to the Hirer upon payment of the purchase price (including AST) agreed by the parties ("**Agreed Purchase Price**"), without the necessity for actual or formal delivery or conveyance of the Equipment;
  - (ii) after the Hirer's payment of the Agreed Purchase Price, Silver Chef shall notify the Hirer immediately if and once it becomes aware of any reason why property in and title to the Equipment is prevented from passing free of any encumbrances to the Hirer;
  - (iii) Silver Chef makes no warranty regarding the state, condition or location of the Equipment before the sale of the Equipment by Silver Chef to the Hirer;
  - (iv) the Hirer purchases the Equipment on an "as is, where is" basis in whatever state, condition or location it may be at the time of the sale;
  - (v) to the fullest extent permitted by law, all guarantees, conditions and warranties which might otherwise be implied into the terms of the sale pursuant to this clause by law are excluded; and
  - (vi) if Silver Chef is not in possession of the Equipment at the time of the sale, Silver Chef is not obliged to deliver possession to the Hirer and the Hirer must itself obtain possession of the Equipment in the manner determined by the Hirer.
- (g) The Rental or Month to Month Rental or holding over (as the case may be) will terminate upon the Hirer's payment of the Agreed Purchase Price and the Hirer will not be required to return the Equipment to Silver Chef.
- (h) To remove doubt, the Hirer will:
  - (i) be responsible for the payment of the Rent for the Term up to the Rental Expiration Date unless the Hirer purchases the Equipment before the Rental Expiration Date;

- (ii) be responsible for the payment of all rent for the duration of any Month to Month Rental or holding over period until termination pursuant to this clause; and
- (iii) be responsible for the payment of all other amounts payable by the Hirer under this Contract during the Term and the duration of any Month to Month Rental or holding over period until termination pursuant to this clause.

### 32. APPLICABLE SALES TAXES

- (a) If one or more Applicable Sales Taxes is imposed on any supply made by Silver Chef pursuant to this Contract, the Hirer must pay, in addition to any AST-exclusive consideration for the supply payable pursuant to this Contract, an additional amount in respect of each Applicable Sales Tax calculated by multiplying the prevailing applicable AST Rate by the AST-exclusive consideration. Specifically, the Hirer must pay any AST payable in relation to its hire of the Equipment from Silver Chef and any AST payable in relation to any purchase by the Hirer of the Equipment under **clause 31**.
- (b) In relation to AST payable on Rent payments, the Hirer shall pay the AST amount/s on each payment of Rent at the same time as paying such payment of Rent to Silver Chef.
- (c) In relation to AST payable on the sale of the Equipment to the Hirer upon Silver Chef's acceptance of an Offer by the Hirer to purchase such Equipment under **clause 31**, the Hirer shall pay the AST amount/s at the same time as the purchase price is payable pursuant to this Contract and/or the accepted Offer to purchase.

### 33. MISCELLANEOUS

- (a) **Continuing obligation:** The obligations of the Hirer under this Contract, including the obligation to pay Rent, shall continue notwithstanding any defect, breakdown, accident to, theft of or seizure of the Equipment.
- (b) **Entire agreement:** Except as otherwise expressly agreed in writing, this Contract contains all the terms of the agreement between Silver Chef and the Hirer in respect of the Equipment (but not necessarily of the Rental Facility) and all terms, conditions, provisions, arrangements and stipulations (if any) made or referred to between the parties prior to the Date of Contract in respect of the Equipment are (except to the extent that they are embodied in this Contract) of no force or effect whatsoever.
- (c) **Governing law:** This Contract shall be governed by the laws of the Province of British Columbia save and except with respect to the hypothec(s) granted pursuant to **clause 38**, which shall be governed by the laws of the Province of Quebec. Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of British Columbia situated anywhere in Greater Vancouver and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Contract; and
  - (ii) waives any objection it may now or in the future have to the venue of any such proceedings and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.
- (d) **Severability:** In the event that any term or condition of this Contract is found to be void or voidable by reason of any statute or rule of law or equity, then that term or condition will be of no force or effect and will be severed from this Contract without affecting the validity and enforceability of the remaining terms and conditions.
- (e) **Amount owing:** A statement in writing prepared from the books of Silver Chef and signed by an authorised officer of Silver Chef evidencing the amount still owing by the Hirer at the date mentioned in such statement is conclusive evidence that the amount is due and owing pursuant to this Contract and of all matters set out in the statement.
- (f) **Time of the Essence:** Time shall be deemed to be of the essence in respect of all the Hirer's obligations in this Contract.
- (g) **Waiver:** No breach by the Hirer of any term or condition of this Contract shall be deemed to have been waived or released by Silver Chef unless a waiver or release is made in writing under the hand of a director or senior officer of Silver Chef or an officer of Silver Chef whose title includes the word "manager". No waiver by Silver Chef of any breach will constitute a waiver of any subsequent, continuing or recurring breach, whether similar to the breach waived or not.
- (h) **Hirer's Warranties:** The Hirer acknowledges, warrants and represents to Silver Chef that:
  - (i) where the Hirer is:
    - (1) an individual, the Hirer has full power and capacity to enter into and observe and perform the terms and conditions of this Contract; or
    - (2) a corporation, company, limited liability company or partnership, the Hirer is duly incorporated/formed and validly existing under the law of its jurisdiction of incorporation/formation and has full power and authority to enter into and observe and perform the terms and conditions of this Contract;
  - (ii) all resolutions, consents and approvals required in order for the Hirer to execute this Contract and to perform and observe every term and condition of this Contract have been obtained and are in full force and effect;
  - (iii) this Contract creates legal, valid and binding obligations on all parties to this Contract;
  - (iv) to the best of the knowledge and belief of the Hirer, no information furnished by the Hirer to Silver Chef in connection with this Contract contains any material misstatement of fact or any omission of a material fact;
  - (v) the execution of this Contract does not, and the performance and observance by the Hirer of every term and condition of this Contract will not, violate any relevant law, regulation, agreement or instrument to which the Hirer is a party or by which any of its assets are bound, including, where the Hirer is a corporation, company, limited liability company or partnership, the constating documents of the Hirer;
  - (vi) the Hirer is conducting its business and operations in compliance with all applicable laws and rules and, where the Hirer is a corporation, company, limited liability company or partnership, its constating documents;
  - (vii) the Hirer (whether as a body corporate, individual or trustee of a disclosed or undisclosed trust (including of more than one trust)) is capable of complying with **clause 37** and has or will be able to obtain the consent of any existing security holder as required; and
  - (viii) no Event of Default exists and no event has occurred or is continuing which constitutes or might, with the passing of time or giving of notice or both, constitute an Event of Default.
- (i) **Trustee Hirer:** Where the Hirer is acting in its capacity as trustee (or nominee) of a trust (including where the Hirer acts as trustee of more than one trust) and whether or not such trust has been disclosed to Silver Chef, the Hirer acknowledges, warrants and represents to Silver Chef that:
  - (i) the trust is a valid and subsisting trust as at the Date of Contract and full particulars of the trust were disclosed to Silver Chef prior to the execution of this Contract;
  - (ii) all of the powers and discretions conferred on the Hirer as trustee of the trust are, at the Date of Contract, capable of being validly exercised by it as trustee of the trust (notwithstanding any conflict of interest which may arise for the Hirer as trustee in performing this Contract), no action has been taken to vary or revoke those powers and discretions and the covenants, undertakings and agreements given by the Hirer to Silver Chef are so given pursuant to the powers contained in the trust deed;
  - (iii) the Hirer is sole trustee of the trust and no action has been taken to replace the Hirer as such sole trustee and, as sole trustee, the Hirer has full and unfettered power under the trust deed to execute, and perform its obligations under, this Contract on behalf of the trust and all action necessary under the trust deed has been taken to authorise the execution and performance of this Contract;
  - (iv) this Contract is binding upon the Hirer personally and in its capacity as trustee of the trust and nothing contained or implied in this Contract or in any notification given or deemed to be given to Silver Chef will prejudice, affect or in any way limit the liability of the Hirer on its own account as hirer under this Contract;
  - (v) this Contract is not affected by the fact that the Hirer is the trustee of the trust or is otherwise a trustee or nominee whether or not disclosed to Silver Chef or by any change whatsoever which is made or takes place in the position of the Hirer as such trustee or nominee;
  - (vi) nothing contained or implied in this Contract or in any notification given or deemed to be given to Silver Chef by any person will:
    - (1) oblige or require Silver Chef to take notice of any actual, contingent or future interest of any person in or under the trust or in respect of any beneficiary or otherwise in regard to any trustee or nominee relationship of the Hirer; or

- (2) prejudice, affect or limit any rights or remedies conferred by law or in equity upon Silver Chef against the Hirer or any present or future beneficiary of the trust or in respect of any beneficiary or any other person referred to in the trust deed or any other relevant agreement or claiming any interest under the trust deed or other relevant agreement or otherwise in regard to any trustee or nominee relationship, including all rights to trace, follow or levy execution upon or against all or any assets;
- (vii) Silver Chef may exercise all the rights, powers, authorities and discretions conferred by this Contract or implied by law or in equity upon Silver Chef and Silver Chef will be entitled to full recourse and resort to an indemnity from time to time held by the Hirer as trustee or nominee in the same manner and to the same extent as if the Hirer were the sole unencumbered legal and beneficial owner of its assets;
- (viii) the Hirer considers that this Contract is being executed and entered into as, and all transactions contemplated by this Contract are or will be entered into as, part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (ix) the Hirer has a right to be fully indemnified out of the assets of the trust for obligations and liabilities undertaken by the Hirer in its capacity as trustee of the trust under this Contract and no action has been taken to limit or restrict that right;
- (x) no default has occurred or, having occurred, is subsisting under the trust deed;
- (xi) no vesting date for the trust has been determined; and
- (xii) it will not permit (in so far as it is able to do so), without the prior written consent of Silver Chef:
- (1) any re-settlement, appointment, appropriation or distribution of capital of the trust;
  - (2) where the trust deed constitutes a unit trust, any issue, transfer or repurchase of units;
  - (3) any retirement or replacement of the Hirer as trustee of the trust (whether in addition to, or in substitution for, the Hirer);
  - (4) any amendment of the trust deed;
  - (5) any breach of the trust deed; or
  - (6) any encumbrance, mortgage, hypothec, prior claim or charge whatsoever on any of the assets of the trust which are encumbered, mortgaged, hypothecated or charged for the benefit of Silver Chef.
- (j) **Survival of Warranties:** The warranties and representations set out in **sub-clauses 33(h)** and **33(i)** shall survive the execution of this Contract and will be deemed to be repeated (updated as appropriate) on each Rent payment date under or pursuant to this Contract.
- (k) **Communications:** Any communication (including a notice) under or in connection with this Contract:
- (i) must be in writing;
  - (ii) must be signed by the party making the communication or on its behalf by its solicitor or by any attorney, director, officer or authorised agent of that party (or in the case of the Hirer, any Authorised Signatory);
  - (iii) must be:
    - (1) delivered, or posted by prepaid post, to the following address:
      - (a) if to Silver Chef, to the address as shown in **sub-clause 1(hh)** or as otherwise notified by Silver Chef from time to time to the party making the communication; or
      - (b) if to the Hirer, to the address specified in **Item 2** of the Schedule or as otherwise notified by the Hirer from time to time to the party making the communication; or
      - (c) if to the Guarantor (if any), to the address specified for that Guarantor in **Item 3** of the Schedule or as otherwise notified by that Guarantor from time to time to the party making the communication; or
    - (2) sent by facsimile to the facsimile number of the addressee as notified by that party to the other party from time to time; or
    - (3) sent by email or other means of Electronic Communication to the email address, other electronic address or number of the addressee as notified by that party to the other party from time to time;
  - (iv) will be deemed to be received by the addressee:
    - (1) (in the case of delivery) on delivery at the address of the addressee, unless that delivery is made on a day that is not a Business Day or after 5:00pm on a Business Day, when that communication will be deemed to be received at 9:00am on the next Business Day;
    - (2) (in the case of prepaid post) on the third Business Day after the date of posting to an address within Canada and on the fifth Business Day after the date of posting to an address outside Canada;
    - (3) (in the case of facsimile) at the local time (in the place of receipt of that facsimile) which then equates to the time at which that facsimile is sent as shown on the transmission report which is produced by the machine from which that facsimile is sent and which confirms transmission of that facsimile in its entirety, unless the local time is not a Business Day or is after 5:00pm on a Business Day, when that communication will be deemed to be received at 9:00am on the next Business Day; or
    - (4) (in the case of email or other Electronic Communication):
      - (a) at the time when the electronic communication becomes capable of being retrieved by the addressee at the electronic address or number designated by the addressee, unless that time is not a Business Day or is after 5:00pm on a Business Day (in the place of receipt), when that communication will be deemed to be received at 9:00am on the next Business Day; and
      - (b) at the place where the addressee has its place of business, which is either:
        - (i) the location indicated by the addressee as its place of business; or
        - (ii) if no place of business is indicated by the addressee and it has only one place of business, that place of business; or
        - (iii) if no place of business is indicated by the addressee and it has more than one place of business, the addressee's place of business with the closest relationship to the underlying transaction having regard to the circumstances known to or contemplated by the parties at any time or otherwise the addressee's principal place of business; or
        - (iv) if the addressee is an individual with no place of business, the place of the addressee's habitual residence; and
  - (v) in the case of email or other Electronic Communication (but not facsimile), will be deemed to be dispatched by the sender:
    - (1) at the time when the electronic communication leaves an information system under the control of the sender or if it has not left such an information system, the time when the electronic communication is received by the addressee; and
    - (2) at the place where the sender has its place of business, which is either:
      - (a) the location indicated by the sender as its place of business; or
      - (b) if no place of business is indicated by the sender and it has only one place of business, that place of business; or
      - (c) if no place of business is indicated by the sender and it has more than one place of business, the sender's place of business with the closest relationship to the underlying transaction having regard to the circumstances known to or contemplated by the parties at any time or otherwise the sender's principal place of business; or
      - (d) if the sender is an individual with no place of business, the place of the sender's habitual residence.
- (l) **Addresses:** The Hirer and any Guarantor must promptly notify Silver Chef of any changes in their respective addresses to which communications are to be sent by Silver Chef (including any change of email addresses).
- (m) **Communications by Silver Chef:** Silver Chef's preferred method of communication is by Electronic Communication. Notwithstanding **sub-clause 33(k)**, Silver Chef may make information available at its website for retrieval by the Hirer and/or any Guarantor and notify the Hirer and/or any Guarantor by Electronic Communication or otherwise that the information is available for retrieval and in that case, the Hirer and any Guarantor acknowledge they are each responsible for:
- (i) accessing and retrieving the relevant information promptly; and
  - (ii) for the installation, maintenance and operation, at their own cost, of their own computers, internet access, browsers, software, printers and other devices necessary to download and print or save any information they wish to retain.
- (n) **Schedule Variation:** Notwithstanding **sub-clause 35(b)**, the parties agree that Silver Chef may from time to time review and vary the items in the Schedule PROVIDED THAT prior written notice is given to the Hirer.

#### 34. FACSIMILE OR ELECTRONIC COPIES, COUNTERPARTS AND ELECTRONIC COMMUNICATIONS

- (a) A reference to the parties in this **clause 34** includes any Guarantor.
- (b) This Contract may be signed by any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.
- (c) This Contract may be entered into by the parties:
  - (i) upon a party signing the Rental Contract & Invoice which has been signed by another party (or a photocopy, facsimile or email copy of it) and transmitting a facsimile or email copy of that document to the other party; or
  - (ii) by means of Electronic Communication, including by a party signing the Rental Contract & Invoice by way of an electronic signature, as and in the manner permitted by law.
- (d) For the purposes of the *Electronic Transactions Act* (British Columbia) and similar legislation of other jurisdictions (including, if applicable, *An Act to Establish a Legal Framework for Information Technology* (Quebec)) and for other purposes generally, each party consents as follows:
  - (i) where a signature of another party is required to be given to a party ("**the receiving party**") for the formation or performance of this Contract, the receiving party consents to the requirement being met by way of the use of an Electronic Communication;
  - (ii) where information is required or permitted to be given by another party to a party ("**the receiving party**") in relation to this Contract (including any notice), the receiving party consents to the information being given by an Electronic Communication; and
  - (iii) where a document is required or permitted to be produced by another party to a party ("**the receiving party**") in relation to this Contract (including any notice), the receiving party consents to the production, by means of an Electronic Communication, of an electronic form of a document,unless and until the receiving party withdraws its consent by notice in writing to each other party.
- (e) To remove doubt, where an Authorised Signatory acts on behalf of the Hirer:
  - (i) Silver Chef consents to:
    - (1) being given the signature of an Authorised Signatory by Electronic Communication when required;
    - (2) being given information from an Authorised Signatory by Electronic Communication when required or permitted; and
    - (3) receiving an electronic form of a document from an Authorised Signatory by Electronic Communication when required or permitted.
  - (ii) Where an Authorised Signatory has been authorised by the Hirer under **clause 23** and the Hirer has not withdrawn its consent as set out in **sub-clause 34(d)**, the Authorised Signatory is deemed to have consented to receiving Electronic Communications as set out in **sub-clause 34(d)** unless and until it or the Hirer withdraws such consent by notice in writing to the parties.

#### 35. SPECIAL CONDITIONS AND VARIATIONS

- (a) One or more special conditions (which may vary these Standard Terms and Conditions) ("**Special Conditions**") may be annexed to the Rental Contract & Invoice and if so, will form part of it.
- (b) This Contract will only be varied or amended after the Date of Contract by a document in writing duly executed by the parties.

#### 36. PPSA / CCQ

- (a) The Hirer and any Guarantor:
  - (i) acknowledge that this Agreement is a security agreement for the purposes of the PPSA and/or a leasing agreement for the purposes of the *Civil Code of Quebec*, as applicable;
  - (ii) consent to Silver Chef registering its Security Interests hereunder in the PPSR;
  - (iii) consent to Silver Chef applying any monies received, firstly, against Silver Chef's costs and disbursements in recovering such monies on a full indemnity basis, secondly against any interest accrued and finally against any amount due; and
  - (iv) the Hirer agrees to the debiting of its account with Silver Chef of the cost of registration of Silver Chef's rights of ownership in the Equipment and its Security Interests hereunder and all other associated costs with perfection and enforcement of such rights of ownership and Security Interests on a full indemnity basis.
- (b) The Hirer waives its rights to receive a copy of all financing statements and any financing change statements registered by Silver Chef in connection with its Security Interests hereunder and of all related verification statements.
- (c) The Hirer agrees that Silver Chef's rights of retention, disposition and/or re-hiring of any repossessed Equipment shall become effective immediately upon repossession and will immediately extinguish any rights and/or interest the Hirer has in the Equipment.

#### 37. GUARANTEE

- (a) This clause applies if there is one or more persons specified as Guarantor in the Schedule.
- (b) In consideration of Silver Chef, at the request of the Guarantor, hiring out the Equipment to the Hirer upon the terms and conditions contained in this Contract, the Guarantor guarantees to Silver Chef:
  - (i) the due and punctual payment by the Hirer of the Rent in accordance with the terms of this Contract;
  - (ii) the due and punctual payment by the Hirer of every other amount payable by the Hirer under this Contract; and
  - (iii) the performance and observance by the Hirer of all the terms and conditions on the part of the Hirer under this Contract, ("**Guaranteed Obligations**").
- (c) This guarantee of the Guaranteed Obligations will continue until all the Rent and other amounts payable pursuant to this Contract have been paid and until all other terms and conditions on the part of the Hirer under this Contract have been performed, observed and satisfied and this guarantee of the Guaranteed Obligations shall not be avoided and the Guarantor shall not be released nor discharged from this guarantee by:
  - (i) the granting of any time, concession or indulgence by Silver Chef;
  - (ii) the making of any composition with Silver Chef;
  - (iii) Silver Chef agreeing to or refusing to agree to any consent requested by the Hirer under this Contract;
  - (iv) the avoidance (by statute or for any other reason whatsoever) of any payment due to Silver Chef by or on behalf of the Hirer;
  - (v) any moratorium arising from any statute or order of any court or any other stay or suspension of all or any of the rights and remedies of Silver Chef;
  - (vi) the waiver of any breach or default of the Hirer by Silver Chef;
  - (vii) the neglect or forbearance of Silver Chef to enforce the terms and conditions of this Contract or of this guarantee;
  - (viii) the release or discharge by Silver Chef of any other Guarantor;
  - (ix) any assignment of the rights of Silver Chef under this Contract; or
  - (x) any other fact, matter, act or thing.
- (d) In the event that this Contract becomes unenforceable by Silver Chef against the Hirer by reason of any legal disability, this guarantee shall be construed as an indemnity and the Guarantor hereby agrees to indemnify and to continue to indemnify Silver Chef in respect of every failure of the Hirer to pay the Rent and other amounts payable in accordance with the terms and conditions of this Contract to the intent that the Guarantor shall pay such Rent and other amounts upon demand being made by Silver Chef and the Guarantor further indemnifies Silver Chef in respect of every failure of the Hirer to observe and perform all other terms and conditions contained in this Contract.
- (e) The indemnity in **sub-clause 37(d)** shall extend to all losses, damages, costs (including legal), expenses and all other liabilities which may be incurred by Silver Chef in connection with any matter contained in this Contract or by reason of any breach, failure or default by the Hirer in performing or observing all the terms and conditions on the part of the Hirer under this Contract.
- (f) All dividends, compositions and payments received by Silver Chef from the Hirer or from the Hirer's estate, whether in bankruptcy, liquidation or otherwise, must be taken and applied by Silver Chef as payments without there being any deduction in respect of any claim arising under this guarantee. The Guarantor's right to be subrogated to Silver Chef in respect of this guarantee does not arise until Silver Chef has received the full amount of all of Silver Chef's claims against the Hirer.

- (g) This guarantee is enforceable against the Guarantor notwithstanding that any negotiable or other securities referred to in this guarantee, or which are applicable to this guarantee, are outstanding or in circulation at the time of proceedings taken against the Guarantor under this guarantee.
- (h) No changes in the constating documents of Silver Chef or the Hirer will impair or discharge the Guarantor's liability under this guarantee.
- (i) In order to give effect to this guarantee, the Guarantor declares that Silver Chef is at liberty to act as though the Guarantor were the Hirer (within the limits of this guarantee) and the Guarantor waives all and any of its rights as guarantor which may at any time be inconsistent with any of the foregoing provisions regardless of whether any demand, written or otherwise, has been made upon the Hirer to pay the amounts owing under this Contract. Each Guarantor renounces the benefits of division and discussion. The Guarantor will not be entitled to call upon Silver Chef to establish that the Hirer is in default under this Contract and the amounts owing will be payable unless the Guarantor establishes that no default has occurred under this Contract.
- (j) The Hirer and the Guarantor expressly authorise and permit Silver Chef to obtain as often as Silver Chef so requires any statement of account and/or payout figure from any mortgagee, chargee, hypothecary creditor or security holder to enable the enforcement by Silver Chef of any order, judgment or right under this Contract.
- (k) This guarantee binds each of the persons executing it as Guarantor notwithstanding that one or more of them may not execute or may not be bound by this guarantee or may subsequently execute this guarantee.
- (l) This guarantee will continue to be effective or will be reinstated, as the case may be, if at any time the whole or any part of any payment or satisfaction of the whole or any part of any of the Guaranteed Obligations:
  - (i) is avoided by the operation of any law; or
  - (ii) must be repaid or restored by Silver Chef or any other recipient of that payment, or beneficiary of that satisfaction, to the Hirer or Guarantor by reason of preference or for any other reason whatever,
 and that payment or satisfaction is deemed not to have discharged any of the Guaranteed Obligations or part of them, as if that payment or satisfaction had not been made.

**38. CAVEAT/MORTGAGE ETC.**

- (a) Each of the Hirer and the Guarantor (if any) (a) charges as a fixed charge, and (if and to the extent not a valid fixed charge against any particular property) charges as a floating charge, all of its present and after-acquired property both real and personal excluding consumer goods, and (b) hypothecates in favour of Silver Chef the universality of its present and after acquired movable property, corporeal and incorporeal, present and future, of whatever nature and kind and wherever situate, in the principal amount equal to 150% of the Agreed Price (at end of Year 1) with interest thereon from the date of this agreement at the rate of twenty-five percent (25%) per annum, in each case as security for the payment of all amounts now or in the future becoming owing by such person under this Contract, which charges/hypothecs may be enforced at any time when an Event of Default exists.
- (b) If requested by Silver Chef, each of the Hirer and the Guarantor (if any) must, at its own expense, execute and sign and deliver to Silver Chef:
  - (i) a consent to caveat or other like instrument under the real or immovable property legislation of any jurisdiction in the form prepared by Silver Chef or its solicitors over any or all of the Hirer's and the Guarantor's real or immovable property;
  - (ii) a mortgage, charge, deed of immovable hypothec or other like instrument under the real or immovable property legislation of any jurisdiction over any or all of the Hirer's and the Guarantor's (if any) real or immovable property in a form and containing terms and conditions to the satisfaction of Silver Chef acting reasonably; and
  - (iii) any instrument or other document and perform such other acts required by Silver Chef in order to register or maintain the validity, enforceability, perfection, opposability or rank of the Security Interests granted under this Contract in any personal property security (or similar) register of any jurisdiction.
- (c) In circumstances where default under this Contract needs to be proved to the Hirer and the Guarantor (if any), then sufficient proof of such default will be a letter by Silver Chef.
- (d) The Hirer and the Guarantor (if any) agree to pay to Silver Chef all legal costs on a full indemnity (solicitor and own client) basis which Silver Chef incurs in giving effect to this **clause 38**.
- (e) Any future obligation hereby secured will be deemed to be one in respect of which the Hirer and the Guarantor (if any) has once again obligated itself hereunder according to the provisions of Article 2797 of the *Civil Code of Quebec*.
- (f) Silver Chef hereby authorizes the Hirer and the Guarantor (if any) to collect all claims, until the occurrence of an Event of Default, on which occurrence such authorization shall be deemed to have been withdrawn.

**39. POWER OF ATTORNEY**

- (a) For valuable consideration and by way of security for the interest of Silver Chef in the Equipment and for the performance of the obligations owed by the Hirer and the Guarantor (if any) to Silver Chef under this Contract, the Hirer and the Guarantor (if any) irrevocably appoint jointly and each of them severally:
  - (i) Silver Chef; and
  - (ii) any director for the time being of Silver Chef; and
  - (iii) any senior officer for the time being of Silver Chef; and
  - (iv) any officer or attorney for the time being of Silver Chef who has been authorised by the board of Silver Chef,
 to be the attorney or attorneys of the Hirer and the Guarantor to:
  - (v) do all acts and things which the Hirer or the Guarantor is obliged to do or which Silver Chef is empowered or authorised to do under this Contract including to execute and sign any of the instruments referred to in **sub-clause 38(b)** and to procure such instruments to be registered; and
  - (vi) from time to time appoint and revoke a substitute or substitutes,
 and the Hirer and the Guarantor (if any) agree to ratify and confirm all and whatever the attorney or attorneys or any substitute or substitutes lawfully do or cause to be done for that purpose. The attorney or attorneys may act irrespective of any conflict of interest and/or duty that may arise.
- (b) The Hirer and the Guarantor (if any) agree this power of attorney is irrevocable, is coupled with an interest, and shall remain in full force and effect (notwithstanding any subsequent incapacity on the part of the Hirer or Guarantor) until the obligations owed by the Hirer and the Guarantor to Silver Chef under this Contract are discharged.
- (c) Upon the exercise of any power or authority contained or implied in this Contract, including the power conferred on Silver Chef by **sub-clause 39(a)**, no person dealing with Silver Chef or any attorney appointed under this Contract shall be bound to inquire:
  - (i) whether any Event of Default exists;
  - (ii) whether this Contract has been repudiated by the Hirer and such repudiation accepted by Silver Chef;
  - (iii) as to the due appointment of any attorney; or
  - (iv) otherwise as to the propriety or regularity of the exercise of any power or authority under this Contract.
 No such person shall be affected by notice, express or otherwise, that any such exercise is unnecessary or improper. Notwithstanding any irregularity or impropriety in the power or authority, its exercise shall as regards the protection of other persons be deemed authorised by that power and authority and shall be valid and effectual accordingly.
- (d) If requested by Silver Chef, the Hirer and the Guarantor (if any) must, at their own expense, promptly execute (and sign (not by way of Electronic Communication) before a qualified witness or by notarial act *en minute* and deliver to Silver Chef a power of attorney form prepared by Silver Chef containing the provisions of this **clause 39**.
- (e) The Hirer and the Guarantor (if any) agree to pay to Silver Chef all legal costs on a full indemnity (solicitor and own client) basis which Silver Chef incurs in giving effect to this **clause 39**.

#### 40. CREDIT INFORMATION

- (a) The Hirer and the Guarantor (if any) represent and warrant that all credit and financial information submitted to Silver Chef prior to entering into this Contract or at any time during the currency of this Contract, is and will be true and correct.
- (b) The Hirer and the Guarantor (if any) acknowledge that, pursuant to applicable privacy legislation, at the time of or before acquiring personal information of the Hirer and/or the Guarantor, Silver Chef has informed the Hirer and/or the Guarantor that the information might be disclosed to a credit reporting agency. The information which may be given to an agency is covered by applicable privacy legislation and includes:
  - (i) identity particulars, including name, gender and date of birth, current and two previous addresses, current or last known employer and driver's licence number;
  - (ii) the fact that the Hirer has applied for credit under this Contract or that the Guarantor (if any) applied to be accepted as guarantor and the extent of its liability;
  - (iii) the fact that Silver Chef is a current credit provider to the Hirer;
  - (iv) if payments have become overdue for more than sixty (60) days and collection action has been commenced;
  - (v) advice that payments are no longer overdue;
  - (vi) if cheques drawn by the Hirer or the Guarantor (if any) have been dishonoured more than once;
  - (vii) in specified circumstances where in the opinion of Silver Chef the Hirer has committed a serious credit infringement, that such an infringement has occurred; and
  - (viii) that credit provided to the Hirer by Silver Chef has been paid or otherwise discharged.
- (c) The Hirer and the Guarantor (if any) hereby consent and give Silver Chef the authority to obtain from a credit reporting agency a credit report containing personal information about the Hirer or the Guarantor in relation to collecting overdue payments, and the Hirer and the Guarantor have the right to access and rectify this personal information and to see the content of any credit report that has been obtained for the purpose of making a decision respecting either of them.
- (d) The Hirer and the Guarantor (if any) understand that the information obtained pursuant to **sub-clause 40(c)** may be used for the following purposes:
  - (i) to notify other credit providers of the default by the Hirer or the Guarantor;
  - (ii) to exchange information with other credit providers as to the status of this Contract where the Hirer or the Guarantor is in default of other agreements of credit providers; and
  - (iii) to assess the Hirer's or any Guarantor's creditworthiness.