

## Master Rental/Lease Agreement

This Master Rental/Lease Agreement (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”), by and between Foley Rents, a division of Foley, Incorporated, a Corporation with its principal place of business at 855 Centennial Avenue, Piscataway, NJ 08854 (“**Lessor**”), and \_\_\_\_\_ (company name) with offices at \_\_\_\_\_ (address) (“**Lessee**”). Foley and Lessee are sometimes individually referred to in this Agreement as a “Party” and collectively as the “Parties.”

In consideration of the promises in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. **GENERAL TERMS:** This Agreement sets forth the general terms of the business relationship between Lessor and Lessee. Lessee desires to rent certain equipment from Lessor from time to time under the terms contained herein and contained in each Rental Agreement, (sample form incorporated herein as Exhibit A) (“Rental Agreement”).
2. **TERM:** The term of this Agreement shall commence on the Effective Date and shall continue subject to the terms and conditions contained herein until a new agreement is signed by Lessee (“Term”) unless earlier terminated as provided in this Agreement, except that any obligations, which may arise prior to such termination date, shall survive until such obligations are satisfied in full. Any Rental Agreement entered into prior to the termination of this Agreement will continue in full force and effect following such termination for its respective term, unless otherwise agreed to by the Parties and shall be governed by the terms and conditions of this Agreement.
3. **TERMINATION:** Either Party may terminate this Agreement at any time, with or without cause, by giving the other Party at least thirty (30) days’ prior written notice.
4. **PAYMENT & RENTAL RATE/TERM:** Rental rates quoted are for a maximum eight (8) hour day, forty (40) hour - 5 day week and 160 hour - 28 day month. Overtime will be charged for each additional hour on a prorated basis unless indicated otherwise. **ALL RENTALS ARE PAYABLE IN ADVANCE.** Rental period begins at time machine is delivered/picked-up and ends when machine is returned to Lessor’s yard. No credit or allowance for weather or down time.
5. **RENT TO RENT:** It is understood that this is a rent to rent rental lease agreement. Lessor does not necessarily offer a purchase option with this rental/lease agreement and therefore may replace this machine with a like machine at any time.
6. **TITLE TO THE EQUIPMENT:** The rented “Equipment” (shall mean all equipment rented by Lessee and described on invoice) shall at all times remain and be the sole and exclusive property of Lessor, and Lessee shall have no right of property therein other than the right to use the Equipment upon the terms and conditions contained in this Agreement or the applicable Rental Agreement. Lessor may elect to file a Financing Statement (UCC-I) for informational purposes.
7. **IDENTIFICATION OF EQUIPMENT:** Lessee will not change or remove any insignia, lettering or other identification which is now or hereafter placed on the Equipment indicating Lessor's ownership thereof, and at any time during the term of this rental/lease agreement, upon request of Lessor, Lessee will affix to Equipment in a prominent place, labels, plates, or other identification supplied by Lessor stating that the Equipment is owned by Lessor.
8. **LOCATION OF EQUIPMENT:** During the term of this rental/lease agreement and until redelivery to Lessor, all Equipment shall be located at the address to which the Equipment is to be shipped as set forth

on the reverse side hereof, and shall not be removed from such location without prior written notification & consent of Lessor.

9. **INSPECTION BY LESSEE:** Lessee shall inspect the Equipment within twenty-four (24) hours after its arrival at the address set forth on the reverse side hereof. Unless within said twenty-four (24) hours (excluding weekends and holidays) Lessee 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 the Equipment, that the Equipment is in full compliance with the terms of this rental/lease agreement, and in good condition and repair, and that Lessee is satisfied with, and has accepted the Equipment. If Lessor so requests, Lessee shall furnish Lessor with a written statement of the foregoing.
10. **INSPECTION BY LESSOR:** Lessor and its representatives may inspect the Equipment at any time, except that no inspection shall be made (without Lessee's consent) under circumstances requiring interruption of Equipment use. Lessee shall have the privilege of having a joint inspection made of the Equipment before returning it to Lessor, to determine the need, if any, for repairs and reconditioning. If a joint inspection is not demanded Lessor shall be the sole judge of the need for repairs and reconditioning, the cost of which is to be paid by Lessee as hereinafter provided.
11. **INSURANCE:** Lessee shall keep Equipment insured at its own expense against all risks of loss or damage from every cause whatsoever for not less than the full new replacement value thereof and shall carry General Liability Insurance, both personal injury and property damage, covering Equipment. All said insurance shall be in form and amount and with companies satisfactory to Lessor. All insurance for loss or damage shall provide that losses, if any, shall be payable to Lessor, naming Lessor as loss payee. Lessee shall pay the premium for the insurance and deliver to Lessor the policies or duplicates thereof, or other evidence satisfactory to Lessor of such insurance coverage. Each insurer shall agree, by endorsement, upon the policy or policies issued by it or by independent instrument furnished to Lessor, that it will give Lessor ten (10) days' prior written notice of the effective date of any alteration or cancellation of such policy. The proceeds of such insurance payable as a result of loss of or damage to Equipment shall be applied, at the option of Lessor, (a) toward the replacement, restoration, or repair of Equipment which may be lost, stolen, destroyed, or damaged, or (b) toward payment of the obligations of Lessee hereunder. Any surplus then remaining shall be refunded to Lessee. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks, or drafts received in payment for the loss or damage under any said insurance policy. In case of the failure of Lessee to procure or maintain said insurance, Lessor shall have the right but shall not be obligated to affect such insurance or compliance on behalf of Lessee. In that event, all monies spent by and expenses of Lessor in effecting such insurance or compliance shall be deemed to be additional rent, and shall be paid by Lessee to Lessor with the next monthly payment of rent. Lessee shall additionally maintain insurance coverage as per Exhibit A.
12. **LOSS AND DAMAGE:** a) Lessee hereby assumes and shall bear the entire risk of direct and consequential loss and damage to Equipment from any and every cause whatsoever. No loss or damage to the Equipment or any part thereof shall release or impair any obligation of Lessee under this Agreement, which shall continue in full force and effect. Lessee agrees that Lessor shall not incur any liability to Lessee for any loss of business, loss of profits, expenses, or any other damages resulting to the Lessee by reason of any delay in delivery or any delay caused by any nonperformance, defective performance, or breakdown of rented Equipment. In the event of loss or damage to any item of

Equipment, Lessee at the option of Lessor shall at Lessee's expense: (1) place the same in good repair, condition and working order, or (2) replace the same with like Equipment of the same make and of the same or a later model and in good repair, condition and working order. (b) If Equipment is determined by Lessor to be lost, stolen, destroyed, or damaged beyond repair, Lessee shall immediately pay Lessor in cash an amount equal to the aggregate amount of unpaid total rent for the balance of the term of this rental/lease agreement, together with the residual value of the Equipment at the end of the current term (exclusive of any renewals) as determined by the Lessor. Interest at the rate stipulated in paragraph 14 on the amount due shall accrue from the time of loss until paid. Upon such payment, this rental/lease agreement shall terminate with respect to the Equipment so paid for and Lessee thereupon shall become entitled to that Equipment as-is-where-is without warranty, express or implied.

13. INDEMNITY: Lessee shall indemnify Lessor against and hold Lessor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, claimed by any person including organizations, associations or otherwise, arising out of, or relating to the Equipment, including without limitation, the design, manufacture, selection, purchase, delivery, possession, use, operation, and/or condition thereof, latent and/or other defects (whether or not discoverable by Lessee).
14. USE, ALTERATIONS AND ADDITIONS: Lessee shall use Equipment solely in the conduct of its lawful business and in a careful, safe and proper manner. Lessee shall not part with possession of or enter into any sub-rental/lease agreement with respect of Equipment or assign this rental/lease agreement or its interest without the prior written consent of Lessor. The equipment shall be used only by operators in the direct employ of the Lessee or by the Lessee himself if an individual. The Equipment shall be operated and handled by competent employees only, and Lessee shall pay wages of operators and all other expenses of operations. Lessee will use and operate said Equipment and cause it to be used and operated only in such manner, under such working conditions, and for such purposes as are consistent with the capacity and design of the Equipment and for performing operations for which it was designed. Lessee shall be liable for all repairs caused by the abuse or negligence of its employees and agents including but not limited to improper application, operator neglect or overheating. Lessee shall not make any alterations to Equipment without the prior consent of Lessor. All Equipment, accessories, parts and replacements which are added to or become attached to Equipment shall immediately become the property of Lessor and shall be deemed incorporated in Equipment and subject to the terms of this rental/lease agreement.
15. OPERATION: Lessee represents and warrants that it is familiar with the proper operation and use of each item or Equipment. Lessee assumes responsibility for familiarizing their operators on the use and safe operation of all product models rented/leased. \_\_\_\_\_ **(Initial)**
16. DEFAULT AND REMEDIES: If Lessee shall default in making any payment when due or if Lessee fails to comply with any other provision of this rental/lease agreement and such default shall continue for five (5) days after written notice to Lessee by Lessor, or if Lessee becomes insolvent or makes an assignment for the benefit of creditors, or if any proceeding in bankruptcy, receivership, or insolvency shall be commenced by or against Lessee or its property, or if Lessee shall have made or intends to make a bulk transfer of Equipment or inventory, or if the Lessee's financial condition shall adversely change, or if the Lessee shall undergo any change so that in the Lessor's sole opinion Lessor's risk is materially increased, or if Lessee has breached any other rental/lease agreement between Lessor and Lessee, then Lessor may at its option, with or without terminating this rental/lease agreement, repossess the

Equipment with or without demand or notice to the Lessee, and without court proceeding, and Lessee waives any and all claims against Lessor with respect to such retaking. Upon Lessee's default, the total payments contracted for hereunder shall immediately become due and payable together with all costs and expenses set forth in Paragraphs 14 & 15. In addition to the foregoing, Lessor may pursue any other remedy available to it at law or in equity.

17. LATE CHARGES AND INTEREST: If Lessee fails to make any payment required by this rental/lease agreement when due, Lessee shall pay to Lessor interest on such delinquent payment from the due date until paid. The interest rate shall be at the maximum lawful contract rate allowable in the jurisdiction where the Lessee's principal place of business is located but will not exceed eighteen percent (18%) per annum.
18. EXPENSES: Lessee shall pay Lessor all costs and expenses including reasonable attorney's fees, fees of collection agencies, and such other expenses such as telephone and telegraph charges incurred by Lessor to enforce any of the terms or conditions of this rental/lease agreement.
19. MAINTENANCE, UPKEEP, and REPAIRS: If Lessee has elected to purchase maintenance service from Lessor in connection with Equipment covered by this rental/lease agreement, then Lessor shall provide for maintenance in accordance with Lessor's standard maintenance contract. That maintenance contract is incorporated herein by reference as though fully set forth herein. A copy of said maintenance rental/lease agreement has been provided to the Lessee and Lessee acknowledges its receipt. In the event that a maintenance contract with the Lessor is not contracted, Lessee, at its expense, shall keep the Equipment well lubricated, property adjusted, and otherwise in good and efficient working order. Lessee shall use in said maintenance only repair parts manufactured or furnished by the manufacturer of the Equipment, or repair parts of equal quality. Lessee will return the Equipment at the termination of the rental/lease agreement, in as good condition as it was at the commencement of the rental/lease agreement, except for the effects of normal wear and tear. If the Equipment shall not, in the opinion of Lessor, be properly lubricated, adjusted, and filter replacement schedules maintained, and otherwise in good and efficient working order and condition at any time, Lessor, without prejudice to any of its rights or remedies, may give written notice to Lessee to put such Equipment in good and efficient working order and condition and to replace all broken or missing parts, and in case the Lessee does not within ten (10) days from the date of said notice comply with the written notice, Lessor may put such Equipment in good and efficient working order and condition, or cause that it be done, and the Lessee shall pay to Lessor all costs for repairing said Equipment together with full rent for the period needed to accomplish such results.
20. ACCIDENTS: Without demand Lessee shall notify Lessor immediately (and in any event, within twenty-four (24) hours thereafter) of each accident involving any Equipment covered by this rental/lease agreement. The Lessee shall include such information as is known such as the time, place, and nature of the accident or damage, the names and addresses of parties invoiced, persons injured, witnesses and owners of property damaged. Lessee shall promptly advise Lessor of all correspondence, papers, notices, or documents whatsoever, received by Lessee in connection with any claim or demand involving or relating to any Equipment or its operation and, together with Lessee's employees, aid in the investigation and defense of all such claims and demands, and in the recovery of damages from third parties liable therefor.
21. SAEETY ATTACHMENTS: Lessee agrees and hereby acknowledges that it is the Lessee's responsibility to meet all OSHA regulations and requirements.

22. CUSTOMER PICKUP: It is Lessee's responsibility to secure all Equipment being picked up by the Lessee or any of its employees, agents, or representatives. Lessee must provide a mode of transportation that can safely transport all Equipment. Lessor is not liable for injury or property damage arising from loading or transport of Equipment by other than Lessor.
23. DISCLAIMER OF WARRANTIES: Lessor understands that Foley does not design or manufacture the Equipment and acknowledges that Foley makes no warranty, express or implied, with respect to the Equipment, its durability or condition. Foley disclaims any warranty of merchantability or the suitability or fitness of Equipment for any particular purpose. Customer acknowledges acceptance of the Equipment on an "AS IS" basis. To the maximum extent permitted by law, all such warranties are hereby disclaimed by Foley and waived by Lessee.
24. ENTIRE AGREEMENT: This Master Rental/Lease Agreement, applicable Rental Agreements and invoices, Tire Clause, Safety Attachment Checklist, Caterpillar Warranty Forms, Credit Application, Insurance Form, Agreement Profile, and Sales Tax Exemption, if applicable, contain the entire rental/lease agreement between the parties and may not be changed, modified, terminated, or discharged except in writing between the parties.
25. ASSIGNMENT BY LESSOR: This rental/lease agreement or any rent or other sums due or to become due under this rental/lease agreement may be assigned by Lessor without notice, and in such event Lessor's assignee shall have all the rights, powers, privileges, and remedies of Lessor. Lessee's obligations under this rental/lease agreement shall not be subject to any defense, offset, or counterclaim available to Lessee against the original Lessor.
26. APPLICABLE LAW: This Agreement shall be governed by laws of the State of New Jersey without regards to any conflict of law provisions and shall be binding upon Lessor and Lessee and their respective legal representatives. The parties submit to the exclusive jurisdiction of the courts of the state of New Jersey and agree that any legal action or proceeding relating to this Agreement must be brought in these courts.
27. COMPLIANCE WITH LAW: Lessee shall comply with all federal, state and local laws, ordinances, and regulations in the performance of this Agreement and use of Equipment.
28. LESSOR'S LIABILITY: Lessor shall not be liable for any actual, direct, indirect, special, or consequential damages due to, caused by, or resulting from (a) any defect and/or malfunction of the Equipment or its installation or maintenance, or (b) any delays in the installation, delivery, or operation of such equipment.
29. ACCEPTANCE BY LESSOR: This Agreement shall be binding upon Lessor when executed on its behalf by one of its managers. Any individual signing this Agreement represents and warrants that he or she has the authority and power to sign this agreement on behalf of Lessee.
30. NOTICE: All notices and communications relating to this Agreement shall be delivered in writing.
31. ASSIGNMENT: Lessee may not assign this Agreement, any applicable Rental Agreement, or any of their rights or obligations under this Agreement without Lessor's prior written consent.
32. Non-Waiver: The failure, delay or neglect by a Party to enforce any of its rights under this Agreement will not be deemed to be a waiver of that party's rights. All waivers shall be in writing and executed by an authorized representative of Lessor.
33. SEVERABILITY: If any provision of this Agreement shall be held invalid or unenforceable, said provision shall be deemed amended to the least amount necessary to render the provision valid and enforceable, without affecting the validity and enforceability of the remaining terms and conditions.

- 34. HEADINGS: Headings for this instrument are for convenience only and shall not be used to interpret or construe its provisions.
- 35. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which, taken together, will constitute one and the same Agreement.
- 36. INCORPORATION: All terms and conditions of this Agreement are incorporated in and shall apply to any future rental to Lessee.

**INTENDING TO BE LEGALLY BOUND HEREBY, Lessee has set its signature below indicating that the person signing below is an authorized agent of the Lessee for the purposes of binding Lessee, and that Lessee has read, understands and agrees with the terms set forth herein.**

**LESSEE:** \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Exhibit A: Sample Rental Agreement

Exhibit B: Insurance Requirements