

**MASTER AGREEMENT FOR EQUIPMENT LEASE TRANSACTIONS**

THIS AGREEMENT is entered into this 27th day of November 2006, by and between the Board of Governors of the Colorado State University System acting by and through Colorado State University, for the benefit of Colorado State University, (Lessee or University) and Colorado Machinery, LLC (Lessor), a Colorado Limited Liability Company (type of business organization, such as A Colorado Corporation or A Sole Proprietorship) with a principal place of business located at: 1100 E. Cheyenne Road, Colorado Springs, CO 80906.

**RECITALS**

- A. Lessee is an institution of higher education of the State of Colorado.
- B. Lessor is in the business of leasing equipment which University requires from time to time. The parties desire to enter into an agreement whereby University may initiate an equipment lease at any time during the term of the agreement by issuance of a Purchase Order, Authorization for Expenditure or Credit Card Transaction describing the equipment to be leased and the period of time for which the lease will run, without the necessity of the parties executing a new agreement in each instance. This Agreement is not intended to obligate either party to enter into a lease of any specific equipment, but shall govern the terms of any equipment lease entered into by the parties pursuant to a duly-issued University commitment.

**NOW THEREFORE**, in consideration of the foregoing Recitals, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1.0 Identification of Equipment: Initiation of Lease**

- 1.1 Lessor agrees to provide University with the equipment and/or other things (Equipment) which shall be more fully described in each Purchase Order, Authorization for Expenditure or Credit Card Transaction issued by University pursuant to this Agreement.
- 1.2 Individual transactions pursuant hereto shall be initiated and confirmed by the University by use of a University Purchase Order, Authorization for Expenditure or Credit Card Transaction which shall reference this Agreement. Lessor acknowledges and agrees that University makes no representation or guaranty that it will actually lease any equipment under this Agreement, or that it will lease any minimum or specific volume of equipment.

**2.0 Term**

- 2.1 This Agreement shall commence on the date set forth above and shall terminate five (5) years from said date unless sooner terminated as provided in this Agreement (such being the Termination Date). Expiration or termination of this Agreement shall not effect a termination of any then-existing lease term which commenced prior to the Termination Date.
- 2.2 Any Lease initiated pursuant to this Agreement (Lease) shall commence on the date that the Equipment is delivered to Lessee and shall continue through and including the ending date specified in the University Purchase Order, Authorization for Expenditure, Credit Card Transaction or other document affixed thereto.
- 2.3 University shall have the right to extend the term of the Lease for additional, successive periods of the same length as the initial lease period. To exercise such right, University must not be in default of any of the Lease provisions and must provide Lessor written notice not less than thirty (30) days prior to the expiration of the initial Lease term or of the Lease extension term as the case may be.

**3.0 Payment**

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University agrees to pay to Lessor as rental for the use of the Equipment the Lessor's then-current retail, commercial or government rate, whichever is less, for rental of such equipment at the time that a University Purchase Order, Authorization for Expenditure or Credit Card Transaction is issued for the lease, ~~multiplied by~~ ~~factor of~~ ~~4~~. Delivery by Lessor shall constitute acceptance of the price terms contained in the Purchase Order, Authorization for Expenditure or Credit Card Transaction.

- 3.2 If the University fails to return any Equipment by the end of the Rental Term, the University will pay an additional rental fee, prorated at \_\_\_ times the regular rental fee, calculated on a *per diem* basis, for each day the Equipment remains unreturned.
- 3.3 Where Equipment is rented by the hour and a certain number of hours is specified for the term, the University will pay an additional rental fee prorated at the mutually agreed upon rate for each hour the Equipment is used in excess of such time. If an hour meter is furnished, (i) the University shall keep it connected to the Equipment and in good working condition at all times, and (ii) it shall be used as the conclusive measure of the number of hours of operation.
- 3.4 All payments hereunder, with the exception of Credit Card Transactions, shall be mailed to the office of Lessor at the address set forth in this Agreement, or at such other place as Lessor may designate in a writing delivered together with presentment of the Purchase Order or Authorization for Expenditure for payment.

4.0 Warranty and Maintenance. Lessor guarantees all parts and components of the rented equipment against any defects and defective workmanship during the lease term, and shall repair or replace such defective materials at Lessor's own expense. University shall be responsible for all routine repairs and maintenance not covered by Lessor's guaranty.

5.0 Selection, Use and Alterations.

- 5.1 The University shall be responsible for selecting Equipment that is of a size, design, and capacity satisfactory and suitable for the University's purposes.
- 5.2 University shall use the Equipment in a careful and lawful manner, and shall not make any alterations, additions or improvements to the Equipment without the prior written consent of Lessor, which shall not be unreasonably withheld. All additions and improvements made to the Equipment shall belong to Lessor unless the same is removed by Lessee without damage or alteration of the Equipment from its condition when delivered by Lessor.
- 5.3 The University shall use the Equipment only for the purpose for which it was designed or intended. The University shall use and permit use of Equipment only by persons knowledgeable in and experienced with its safe operation, shall be responsible for the safe operation of Equipment, and shall pay operation costs of Equipment.
- 5.4 Any transaction hereunder shall be construed as a bailment and not as a sale or conditional sale. Nothing herein shall be construed as conveying to the University any right, title, or interest in or to Equipment, except as a lessee. Equipment shall remain personal property at all times, notwithstanding the manner of its annexation, if at all, to realty.

6.0 Delivery, Lessor's Inspection, Labels and Surrender.

- 6.1 Lessor shall deliver the Equipment, freight prepaid, in good working condition, to University at its place of business, identified in the Purchase Order, Authorization for Expenditure or Credit Card Transaction. Lessee shall have the right to inspect such equipment at the time of delivery or, if no reasonable opportunity for inspection is afforded, for a reasonable time thereafter. Lessee shall not be deemed to have accepted the Equipment until such inspection is completed (including any test or use of Equipment which may be required to determine its condition and operability).
- 6.2 Lessor shall retain the right to inspect the Equipment upon prior notice at any reasonable time.
- 6.3 At the expiration of this Agreement, University shall deliver the equipment, freight prepaid, to Lessor at the address of Lessor's principal place of business set forth first above, or at such other place as may be agreed upon by the parties, in as good condition as existed at the commencement of the term, reasonable wear and tear excepted. Lessee shall not be required to furnish fuel for the Equipment when returned.
- 6.5 If the Agreement is earlier terminated by Lessor, Lessor shall be responsible for taking possession of the Equipment from the premises of University, upon mutual agreement with University as to the logistics of transfer of possession. Lessor shall not enter nor cause others to enter upon Lessee's property for purposes of

inspection or retaking of possession except upon Lessee's prior consent which shall not unreasonably be withheld.

7.0 Loss and Damage. University shall bear the risk of loss, theft, destruction or damage of the Equipment after delivery by Lessor and acceptance by University, to the extent such loss is not covered by Lessor's insurance, and any such loss, theft, destruction or damage of the Equipment shall relieve University of the obligation to pay rent or any other obligation under this Lease. Losses or damage to the Equipment from causes beyond the control or fault of University which render the Equipment unsuitable for further use shall cause a cessation of this Lease, and abatement of further rental payments.

8.0 Assignment.

8.1 Without Lessor's prior written consent, University shall not: (a) assign, transfer, pledge or otherwise dispose of this Lease or any interest therein, or (b) sublet or lend the Equipment, or permit it to be used by anyone other than University or University's employees.

8.2 Lessor may assign this Lease and/or mortgage the Equipment, in whole or in part, upon written notice to University. Each such assignee and/or mortgagee shall have all of the rights and obligations of Lessor under this lease.

9.0 Default; Termination.

9.1 This Lease may be terminated by any of the following acts or events:

9.1.1 By either party, without cause, by giving the other party sixty (60) days written notice;

9.1.2 By either party, if within thirty (30) days of having given written notice to the other party of a breach of any specific term or condition of this Agreement, the other party shall have failed to cure such breach;

9.1.3 By Lessor, if University attempts to transfer or assign its interest, or if there is an involuntary transfer of University's interest in this Agreement by operation of law, and upon notice to University, Lessor may immediately take possession of the leased equipment; or

9.1.4 By Lessor, if University fails to pay any rent or other amount required by this Agreement to be paid by University within 45 days of the payment due date and Lessor gives notice of default by non-payment which default is not cured by payment in full, with interest at the rate of 1% per month, within 10 days after the date that notice is received by Lessee.

9.1.5 Automatically, five (5) years from the commencement date written first above, except that any Lease made pursuant to this Agreement which is in effect as of such termination date shall continue to apply to such Lease(s) until the termination thereof.

9.1.6 By Lessee, if Lessor fails to repair or replace at its cost the defects, defective workmanship or defective materials covered by the warranty within 30 days after University shall have demanded in writing such performance.

9.2 A party will be considered in default of its obligations under this Agreement if such party should fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for ten (10) days after the non-defaulting party gives the defaulting party written notice thereof. In the event of default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as may be provided by law.

10.0 Ownership, Personal Property. The Equipment is, and shall at all times remain, the property of Lessor. University shall have no right, title or interest therein except for the interest granted by this Lease.

- 11.0 Notice. Any notice, payment, consent, or request from either party hereunder must be in writing signed by the party giving it, and shall be served either personally, by fax or by registered or certified mail addressed as follows:

To University:  
Colorado State University  
Purchasing Department  
Fort Collins, CO 80523-6010

To Lessor:  
Colorado Machinery, LLC  
Attn: Jeffrey Jensen  
100 E. Cheyenne Road  
Colorado Springs, CO 80906

In addition, a copy of any notice to University concerning the validity or enforcement of any provision of this Agreement, or any dispute arising hereunder, shall also be sent to: Office of the General Counsel, 01 Administration Building, Colorado State University, Fort Collins, CO 80523-0006.

or to such other address as may be hereafter designated by written notice. All such notices shall be effective when received by the addressee.

- 12.0 Entire Agreement. This Agreement and Purchase Order terms and conditions as may appear on Purchase Orders for Equipment rented from time to time constitute the entire agreement between the parties, and supersede any previous contracts, understandings, or agreements of the parties, whether oral or written, concerning the subject matter of this Agreement. As to any conflict, the terms and conditions of this Agreement shall control over any contradictory provisions contained in any purchase order or other confirmation that may be issued or signed by the parties, including but not limited to any documents prepared by Lessor to process the equipment lease at the time of order.
- 13.0 Amendment. Any amendment to this Agreement must be in writing and must be signed by the parties.
- 14.0 Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.
- 15.0 Severability. In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.
- 16.0 Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Denver, State of Colorado.
- 17.0 Colorado Governmental Immunity Act and Risk Management Statutes. The parties understand and agree that liability of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the Colorado Governmental Immunity Act, C.R.S. ' ' 24-10-101 et seq., and by risk management provisions, C.R.S. ' ' 24-30-1501 et seq. Nothing in this Agreement shall be construed as a waiver of any protection of the Lessee pursuant to such statutes.
- 18.0 Time is of the Essence. Time is of the essence hereunder. Failure to perform any obligation of this Lease within the time specified herein, or, if no time period is specified, within a reasonable time, shall constitute a material breach.
- 19.0 Authority to Contract. Each party warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the party to its terms. The person(s) executing this contract on behalf of the party warrant(s) that such person(s) have full authorization to execute this contract.

**SPECIAL PROVISIONS**  
**(Not for Use with Inter-Governmental Contracts)**

1. **CONTROLLER'S APPROVAL.** CRS 24-30-202 (1). This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.
  2. **FUND AVAILABILITY.** CRS 24-30-202 (5.5). Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
  3. **INDEMNIFICATION.** The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
  4. **INDEPENDENT CONTRACTOR.** 4 CCR 801-2. THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.
  5. **NON-DISCRIMINATION.** The contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.
  6. **CHOICE OF LAW.** The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.
- At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.
7. **VENDOR OFFSET.** CRS 24-30-202 (1) & CRS 24-30-202.4. Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.
  8. **SOFTWARE PIRACY PROHIBITION** Governor's Executive Order D 002 00. No State or other public funds payable under this Contract shall be used for the acquisition, operation, or maintenance of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby certifies that, for the term of this Contract and any extensions, the Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that the Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this Contract, including, without limitation, immediate termination of the Contract and any remedy consistent with United States copyright laws or applicable licensing restrictions.

9. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 and CRS 24-50-507. The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

10. ILLEGAL ALIENS – PUBLIC CONTRACTS FOR SERVICES. CRS 8-17.5-101 and 24-76.5-101. The Contractor certifies that the Contractor shall comply with the provisions of CRS 8-17.5-101 et seq. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. The Contractor represents, warrants, and agrees that it (i) has verified that it does not employ any illegal aliens, through participation in the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security, and (ii) otherwise will comply with the requirements of CRS 8-17.5-102(2)(b). The Contractor shall comply with all reasonable requests made in the course of an investigation under CRS 8-17.5-102 by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or CRS 8-17.5-101 et seq., the State may terminate this contract for breach and the Contractor shall be liable for actual and consequential damages to the State.

A Contractor that operates as a sole proprietor hereby swears or affirms under penalty of perjury that the Contractor (i) is a citizen of the United States or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of CRS 24-76.5-101 et seq, and (iii) shall produce one of the forms of identification required by CRS 24-76.5-103 prior to the effective date of this Contract. Except where exempted by federal law and except as provided in CRS 24-76.5-103(3), a Contractor that receives federal or state funds under this contract must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to CRS 24-76.5-103(4) if such individual applies for public benefits provided under this contract.

Effective Date of Special Provisions: August 7, 2006

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**LESSOR:**

(Corporate Secretary or Equivalent)

Colorado Machinery, LLC

Legal Name of Contracting Entity

84-1250122

Social Security Number or FEIN

Jensen

Signature of Authorized Officer

Jeffrey Jensen, CFO

Print Name & Title of  
Authorized Officer

**STATE OF COLORADO:  
BILL OWENS, GOVERNOR**

**Board of Governors of the Colorado State  
University System, acting by and through  
Colorado State University:**

By: John P. Utterback  
Printed Name: John P. Utterback  
Title: Director of Purchasing

**CORPORATIONS:**  
(A corporate seal or attestation is required.)

**LEGAL SUFFICIENCY:**  
John W. Suthers  
Attorney General, State of Colorado

Attest (Seal) Colorado  
Machinery, LLC

By: Robert Schur  
Robert Schur  
Associate Legal Counsel

By: Jensen

**ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

**STATE CONTROLLER:  
LESLIE M. SHENEFELT**

By: Leslie M. Shenefelt

Date: 11/27/06