

MASTER AGREEMENT FOR EQUIPMENT LEASE TRANSACTIONS

THIS AGREEMENT is entered into by and between the Board of Governors of the Colorado State University System acting by and through Colorado State University, (Lessee or University) and Colorado Machinery, LLC (Lessor), a Colorado Limited Liability Company with a principal place of business located at 125 John Deere Dr, Fort Collins CO 80524.

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 University Purchase Order (Purchase Order) or a University issued Commercial Credit Card (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 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 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 signed by the Colorado State University Controller (Commencement Date) 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 transaction 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, Credit Card Transaction or other document affixed thereto.
- 2.3 University shall have the right to extend the term of this Master Agreement 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.

- 3.1 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 or Credit Card Transaction is issued for the lease. Delivery by Lessor shall constitute acceptance of the price terms contained in the Purchase Order 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 prorated rental fee, at the regular rental rate, 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 retained beyond the rental period. 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 length of the rental period.
- 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 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.
- 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 operating 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 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 for 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 written 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 30 days written notice;

9.1.2 By either party, if within 10 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 10 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 10 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 Office
6010 Campus Delivery
Fort Collins, CO 80523-6010

To Lessor:
Colorado Machinery, LLC
Attn: Jeffrey Jensen
1100 E Cheyenne Rd
Colorado Springs CO 80905

With a copy to:
Director, Contracting Services
6010 Campus Delivery
Colorado State University
Fort Collins, CO 80523-6010
Email: contracts@colostate.edu
Tel: 970-491-6166
Fax: 970-491-5523.

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

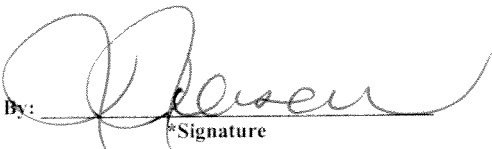
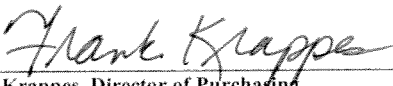
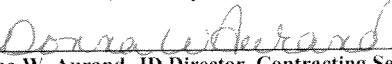
- 12.0 Entire Agreement. This Agreement and Purchase Order terms and conditions as may appear on Purchase Orders for Equipment rented from time to time constitute the entire agreement between the parties, and supersede any previous contracts, understandings, or agreements of the parties, whether oral 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 Choice of Law, Venue and Jurisdiction. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado District Court, and exclusive venue shall be in the County of Larimer. The University does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.
- 17.0 University Liability/Governmental Immunity. Liability for claims for injuries to persons or property arising from the negligence of the University, its departments, Board, officials, and employees is at all times herein strictly controlled and limited by the provisions of the CGIA, as now and hereafter amended. Nothing in this Contract shall be deemed or applied as a waiver of such immunities. In no event will the University or the State of Colorado be liable for any special, indirect, or consequential damages, even if the University or the State has been advised of the possibility thereof. As an institution of the State of Colorado, the University is not authorized to indemnify any party, public or private, as against the claims and demands of third parties and any such indemnification provision in this Contract shall be null and void.
- 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.
- 20.0 Fund Availability. Financial obligations of the University payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. If federal funds are used to fund this

Contract, in whole or in part, the University's performance hereunder is contingent upon the continuing availability of such funds. If such funds are not appropriated, or otherwise become unavailable, the University may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof and shall remit payment to the Contractor for its performance prior to termination. If the amount due cannot readily be determined from the Contract, then the amount shall be calculated on a pro rata basis according to the percentage of the entire Scope of the Work that was completed and accepted by University.

- 21.0 Employee Financial Interest (CRS 24-18-201; 24-50-507). The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
- 22.0 Vendor Offset (CRS. 24-30-201(1); 24-30-202.4. (Not applicable to intergovernmental agreements.) Subject to CRS Sec.24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS Sec.39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.
- 23.0 Public Contracts with Natural Persons (CRS 24-76.5-101). Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS Sec.24-76.5-101 et seq., and (c) has produced one form of identification required by CRS Sec.24-76.5-103 prior to the effective date of this Contract.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

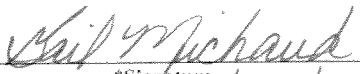
*Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that Colorado State University is relying on their representations to that effect and accept personal responsibility for any and all damages the University may incur for any errors in such representation.

<p style="text-align: center;">CONTRACTOR: Colorado Machinery, LLC</p> <p>By: <u></u> *Signature</p> <p>Name: <u>Jeffrey Jensen</u> Title: <u>CFO</u> Date: <u>4-20-12</u></p>	<p>STATE OF COLORADO John W. Hickenlooper GOVERNOR Board of Governors of the Colorado State University System, acting by and through Colorado State University Dr. Anthony A. Frank, President</p> <p>By: <u></u> Frank Krappes, Director of Purchasing</p> <p>Date: <u>4/25/12</u></p> <p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: <u></u> Donna W. Aurand, JD Director, Contracting Services and Special Assistant Attorney General for Colorado State University</p> <p>Date: <u>May 1, 2012</u></p>
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ALL EXPENDITURE CONTRACTS REQUIRE APPROVAL BY THE UNIVERSITY CONTROLLER

CRS §24-30-202 and University policy require the University Controller to approve all expenditure contracts. This Amendment is not valid until signed and dated below by the University Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the University is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

COLORADO STATE UNIVERSITY CONTROLLER

By: 
*Signature

Name: Gail Michaud
Date: 5/7/12