

EQUIPMENT RENTAL AGREEMENT (LEASE)

THIS AGREEMENT, made the _____ day of _____, 200____, by and between

hereafter called the Lessee, and Marquette University, hereafter called the Lessor.

Lessee and Lessor, for the consideration hereafter named, agree as follows:

Under the General Conditions of Lease attached to this sheet, Lessor hereby leases to Lessee all equipment named and identified in the following "List of Equipment," for use at such location and at such rental rate for approximately such time as is therein stated. Lessor shall furnish such equipment, F.O.B.

in operative condition.

LIST OF EQUIPMENT

Description of equipment	Equipment to be Used at or Near	Approximate Rental Period See Art. 6	Manufacturer's Shop Number	Lessor Identification Number	Security Deposit	Rental Rate Per Article (\$)	Rental Rate Unit Base (e.g. daily, monthly)

Lessor and Lessee, for themselves, their successors, executors, administrators and assigns, agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, they have executed this Agreement the day and year first above written:

MARQUETTE UNIVERSITY, Lessor

By: _____

_____, Lessee

By: _____

GENERAL CONDITIONS OF EQUIPMENT RENTAL AGREEMENT (LEASE)

The conditions of lease here below stated, together with the Agreement set forth on the reverse side of this sheet, constitute a contract between the parties therein named which contract is hereafter referred to as "this Agreement".

- 1) **RENTAL PERIOD.** The Rental period shall cover all time consumed in transporting the equipment, including the date of legal delivery to a public carrier for transit to Lessee and upon return of the equipment, the date of legal delivery by such carrier to Lessor, or if no public carrier is used, shall include the date upon which transit to Lessee begins and the date upon which transit from Lessee ends at Lessor's unloading point.
- 2) **RENTAL CHARGES.** Lessee shall pay rental for the entire Rental Period on each article of equipment named in the List of Equipment, at the rate therein stipulated and in accordance with the following:
 - a) Monthly Rental Rates shall not be subject to any deductions on account of any non-working time in the month. The amount of rent payable for any fraction of a month at the beginning or end of the Rental Period shall be the monthly rental rate, prorated according to the number of calendar days in such fraction.
 - b) Daily Rental Rates shall not be subject to deductions for any non-working time in the day and shall be paid for each calendar day in the month except Sundays and legal holidays upon which the equipment is not operated. Daily and monthly rental rates stipulated in the List of Equipment contemplate an operating day of a regular single shift of eight (8) hours, and for each hour over such eight (8) hours that the equipment is operated these rates shall be increased six (6) percent of the daily rate throughout such period as the equipment is so operated.
 - c) Unit of Work Rates shall be paid for each unit of work in which the equipment participates, and the amount of rental shall, unless otherwise agreed in writing be determined by the number of units shown in the supervising engineer's or architect's estimates.
- 3) **PAYMENT.** The rent for any and every item of equipment described in the List of Equipment shall be the amount therein designated and is payable in advance on the first day of each month. Lessee shall pay Lessor interest at twelve percent (12%) or the highest lawful rate, whichever is greater, on any delinquent payment from the date when such payment was due until paid and on any other sum for breach of this Agreement, from the date of the breach, and expenses of collection or suit, including actual attorneys' fees.
- 4) **SECURITY DEPOSIT.** Any security deposit paid by Lessee to Lessor is paid to guarantee Lessee's full and faithful performance of all terms, conditions and provisions of this Agreement. If Lessee shall so perform, an equal sum shall be repaid without interest to Lessee at the termination of this Agreement.
- 5) **FEES, ASSESSMENTS, AND TAXES PAID BY LESSEE.** Lessee shall pay all license fees, assessments, and sales, use, property and excise, and other taxes or hereafter imposed, and relating to Lessee's use or possession of the equipment.
- 6) **RECALL NOTICE.** Lessor may recall any or all equipment upon ten (10) days written notice to Lessee and the Lessee may return any or all equipment upon a like notice to the Lessor.
- 7) **MAINTENANCE AND OPERATION.** Lessee shall not remove, alter, disfigure or cover up any numbering, lettering, or insignia displayed upon the equipment, and shall see that the equipment is not subjected to careless, unusually or needlessly rough usage; and Lessee shall at his own expense maintain the equipment and its appurtenances in good repair and operative condition, and return it in such condition to Lessor, ordinary wear and tear resulting from proper use thereof alone expected.
- 8) **REPAIRS.** The expense of all repairs made during the Rental Period, including labor, material, parts and other items shall be paid by Lessee.
- 9) **OPERATORS.** Unless otherwise mutually agreed in writing, Lessee shall supply and pay all operators on the equipment during the Rental Period. All operators shall be competent. Should Lessor furnish any operators or other workmen for the equipment, they shall be employees of Lessee during the Rental Period, and Lessee shall pay them salary or wages and all other applicable costs. Lessee shall provide and pay for all workmen's compensation insurance and pay all payroll taxes required by law and applying to such operators and workman.
- 10) **DISCLAIMER OF WARRANTIES.** LESSOR, BEING NEITHER THE MANUFACTURER, NOR A SUPPLIER, NOR A DEALER IN THE EQUIPMENT, MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, ITS DESIGN, ITS CAPACITY, ITS PERFORMANCE, ITS MATERIAL, ITS WORKMANSHIP, ITS FITNESS FOR ANY PARTICULAR PURPOSE, OR THAT IT WILL MEET THE REQUIREMENTS OF ANY LAWS, RULES, SPECIFICATIONS, OR CONTRACTS WHICH PROVIDE FOR SPECIFIC APPARATUS OR SPECIAL METHODS. LESSOR FURTHER DISCLAIMS ANY LIABILITY WHATSOEVER FOR LOSS, DAMAGE, OR INJURY TO LESSEE OR THIRD PARTIES AS A RESULT OF ANY DEFECTS, LATENT OR OTHERWISE, IN THE EQUIPMENT. AS TO LESSOR, LESSEE LEASES THE EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE IN ANY EVENT TO LESSEE FOR ANY LOSS, DELAY, OR DAMAGE OF ANY KIND OR CHARACTER RESULTING FROM DEFECTS IN, OR INEFFICIENCY OF, EQUIPMENT HEREBY LEASED OR ACCIDENTAL BREAKAGE THEREOF.
- 11) **INDEMNITY.** Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorneys fees, arising out of, connected with, or resulting from the equipment or the Lease, including without limitation, the manufacture, selection, delivery, leasing, renting, control, possession, use, operation, maintenance or return of the equipment. Lessee shall further indemnify Lessor, and hold Lessor harmless from all loss and damage to the equipment during the rental period. Lessee recognizes and agrees that included in this indemnity clause, but not by way of limitation, is Lessee's assumption of any and all liability for injury: disability and death of workmen and other persons caused by the operation, use, control, handling, or transportation of the equipment during the Rental Period.

- 12) **RISK OF LOSS.** Lessor shall not be responsible for loss or damage to property, material, or equipment belonging to Lessee, its agents, employees, suppliers, or anyone directly or indirectly employed by Lessee while said material property, or equipment is in Lessor's care, custody, control or under Lessor's physical control. Lessee is encouraged to obtain appropriate equipment, material, or installation floater insurance against such risk of loss. Lessee and its insurers waive all rights of subrogation against Lessor for such losses.
- 13) **INSPECTION; CONCLUSIVE PRESUMPTIONS.** Lessee shall inspect the equipment within three (3) business days after receipt thereof. Unless Lessee within said period of time gives written notice to Lessor, specifying any defect in or other proper objection to the equipment. Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that Lessee has fully inspected and acknowledged that the equipment is in full compliance with the terms of this agreement, in good condition and repair, and that Lessee is satisfied with and has accepted the equipment in such good condition and repair. Lessor shall have the right at any time to enter the premises occupied by the equipment and shall be given free access thereto and afforded necessary facilities for the purpose of inspection.
- 14) **INSURANCE.** Lessee shall keep the equipment insured against all risks of loss or damage from every cause whatsoever for not less than the full replacement value thereof; and shall carry public liability and property damage insurance covering the equipment and its operation and handling for the amount of at least Five Hundred Thousand Dollars (\$500,000.00) or other reasonable amount specified by Lessor. Lessee shall pay the premiums and any deductible portions therefor and deliver said policies, or duplicates thereof, to Lessor.
- 15) **OWNERSHIP.** Lessor shall at all times retain ownership and title of the equipment. Lessee shall give Lessor immediate notice in the event that any of said equipment is levied upon or is about to become liable or is threatened with seizure, and Lessee shall indemnify Lessor against all loss and damages caused by such action.
- 16) **DEFAULT; REMEDIES.** If (a) Lessee shall default in the payment of any rent or in making any other payment hereunder when due, or (b) Lessee shall default in the payment when due of any indebtedness of Lessee to Lessor arising independently of this lease, or (c) Lessee shall default in the performance of any other covenant herein and such default shall continue for five days after written notice hereof to Lessee by Lessor, or (d) Lessee becomes insolvent or makes an assignment for the benefit of creditors, or (e) Lessee applies for or consents to the appointment of a receiver, trustee, or liquidator of Lessee or of all or a substantial part of the assets of Lessee under the Bankruptcy Act, or any amendment thereto (including, without limitation, a petition for reorganization, arrangement, or extension) or under any other insolvency law or law providing for the relief of debtors, then, if and to the extent permitted by applicable law. Lessor shall have the right to under any other insolvency law or law providing for the relief of debtors, then, if and to the extent permitted by applicable law. Lessor shall have the right to exercise any one or more of the following remedies.
- (a) To declare the entire amount of rent hereunder immediately due and payable as to any or all items of the equipment, without notice or demand to Lessee.
 - (b) To sue for and recover all rents, and other payments, then accrued or thereafter accruing, with respect to any or all items of the equipment.
 - (c) To take possession of any or all items of the equipment without demand, notice, or legal process, wherever they may be located. Lessee hereby waives any and all damages occasioned by such taking of possession. Any said taking of possession shall not constitute a termination of this lease as to any or all items of equipment unless Lessor expressly so notifies Lessee in writing.
 - (d) To terminate this lease as to any or all items of equipment.
 - (e) To pursue any other remedy at law or in equity.

Notwithstanding any said repossession, or any other action which Lessor may take, Lessee shall be and remain liable for the full performance of all obligations on the part of Lessee to be performed under this Lease.

All such remedies are cumulative, and may be exercised concurrently or separately.

- 17) **NO SUBLETTING ASSIGNMENT.** No equipment shall be sublet by Lessee, nor shall he assign or transfer any interest in this Agreement without written consent of Lessor. Lessor may assign this Agreement without notice. Subject to the foregoing, this Agreement inures to the benefit of, and is binding upon, the heirs, successors, and assigns of the parties hereto.
- 18) **REMEDIES CUMULATIVE; NO WAIVER; SEVERABILITY.** All remedies of Lessor hereunder are cumulative and may, to the extent permitted by law, be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure on the part of the Lessor to exercise and no delay in exercising, any right or remedy, hereby shall operate as a waiver thereof; nor shall any single or partial exercise by Lessor of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. If any term or provision of this lease is found invalid, it shall not affect the validity and enforcement of all remaining terms and provisions of this lease.
- 19) **EXPENSES.** Lessee shall pay Lessor all costs and expenses, including attorneys' fees, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.
- 20) **ENTIRE AGREEMENT.** This instrument constitutes the entire agreement between Lessor and Lessee; and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.