

EQUIPMENT RENTAL AGREEMENT

ISCO CANADA, INC. dba ISCO-AH McElroy ("ISCO") Customer Name: _____

9310 Yellowhead Trail NW Address: _____

Edmonton, AB T5G 0W4 City, State, Zip Code: _____

- 1. Grant.** ISCO leases to CUSTOMER, and CUSTOMER leases from ISCO (a) the equipment described on Schedule A which shall be attached and incorporated and (b) any additional equipment which may be added to this Agreement from time to time pursuant to Section 3 of this Agreement (collectively, the "Equipment").
- 2. Rent.** Rent with respect to each item of Equipment shall accrue during the Term of the Agreement at the rental rate, as described on Schedule A which shall be attached, or on any Rider drafted pursuant to Section 3, plus sales, use or other taxes applicable to the transaction and any late charges (collectively, the "Rent"). CUSTOMER shall pay the Rent to ISCO within thirty (30) days of the date of ISCO's invoice. DELINQUENCY CHARGE of 1.5% per month (18% Annual) will be levied on past due balances. **CUSTOMER AGREES TO PAY THE DAILY, WEEKLY OR MONTHLY RENTAL RATE, AS APPLICABLE, DURING THE TERM OF THIS AGREEMENT, REGARDLESS OF WEATHER CONDITIONS, CONSTRUCTION DELAYS, OR USAGE OF EQUIPMENT.**
- 3. Convenience Orders.** At CUSTOMER request and for CUSTOMER convenience and subject to ISCO's acceptance, CUSTOMER may add additional Equipment to this Agreement without executing a formal amendment to this Agreement or a new agreement. Such orders may be submitted to ISCO orally, by telephone, facsimile or e-mail. When ISCO accepts such an order, ISCO shall prepare a confirmation in a form substantially similar to Schedule A. ISCO shall forward the confirmation to CUSTOMER by facsimile or e-mail at the number or address designated below. Unless CUSTOMER contacts ISCO within two (2) hours after the transmission of the confirmation to dispute its terms, CUSTOMER agrees that any Equipment listed on the confirmation shall be deemed subject to this Agreement.
- 4. Term; Accrual of Rent.** The Term shall commence when CUSTOMER takes possession of the Equipment and expire when CUSTOMER returns the Equipment. For the purposes of this Agreement, CUSTOMER shall be deemed to have taken possession of the Equipment either (a) when the Equipment is unloaded from ISCO's truck, if delivered by ISCO, (b) when the Equipment leaves ISCO's premises, if picked up/will-called by CUSTOMER, or (c) when the Equipment is unloaded from a third party carrier's truck, if delivered by a third party carrier. CUSTOMER shall be deemed to have returned the Equipment either (a) when the Equipment is re-loaded onto ISCO's truck, if returned by ISCO or (b) when the Equipment is delivered to ISCO's premises, if not returned by ISCO.
- 5. Inspection and Delivery.** CUSTOMER shall inspect the Equipment at the time it takes possession. CUSTOMER receipt of the Equipment constitutes its acknowledgment and agreement that the Equipment is in satisfactory condition. CUSTOMER shall pay all charges associated with transporting the Equipment to and from the job site, unless otherwise agreed to by ISCO in writing. ISCO shall have the right, from time to time, during reasonable business hours, to enter CUSTOMER premises or elsewhere for the purpose of inspecting the Equipment.
- 6. Use.** CUSTOMER shall use the Equipment only in the manner for which it was designed and intended. CUSTOMER shall comply with all applicable laws and regulations that relate in any way to the possession, use and maintenance of the Equipment. If an ISCO Technician will not be operating the Equipment, then CUSTOMER agrees that only persons trained in the operation of the Equipment and under the sole control of CUSTOMER shall operate the Equipment; and, at ISCO's request, CUSTOMER shall provide evidence of such training, it being expressly understood that ISCO's acceptance of such evidence shall not constitute a warranty by ISCO to such person's fitness, training or ability to operate the Equipment. CUSTOMER agrees that the Equipment is rented for the exclusive use of CUSTOMER at the specified project location, and that no Equipment shall be sublet, assigned, or removed from the location at which CUSTOMER represented it was to be used, except with the previous written consent of ISCO.
- 7. Technical Advice.** On request, ISCO may, in its sole discretion, furnish advice and instruction regarding the use and operation of the Equipment, it being expressly understood that **ISCO assumes no obligation or liability for any advice or training that it may provide to CUSTOMER.**
- 8. ISCO Technician Expenses, Services.** If CUSTOMER requests the services of an ISCO Technician on-site, CUSTOMER shall pay the Technician Daily Rate, as set forth in Schedule A attached, or any Rider, and any additional expenses incurred by the ISCO Technician, such as airfare, rental car, tolls, parking fees, and other required fees or permits, which shall be invoiced separately (collectively, the "Technician Expenses"). The Technician Daily Rate is based on an eight (8) hour day. The minimum charge shall be one (1) day, except as agreed otherwise by ISCO in writing. If the ISCO Technician works in excess of eight (8) hours in one 24-hour period or on a Saturday, the Technician Daily Rate shall be one and one-half (1½) times the regular rate. If the ISCO Technician works on Sunday or holiday, the Technician Daily Rate shall be double the regular rate. In the event CUSTOMER requires ISCO Technician's services in excess of one (1) day, and it is reasonably impractical for ISCO Technician to return to his or her residence for the evening, then in addition to the Technician Expenses, CUSTOMER shall pay an "Overnight Charge" to cover the cost of ISCO Technician's overnight lodging and associated expenses. In the event CUSTOMER requires ISCO Technician's services such that CUSTOMER pays an Overnight Charge for a time period in excess of two consecutive (2) weeks, then ISCO may replace such Technician at CUSTOMER expense. In the event (a) CUSTOMER requires ISCO Technician's services in excess

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This writing and the obligations evidenced or secured hereby are subject to the security interest of PNC Bank, National Association, as Agent and Security Trustee for the benefit of certain Lenders, and the taking of, or attempt to take, possession or control of this writing and/or the obligations evidenced or secured hereby will be in violation of the rights of PNC Bank, National Association, as Agent and Security Trustee for the benefit of the Lenders
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of one (1) day, (b) it is reasonably impractical for ISCO Technician to return to his or her residence for the evening, and (c) ISCO Technician is unable to work for reasons beyond ISCO's control, including but not limited to weather conditions and construction delays, then in addition to the Technician Expenses and Overnight Charge, CUSTOMER shall pay a "Layover Charge"; or, in lieu of paying the Layover Charge, CUSTOMER may pay the travel expenses of ISCO Technician for his or her trip home and return; however, the ISCO Technician Daily Rate shall apply for travel time.

The Equipment Rent will be charged for all days an ISCO Technician is on-site. **THE ISCO TECHNICIAN IS NOT A "SUBCONTRACTOR." THE SCOPE OF THE ISCO TECHNICIAN'S WORK IS TO OPERATE THE EQUIPMENT ONLY ; THE ISCO TECHNICIAN DOES NOT OVERSEE, SUPERVISE OR PERFORM THE PREPARING, LAYING OR COVERING OF THE PIPE OR THE SITE FOR THE PIPE.**

- 9. Fusion Joint Warranty.** ISCO warrants any joints of pipe fused by an ISCO Technician against any joint failure caused by faulty workmanship for ninety (90) days from the date the joint was made. If, in ISCO's sole determination, a joint failed due to an ISCO Technician's faulty workmanship, then ISCO shall furnish the Equipment and the ISCO Technician, including travel expenses, to repair the defective joint. **ISCO shall not be responsible for any other costs whatsoever, either direct or indirect, relating to the repair of the joint, nor will ISCO be responsible for any damages of any kind resulting from such joint failure. ISCO warrants no work done by anyone other than its authorized personnel, nor does ISCO warrant any joint which fails due to damage during installation or to improper operating conditions. ISCO will not be responsible for, nor will it accept, any back charges, consequential damages, incidental damages, special damages, and/or liquidated damages due to scheduling delays, equipment failures, or any other events that occur before, during or subsequent to fusion work.**
- 10. Repairs and Maintenance.** CUSTOMER shall maintain the Equipment in good condition and repair, including but not limited to protection against freezing, corrosion or other abnormal exposure. If the Equipment needs repair or service due to normal wear and tear, ISCO shall pay the cost of such repair and Rent shall abate until the Equipment is repaired. If the Equipment needs repair or service due to any cause other than normal wear and tear, including but not limited to negligence, misconduct or willful abuse by CUSTOMER or any third party, then CUSTOMER shall pay the cost of such repair and Rent shall not abate. At ISCO's option, either ISCO or CUSTOMER may affect necessary repairs. In no event shall ISCO be responsible or liable for any delays in work resulting from the need to repair or maintain the Equipment. CUSTOMER shall return the Equipment to ISCO in the same condition as it was received, normal wear and tear allowed. **RENT SHALL NOT ABATE PURSUANT TO THIS SECTION UNLESS CUSTOMER INFORMS ISCO OF ANY PROBLEMS WITH OR DAMAGE TO THE EQUIPMENT WITHIN TWENTY-FOUR (24) HOURS OF SUCH OCCURRENCE BY CALLING 1-800-345-4726 EXT. 4790.**
- 11. Fuel.** CUSTOMER is responsible for supplying fuel for all Equipment.
- 12. Payment of Fees and Taxes.** CUSTOMER shall pay all license fees, assessments, duties, sales, use, special use, property and other taxes imposed on the Equipment or the leasing of, either directly or by reimbursement to ISCO upon demand. CUSTOMER is responsible for any sales, use or similar taxes; unless CUSTOMER provides ISCO with satisfactory evidence that such taxes do not apply to the specific transaction. If such tax is not collected, and taxing authorities subsequently rule the transaction is taxable, then upon receiving notice, CUSTOMER shall promptly remit payment of the tax, including any applicable interest and penalty to ISCO.
- 13. Insurance.** CUSTOMER warrants that it maintains insurance coverage of not less than \$1,000,000 personal injury and \$1,000,000 property damage per occurrence. CUSTOMER agrees to defend, indemnify and hold ISCO and ISCO's agents harmless from any and all liabilities, claims, expenses, losses or damages, including attorney's fees, which may arise from CUSTOMER repair, maintenance, operation or use of the Equipment. CUSTOMER shall insure the Equipment, with ISCO named as the Loss Payee, to the extent of the full insurable value of the Equipment with insurance covering all damages occasioned by fire, theft, flood, explosion, accident or any other cause. ISCO may require that insurance shall contain the insurer's agreement to give not less than thirty (30) days advance written notice to ISCO before cancellation, expiration or alteration of any insurance policy. In the event CUSTOMER fails to maintain such insurance, ISCO may, but shall not be obligated to, obtain such insurance, and CUSTOMER shall pay the cost of such insurance to ISCO.
- 14. Risk of Loss or Damage.** CUSTOMER assumes all responsibility for loss or damage to the Equipment while the Equipment is in CUSTOMER possession, including prior to the requested on-site date and after the indicated return date. If anyone other than an ISCO Technician damages the Equipment at any time during the Term of this Agreement, then CUSTOMER assumes all risk of loss or damage to the Equipment from any cause whatsoever, including but not limited to the negligence or act of CUSTOMER or any third party. Lost or damaged Equipment shall not affect CUSTOMER's other obligations under this Agreement, including CUSTOMER's obligations to pay the Rent.
- 15. Default.** Should CUSTOMER breach any of the terms, conditions or other provisions of this Agreement, including failure to make rental payments on time or to return the Equipment upon demand, or in the event of CUSTOMER bankruptcy or insolvency, or the appointment of a receiver for the assets of CUSTOMER, or the institution of any legal proceedings of any kind or character affecting possession of the Equipment, ISCO may, at its option, immediately take possession of and remove the Equipment wherever the Equipment may be found without notice and without legal proceedings. Upon such retaking, CUSTOMER right to possession of the Equipment shall automatically terminate, but CUSTOMER's other obligations shall continue. In the event that ISCO's invoices are not paid when due and are placed in the hands of an attorney for collection or are collected through any court or bankruptcy court, or are collected through a collection agency, CUSTOMER agrees to pay ISCO's reasonable attorneys' fees, collection fees and court costs incurred in collection efforts to the extent permitted by applicable law.

- 16. No Modification.** Except as set forth in Section 3 of this Agreement, this Agreement is the complete and exclusive statement of the parties' understanding, and the provisions of this Agreement may be waived or modified only by a writing signed by a duly authorized signatory of ISCO, and no other representations, waiver or modification shall be binding upon ISCO. **ISCO REJECTS ANY ADDITIONAL OR CONTRARY TERMS PROPOSED BY CUSTOMER.**
- 17. No Waiver.** Failure of ISCO to insist upon the terms and/or conditions stated at any time or under any circumstances shall not be deemed a waiver of such terms or conditions any other time under any circumstances or the same circumstances.
- 18. No Lien.** CUSTOMER covenants and agrees that CUSTOMER shall not execute or enter into any agreement, contract or other document to effect a waiver of any lien rights that ISCO may have, at law or in equity relating to the Equipment or labor furnished by ISCO without the prior written authorization of ISCO. If CUSTOMER executes any documents to effect a waiver of ISCO's lien rights without ISCO's prior written consent, such lien waiver shall be of no force or effect with regard to ISCO's rights and CUSTOMER agrees to indemnify ISCO for all liability, cost and expense including reasonable attorneys' fees and costs incurred by ISCO as a result of any such purported waiver.
- 19. Assignment.** This Agreement may be assigned by ISCO upon notice to CUSTOMER. Any attempt by CUSTOMER to assign, sublet, or otherwise transfer this Agreement or any interest in the absence of ISCO's, shall be void. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, administrators, executors and trustees.
- 20. Validity.** If a court of competent jurisdiction deems any term or condition of this Agreement invalid or unenforceable, the parties agree that the other terms shall be binding and enforceable and such unenforceable and invalid terms and conditions shall be construed to be enforceable to the fullest extent permitted by law.
- 21. Venue, Choice of Law, Legal Fees and Actions.** This Agreement shall be governed by the laws of the Province of Manitoba and the federal laws of Canada applicable therein. CUSTOMER and ISCO irrevocably attorn and submit to the exclusive jurisdiction of the Manitoba courts situated in the City of Winnipeg and waive objection to the venue of any proceeding in such court or that such court provides an inconvenient forum. To the extent permitted by law, CUSTOMER shall be liable for and pay ISCO's costs and expenses, including reasonable attorneys' fees and court costs, arising out of or relating to this Agreement and the delivery of the Equipment and enforcement of ISCO's rights or remedies under this Agreement. No action arising out of this Agreement, the Equipment or delivery shall be brought by CUSTOMER against ISCO more than one (1) year after delivery of the Equipment.
- 22. Credit toward Purchase.** In the event CUSTOMER wishes to purchase all or any portion of the Equipment during the Term, then twenty-five (25%) of the first three (3) months of paid rental invoices may be applied as a credit toward the purchase of such equipment.
- 23. Warranty and Limitation of Liability.** **OTHER THAN AS EXPRESSLY SET OUT IN THIS AGREEMENT ISCO MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, AND ISCO DISCLAIMS ALL IMPLIED WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY OR MERCHANTABILITY AND COMPLIANCE WITH THE REQUIREMENTS OF ANY LAW, REGULATION, SPECIFICATION OR CONTRACTS WHICH PROVIDE FOR SPECIFIC MACHINES, APPARATUS OR METHODS. THE EQUIPMENT SHALL BE DELIVERED TO CUSTOMER "AS IS". ISCO SHALL NOT BE LIABLE TO CUSTOMER FOR PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING ANY DAMAGES FOR FAILURE TO DELIVER THE EQUIPMENT BY THE DELIVERY DATE OR WORK DELAYS CAUSED BY THE NEED TO REPAIR OR MAINTAIN THE EQUIPMENT. ISCO SHALL NOT BE LIABLE TO ANY THIRD PARTY FOR ANY DAMAGE WHATSOEVER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ISCO'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO ANY AND ALL CLAIMS OF ANY NATURE WHATSOEVER SHALL, IN NO EVENT AND UNDER NO CIRCUMSTANCE, EXCEED THE PAYMENTS ACTUALLY RECEIVED BY ISCO UNDER THIS AGREEMENT.**
- 24. Representation on Authority of Signatory.** The person signing this Agreement on behalf of CUSTOMER represents and warrants that he or she is a duly authorized signatory and has the legal capacity to execute this Agreement. CUSTOMER represents and warrants that execution and delivery of this Agreement and performance of such obligations have been duly authorized and that the Agreement is a valid and legal agreement binding on CUSTOMER and enforceable in accordance with these terms.
- 25. Miscellaneous.** Service of all notices under this Agreement shall be sufficient if given personally or mailed to the respective addresses identified or at such address as either party may provide. ISCO may withhold delivery of the Equipment until the parties have properly executed this Agreement; however, acceptance of delivery of the Equipment by CUSTOMER shall constitute acceptance of all the terms and conditions of this Agreement. The paragraph headings set forth are for convenience purposes only and shall not define or limit any term, covenant or condition contained in this Agreement. CUSTOMER agrees that it had an opportunity to consult with legal counsel to review this Agreement and revise

any portion of this Agreement. Therefore, any ambiguity contained in this Agreement shall not be construed against either ISCO or CUSTOMER as the drafter.

IN WITNESS WHEREOF, CUSTOMER, acting by and through their duly authorized representative[s], duly executed this Agreement on the date set forth below.

CUSTOMER: _____

Signature: _____

Print Name: _____

Title: _____