



SD ANIMAL INDUSTRY BOARD
411 South Fort Street
Pierre, South Dakota 57501-4503
Phone: (605) 773-3321
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EQUIPMENT LEASE AGREEMENT

THIS AGREEMENT, made the _____ day of _____, 2024, by and between _____, hereafter called the Lessee, and the South Dakota Animal Industry Board, hereafter called the Lessor.

Lessee and Lessor, for the consideration described below, agree as follows:

Under the General Conditions of Lease attached to this sheet, Lessor hereby leases to Lessee all equipment named and identified for use at such location(s) and at such time as is therein stated on the EQUIPMENT CHECK IN / CHECK OUT form as provided by the Lessor. Lessor shall furnish such equipment, F.O.B., in operative condition.

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

ITEMS REQUIRED OF THE LESSEE: Prior to equipment pickup, Lessee must have available: Class A Foam, comparable to Phos-Chek; Disinfectant; Personal Protective Equipment (PPE).

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

Lessor (including the State of South Dakota ("State"), its officers and employees)

Lessee

By: _____
State Veterinarian
SD Animal Industry Board
411 S Fort St, Pierre
Pierre SD 57501

By: _____

Official Use Only:

Equipment Agreement Number: _____ Date Approved: _____

GENERAL CONDITIONS OF EQUIPMENT LEASE AGREEMENT

The conditions of the lease stated below, together with the Agreement set forth on page 1, constitute a contract between the named parties and the contract is hereafter referred to as “this Agreement”.

1. **LEASE PERIOD.** The Lease period shall cover all time for transport of 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. This Lease agreement will automatically renew after 30 days from the date all signatures are obtained unless the Lessee declines renewal in writing. The automatic renewal will cease after one year.
2. **LEASE CHARGES.** Lessee may charge a fee to third parties when performing services using the equipment at issue in this Agreement. The fee may not exceed the payroll costs and supplies needed to operate the leased equipment only on the premises, and for the benefit, of the third party paying that fee. No net profit may be made while using the equipment as part of a service provided to third parties.
3. **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.
4. **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. Lessee shall at its 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.
5. **REPAIRS.** The expense of all repairs made during the Lease Period, including labor, material, parts and other items shall be paid by Lessee. Lessee must obtain Lessor’s approval before any repairs.
6. **COMPLIANCE.** Lessee must comply in full with all federal, tribal, state and local laws, regulations, ordinances, guidelines, permits and other standards applicable to the use of the equipment under this Agreement and will be solely responsible for obtaining current information regarding the foregoing. Nothing herein shall constitute a waiver by the Lessor to any defense to jurisdiction nor shall anything herein constitute an acknowledgement by the Lessor that any tribe has or exercises any jurisdiction over this Agreement or the parties.
7. **OPERATORS.** Unless otherwise mutually agreed in writing, Lessee shall supply and pay all operators for equipment use during the Lease Period. All operators shall be competent and trained on the use and care of the equipment and Lessee will certify such below. Lessor will not furnish any operators or other workers for the equipment. Lessee shall provide and pay for all workers’ compensation insurance and pay all payroll taxes required by law and applying to such operators and workers.
8. **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.

9. INDEMNITY. Lessee shall indemnify the State of South Dakota, its officers, agents, and employees, from and against, and hold Lessor harmless from any and all claims, actions, suits, proceedings, costs, expenses, damages, liabilities, or equitable relief that may arise at least in part from the equipment, Lessee's use or 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 workers and other persons caused by the operation, use, control, handling, or transportation of the equipment during the Lease Period.

Lessee shall defend the State of South Dakota, its officers, agents, and employees against any claim, including any claim, action, suit, or other proceeding related to the claim. Lessee's obligation to indemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agents, and employees, Lessee shall engage other professionals, subject to the written approval of the Lessor which shall not be unreasonably withheld. Notwithstanding the foregoing, Lessor may, in its sole discretion and at the expense of Lessee, engage attorneys and other professionals to defend Lessor or to assist Lessee in the defense.

10. 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.
11. 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.
12. INSURANCE. Lessee shall maintain occurrence-based commercial general liability insurance or equivalent form of coverage with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit. The insurance policy shall name Lessor (including the State of South Dakota, its officers and employees), as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. Lessor does not hereby waive sovereign immunity for discretionary conduct as provided by law.

Before taking possession of the equipment, Lessee shall furnish Lessor with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement

including naming Lessor (including the State of South Dakota, its officers and employees), as additional insureds, as set forth above. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Lessee agrees to provide immediate notice to Lessor and provide a new certificate of insurance showing continuous coverage in the amounts required. Lessee shall furnish copies of insurance policies if requested by Lessor.

13. OWNERSHIP. Lessor shall at all times retain ownership and title of the equipment.
14. DEFAULT; REMEDIES. If Lessee defaults in the performance of any other covenant herein or becomes insolvent, Lessor shall have the right to exercise any one or more of the following remedies.
 - a. 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.
 - b. To terminate this lease as to any or all items of equipment.
 - c. To pursue any other remedy at law.

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.

15. NO SUBLETTING ASSIGNMENT. No equipment shall be sublet by Lessee, nor shall Lessee assign or transfer any interest in this Agreement, nor use the equipment for other than its intended purpose, nor use the equipment outside of South Dakota 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.
16. 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 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.
17. 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.
18. THIRD PARTY BENEFICIARIES. This Agreement is intended to govern only the rights and interests of the parties named herein. It is not intended to create, does not and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any third party in any matters, civil or criminal.
19. REPORTING. Lessee agrees to report to Lessor any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject

Lessee, or Lessor (including the State of South Dakota or its officers, agents or employees) to liability. Lessee shall report any such event to Lessor immediately upon discovery.

Lessee's obligation under this section shall only be to report the occurrence of any event to Lessor and to make any other report provided for by their duties or applicable law. Lessee's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to Lessor under this section shall not excuse or satisfy any obligation of Lessee to report any event to law enforcement or other entities under the requirements of any applicable law.

20. **CONTROLLING LAW AND VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
21. **DISCLOSURE OF THE CONTRACT.** Neither party shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. The Lessee acknowledges that Lessor is a public entity and thus is bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for Lessor to take any action that it reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including, without limitation, posting this Agreement on the website pursuant to SDCL 1-27-46. Lessee agrees that the Agreement and any prices, fees, and rates under the Agreement are not confidential.
22. **SOVEREIGN IMMUNITY.** Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers or employees.
23. **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.
24. **CERTIFICATIONS.** Lessee certifies and agrees that the following information is correct:
 - a. The Lessee is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the Lessor to terminate the lease, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

Lessee agrees to provide immediate written notice to Lessor if during the term of the Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

- b. Lessee (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that

was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Lessee hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

- c. Lessee is a “trained industry partner” in that it has completed all training required by Lessor and all employees, agents, operators, workers, and contractors of Lessee have also completed such training. Lessee acknowledges and agrees that the training required by Lessor may not be all training necessary to safely operate the equipment and will take independent steps to confirm all personnel operating the equipment has been properly trained to operate the equipment.
- d. The Lessee is aware of and will require its employees, agents, operators, workers, and contractors to follow all requirements of the Occupational Safety and Health Administration (“OSHA”) while using the equipment that is the subject of this Agreement.

25. The Executive Secretary of the SD Animal Industry Board has the signatory authority of the Agreement, on behalf of the Board. Executed Agreement(s) shall be reviewed at the next regularly scheduled Board meeting.

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

Lessor

Lessee

(Signature)

(Signature)

BY: _____
(Name)

BY: _____
(Name)

(Title)

(Title)

(Date)

(Date)