

JOULE REFRESH MASTER LEASE

August 23, 2017

Department of Energy

National Energy Technology Laboratory

**AGREEMENT DATE:**

**LESSOR:**

**LESSOR’S PRINCIPAL PLACE OF BUSINESS:**

**LESSEE:**

**LESSEE’S PRINCIPAL PLACE OF BUSINESS:**

**U.S.GOVERNMENT END USER:**

**GOVERNMENT CONTRACT NO.:**

**THIS MASTER EQUIPMENT LEASE AGREEMENT** (this “Master Lease”), made as of the above date, is entered into by and between the above named LESSOR and the above named LESSEE.

WITNESSETH THAT:

Whereas, LESSEE operates a U.S Department of Energy Laboratory (the “U.S. Government End User”) under a contract (the “Government Contract”) as might be amended from time to time; and Whereas, LESSEE desires to lease certain equipment from LESSOR for use at U.S Government End User; and Whereas, LESSEE and LESSOR are entering into this Agreement as a financing transaction between Lessee and Lessor for the sale of the equipment described on one or more Lease Schedules to be issued hereunder.

NOW, THEREFORE, the parties in consideration of the exchange of mutual promises contained herein, agree as follows:

**1. LEASE AGREEMENT:** Pursuant to the terms of this Master Lease, Lessor hereby leases to Lessee and

Lessee hereby leases from Lessor all the machinery, equipment and other personal property (the “Equipment”) listed in the Lease Schedule(s) related hereto which are or may from time to time be executed by Lessor and Lessee (the “Schedules”). Each Schedule shall constitute a separate and independent lease (a “Lease”); the original of such Lease shall consist of the manually-signed Schedule and a reprographic copy of this Master Lease. Capitalized terms used and not defined herein shall mean and refer to the corresponding items on the applicable Schedule. Lessor will also finance the fees (the “Fees”) for any of the following, if specified on a Schedule: (i) services relating to the transportation, delivery, installation, maintenance or operation of the Equipment (the “Services”) provided by the Supplier of the Equipment pursuant to a separate agreement between such Supplier and Lessee.

**2. TERM:** The Master Lease shall commence as of the above date, provided Lessor accepts this Master Lease in

writing and shall continue as long as any Schedule is in effect. The rental term of a Lease (the “Rental Term”) shall commence upon the Acceptance Date (as defined in Section 4) of the Equipment and/or Software described in the applicable Schedule, and shall continue for the number of months set forth in such Schedule, beginning with the first month commencing after the Acceptance Date, unless such term has been extended or otherwise modified in a writing executed by Lessor and Lessee. Lessee’s execution of a Schedule shall evidence its binding commitment to lease the Equipment described therein upon the terms and conditions of this Master Lease and such Schedule.

Lessor understands that funding of each applicable LTO Lease Schedule is subject to the future availability of

annually appropriated, apportioned, and allotted Funds; and that this Agreement and the LTO Payment Schedule in each

LTO Lease Schedule must be made and administered consistent with the Antideficiency Act 31 U.S.C. §1341 and 41

U.S.C. §11. Accordingly, funding of lease costs under this Agreement shall be provided on a federal fiscal year (i.e.,

begins on 1 October and ends on 30 September of the year with which it is numbered) basis, subject to a determination by U.S. Government End User that sufficient appropriated and apportioned Funds are available to be allotted for such costs.

Lessee agrees to give written notice not later than 30 days before the beginning of each successive federal fiscal year that Funds for the next fiscal year, which may be lawfully applied to this Agreement, shall be applied to the applicable LTO

Payment Schedule, subject to the continued availability of Funds in the ensuing fiscal year. In the event that no Funds are

appropriated and/or apportioned, or a determination is not made by U.S. Government End User that sufficient Funds are

available to apply to the applicable LTO Payment Schedule and no written notice of Funds is made within the time

prescribed, this Agreement shall end on the last day of the current fiscal year without penalty or expense of any kind to

Lessee. If funding previously available for the applicable LTO Payment Schedule is withdrawn during the current fiscal

year as a result of budgetary action by the Office of Management and Budget or by Congress, Lessee will notify Lessor of

this occurrence and may cancel this Agreement in whole or in part upon two (2) weeks written notice to Lessor. Upon

cancellation of this Agreement, and upon written direction from Lessor, Lessee shall deliver the Equipment to LESSOR, at

Lessee’s expense, within the continental United States consistent with the terms and conditions described in this

Agreement.

It is Lessee intent to make payments for the full term of each Lease Schedule, subject to the availability of

operating Funds which may lawfully be used for that purpose and subject to the procedure described above. To that end

Lessee agrees, to the extent related to this Agreement and the applicable Lease Schedule, that it will not: (i) avoid

obligating Funds if operating Funds for the then current fiscal year are appropriated and allotted to it for the Equipment or

other product with similar functional capability, or (ii) permit this Agreement to end in order to acquire other product, which

performs essentially the same application performed by the Equipment covered by the applicable Lease Schedule.

FUNDS, as used in this Agreement, means monies made available for operation of the U.S. Government End User

by Lessee under the Government Contract. Nothing in this Agreement shall be construed to require a violation of 31 U.S.C. §1341 and 41 U.S.C. §11.

**3. RENTAL PAYMENTS:** Lessee shall pay Lessor the monthly amounts specified in the applicable Schedule (the

“Rental Payments”). Rental Payments shall be payable in arrears and are due the first day of each month during the Rental Term, beginning with the first month commencing after Acceptance Date. If a Schedule includes any Software or Services, the Rental Payments specified include amounts to cover payment of the related Fees. Rental Payments shall be payable at the mailing address of Lessor set forth in Lessor’s Invoice.

**4. ORDER AND ACCEPTANCE OF EQUIPMENT:** In reliance upon Lessee’s execution of and compliance with this Lease and assignment of Lessee’s purchase rights for the Equipment to Lessor, Lessor shall issue its purchase order to the Supplier(s) for the Equipment and/or Services described in the applicable Schedule. As soon as practicable after the date on which the Equipment have been delivered and determined by Supplier(s) to be ready for use at Lessee’s location (the “Acceptance Date”), Lessee will execute a Certificate of Acceptance provided by Lessor and dated as of the Acceptance Date. If prior to the Last Acceptance Date set forth in the Schedule (i) no Event of Default has occurred, (ii) Lessor receives such executed Certificate of Acceptance, all other documents and information required under this Lease, and any additional credit enhancement of Lessor requires in connection with the related Schedule, and (iii) Lessor receives appropriate invoices and related documents from Supplier(s), Lessor shall pay the Supplier(s) for the Equipment and any Fees.

**5. DELIVERY AND INSTALLATION:** Lessee shall arrange with the Supplier(s) for delivery and installation of

Equipment and Software under each Schedule. All Equipment and Software shall be shipped directly from Supplier(s) to Lessee. Lessor shall have no liability for any delay or failure by the Supplier(s) to deliver any Equipment, to license any Software or to perform any Services, or with respect to the selection, installation, testing, performance, quality, maintenance or support of the Equipment, Software or Services. Lessee, at its expense, will pay all transportation, packing, taxes, duties, insurance, installation, testing, maintenance and other charges in connection with the delivery, installation and use of the Equipment and Software, unless the related Service is included in the related Schedule.

**6. DISCLAIMER:**

IF LESSOR IS NOT THE SUPPLIER OR THE AGENT OF ANY SUPPLIER, IT MAKES NO WARRANTY,

REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATEVER, INCLUDING, BUT NOT LIMITED TO THE MERCHANTABILITY OF THE EQUIPMENT, SOFTWARE OR SERVICES OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THE DESIGN, QUALITY, CAPACITY OR CONDITION OF THE EQUIPMENT, SOFTWARE OR SERVICES, COMPLIANCE OF THE EQUIPMENT, SOFTWARE OR SERVICES WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT, PATENT OR COPYRIGHT INFRINGEMENT, OR LATENT DEFECTS. LESSOR SHALL HAVE NO LIABILITY WHATSOEVER FOR THE BREACH OF ANY REPRESENTATION OR WARRANTY MADE BY THE SUPPLIER(S). LESSOR MAKES NO REPRESENTATION AS TO THE TREATMENT BY LESSEE OF THIS LEASE FOR FINANCIAL STATEMENT OR TAX PURPOSES. LESSEE LEASES THE EQUIPMENT “AS IS.” Lessee agrees, regardless of cause, not to assert any claim whatsoever against Lessor for any indirect, consequential, incidental or special damages or loss, of any kind, including, without limitation, any loss of business, lost profits or interruption of service. Any action by Lessee against Lessor for any default by Lessor under this Lease shall be commenced within one (1) year after any such cause of action accrues.

Lessee shall look solely to the Supplier(s) for any and all claims related to the Equipment, Software or Services.

LESSEE UNDERSTANDS AND AGREES THAT NEITHER SUPPLIER(S) NOR ANY SALESPERSON OR OTHER AGENT OF SUPPLIER(S) IS AN AGENT OF LESSOR, NOR ARE ANY OF THEM AUTHORIZED TO WAIVE OR ALTER THIS LEASE. No representation by Supplier(s) shall in any way affect Lessee’s duty to pay the Rental Payments and perform its obligations under this Lease.

**7. NO OFFSET:** This Lease is a net lease. LESSEE’S OBLIGATIONS TO PAY ALL AMOUNTS UNDER THIS

LEASE SHALL BE ABSOLUTE AND UNCONDITIONAL, AND SHALL NOT BE SUBJECT TO ANY SET-OFF,

COUNTERCLAIM, ABATEMENT, REDUCTION, RECOUPMENT, INTERRUPTION OR DEFENSE FOR ANY REASON

WHATSOEVER, INCLUDING EFECTS OR FAILURE IN, LOSS OF USE OR POSSESSION OF, OR DISCONTINUANCE OF THE EQUIPMENT, SOFTWARE OR SERVICES. THIS LEASE CAN BE TERMINATED BY LESSEE DUE TO LACK OF APPROPRIATED FUNDING, BUYDOWN OR BUYOUT OF LEASE.

**8. TITLE TO AND LOCATION OF EQUIPMENT AND SOFTWARE:** Title to each item of Equipment shall remain

with Lessor or its assigns at all times during the lease period of performance and Lessee shall have no right, title or interest therein except as expressly set forth in this Lease. Lessee, at its expense, will keep the Equipment free and clear of all claims, liens, and encumbrances, other than those which result from acts of Lessor or its assigns. All items of Equipment shall at all times remain personal property notwithstanding that any such Equipment may be affixed to realty. Lessee has the option to purchase the equipment at the end of the lease period (or through buy down or buy out of lease) at which time title to the equipment shall transfer from Lessor to Lessee.

The Equipment shall be delivered to the location specified in the related Schedule and shall not be relocated,

displaced or moved without Lessor’s prior written consent. Lessee shall in no event permit any Equipment to be removed

outside the United States.

**9. TAX BENEFITS:** Lessee acknowledges that Lessor intends to claim all available tax benefits of ownership

with respect to the Equipment (the “Tax Benefits”), unless otherwise indicated in a Schedule. All references to Lessor in this Section include the consolidated taxpayer group of which Lessor is a member. Tax Benefits shall include interest deductions, investment tax credit and depreciation deductions using the “applicable depreciation method” set forth in Section 168(b)(1) of the Internal Revenue Code, as amended (the “Code”) over an “applicable recovery period” of 5 years. Lessee represents and warrants to Lessor that at no time during the Lease Term will Lessee take or omit to take, nor will it permit any sublease or assignee to take or omit to take, any action (whether or not such sublessee or assignee, or act or omission is otherwise permitted by the terms of this Lease), which may result in the disqualification of any of the Equipment for, or recapture of, all or any portion of the Tax Benefits.

If as a result of a breach of any representation or warranty of Lessee in this Lease or any act, omission or

misrepresentation by Lessee, (i) tax counsel of Lessor shall determine that Lessor is not entitled to claim on its federal income tax return all or any portion of the Tax Benefits, or (ii) any such Tax Benefit is disallowed or recaptured (a “Loss”), then Lessee shall pay to Lessor, on demand, as an indemnity and as additional rent, an amount which will, after deduction therefrom of all taxes required to be paid by Lessor with respect to such amount, enable Lessor to receive the same after-tax rate of return that Lessor would have realized had such Loss not occurred, plus all interest and penalties assessed on such Loss.

**10. USE OF EQUIPMENT; INSPECTION:** During the Rental Term, Lessee may possess and use the Equipment

in accordance with this Lease free and clear of any claims arising by, through or under Lessor, provided that Lessee is in

compliance with the terms of this Lease, applicable law, insurance policies, installation requirements (including environmental specifications) and warranties of Supplier(s) concerning the Equipment. Lessee shall obtain all permits and licenses, if any, necessary for the Equipment. Lessor shall have the right, upon reasonable prior notice to Lessee and during regular business hours, to inspect the Equipment.

**11. FURTHER ASSURANCES:** Lessee shall provide to Lessor, at Lessor’s request, such documents and

assurances as Lessor deems necessary for the confirmation or perfection of this Lease, including corporate resolutions,

opinions of counsel and financing statements. Lessor is authorized to file financing statements (with respect to the Equipment and this Lease) signed only by Lessor or signed by Lessor on behalf of Lessee, as Lessee’s attorney in fact. Any such filings shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. Lessee will within 120 days of the close of each fiscal year of Lessee, deliver to Lessor, Lessee’s balance sheet and profit and loss statement, certified by a recognized firm of certified public accountants. Upon request, Lessee will also deliver to Lessor quarterly, within 60 days of the close of each fiscal quarter of Lessee, Lessee’s quarterly financial report certified by Lessee’s chief financial officer.

Lessee agrees to promptly notify Lessor in writing of any change in Lessee’s corporate or business name or in the location of its principal place of business.

**12. RISK OF LOSS:** Lessee shall bear the entire risk of any item of Equipment being lost, stolen, destroyed or

otherwise rendered permanently unfit or unavailable for use from any cause whatsoever (an “Event of Loss”) after its delivery to Lessee. If an Event of Loss shall occur, Lessee shall promptly notify Lessor. On the Rental Payment date following such notice or within ten (10) days after Lessor’s invoice, whichever is later, Lessee shall pay to Lessor an amount equal to the Rental Payment(s) and any other amounts then due and payable for such item of Equipment plus the Stipulated Loss Value (as hereinafter defined) for such item as of such date. Upon such payment in full, (i) the Rental Payments for such item shall cease to accrue; (ii) the Rental Term as to such item shall terminate; (iii) Lessee shall be entitled to the proceeds of any recovery in respect of such item from insurance or otherwise; and (iv) Lessor shall inform Lessee of the revised Rental Payments for the remaining Rental Term.

**13. INSURANCE:** The risk of loss may pass to U.S. Government as the Government provides for self-insurance for all losses.

**14. MAINTENANCE AND REPAIRS:** Lessee shall, at its expense, maintain the Equipment and all additions,

attachments and accessories thereto, in good repair, condition and working order (including replacement of all parts which

become damaged, worn out or unfit for use with appropriate new replacement parts), excluding, however, normal wear and tear resulting from Lessee’s authorized use. In addition, Lessee shall maintain the Equipment at the most current engineering levels issued by the Supplier of the Equipment and shall comply with all directives issued by such Supplier. Lessee shall, at its expense, enter into and keep in force during the Rental Term a maintenance agreement with the Supplier of the Equipment and shall send Lessor a copy on request. Lessee shall promptly inform Lessor of any changes to or terminations of such maintenance agreement. Lessee shall take all actions necessary during the Rental Term to ensure that the Equipment will be eligible, at the expiration or termination of the Rental Term, for a standard, full service maintenance contract with the Supplier thereof. Lessee, without the prior written consent of Lessor, shall make no modifications or alterations to any item of Equipment except engineering changes suggested by the Supplier, nor shall Lessee place any Equipment in storage or retire any Equipment from use during the Rental Term. Lessee may make repairs, additions or attachments to the Equipment so long as they do not interfere with the normal and satisfactory operation or maintenance thereof, create a safety hazard or impair the originally intended function of the Equipment. All modifications, repairs, alterations, replacement parts, additions and attachments to the Equipment shall become the property of Lessor and subject to this Lease, subject, however, to the right of Lessor to require Lessee to return the Equipment to its original condition.

**15. TAXES:** Lessee shall timely pay all assessments, license fees, taxes (including sales, use, excise, personal

property, ad valorem, stamp, documentary and other taxes) and all other governmental charges, fees, fines, or penalties

whatsoever, whether payable by Lessor or Lessee, on or relating to the Rental Payments, Equipment, Software or Services, or the use, registration, rental, shipment, transportation, delivery, ownership or operation thereof, and on or relating to this Lease; excluding, however, Lessor’s net income taxes. Applicable sales and use taxes shall be paid with the Rental Payments unless Lessee provides evidence of direct payment authority or an exemption certificate valid in the state where the Equipment and/or Software is located.

**16. LESSOR’S PERFORMANCE OF LESSEE’S OBLIGATION:** If Lessee shall fail to comply with any provision

of this Lease, Lessor may, but shall not be obligated to, effect such compliance, in whole or in part. All expenses incurred by Lessor in effecting such compliance, including reasonable legal fees, shall be payable by lessee to Lessor on demand. Lessor’s performance of any of Lessee’s obligations shall not be deemed a waiver or release thereof.

**17. LATE CHARGES; TIME IS OF THE ESSENCE:** A charge on any Rental Payments or other sums due

hereunder which are past due shall accrue at the rate of 18% per annum, or if such rate exceeds the maximum rate allowed by law, then at such maximum rate, and shall be payable on demand.

**18. PURCHASE OPTION:** Lessee shall have no option to purchase any item of Equipment unless the terms of

such purchase option are set forth in the applicable Schedule. If a purchase option is provided on the Schedule, Lessee may, if no Event of Default then exists, purchase all (but not less than all) of the Equipment having the same Rental Term expiration date. If there is a purchase option for fair market value (“FMV”) or for a price greater than $1.00, such purchase option may only be exercised by Lessee’s written notice to Lessor not less than 90 days prior to the end of the applicable Rental Term. For any purchase option price stated as $1.00, however, Lessee need not give any written notice, and title to the Equipment shall transfer to Lessee upon Lessee’s compliance with all of its obligations hereunder at the end of the Rental Term. The terms “fair market value” and “FMV” shall mean the value, as determined by Lessor, which would be obtained in an arm’s-length transaction between an informed and willing buyer-user under no compulsion to buy and an informed and willing seller under no compulsion to sell and, in such determination, (i) costs of removal of the Equipment from its location of current use shall not be a deduction from such value; (ii) the Equipment shall be assumed to be in the condition in which it is required to be maintained and returned under this Lease; and (iii) in the case of any installed Equipment, that Equipment shall be valued on an installed basis. On the last day of the Rental Term, Lessee shall pay to Lessor the purchase price for such item of Equipment in cash; and upon receipt of such payment Lessor shall transfer to Lessee title to the Equipment, free and clear of any claim, lien or encumbrance (other than those held by parties claiming by, through or under Lessee), but without recourse, representation or any other warranty, express or implied, “AS IS”, in its then condition and location. Lessee shall be responsible for all applicable sales, use, personal property and other taxes.

**19. RENEWALS/EXTENSIONS:** If a renewal is set forth in any Schedule, Lessee may, at its option, extend the

Rental Term for the renewal period specified by giving Lessor written notice not less than 90 days before the expiration of the Rental Term or the then current renewal thereof, provided no Event of Default then exists. Any such renewal shall continue on the same terms and conditions set forth herein and such renewal term shall be treated as a Rental Term; except that the Rental Payments shall be in the amount of the renewal Rental Payments set forth in the applicable Schedule. If the Schedule provides for FMV renewal Rental Payments, they shall be determined as set forth in Section 19, substituting renewal Rental Payments for purchase price. If Lessee fails to exercise any renewal or purchase option pursuant to Sections 19 and 20, and either (i) fails to notify Lessor of its intention to return the Equipment pursuant to Section 25 or (ii) fails to return the Equipment after such notification to Lessor, then the lease of such Equipment shall automatically be extended on a month-to-month basis until terminated (upon notice by either party, given at least 90 days prior to the end of the month in which the termination is to be effective) at rent equal to the Rental Payment applicable during the Rental Term, and all other obligations of Lessee under this Lease shall continue during such month-to-month rental.

**20. REPRESENTATIONS AND WARRANTIES OF LESSEE:** Lessee represents and warrants to Lessor that as of

the date of each Schedule and Acceptance Date:

Lessee has adequate power and capacity to enter into the Master Lease, the Schedule, the Certificate of

Acceptance and any other documents required to be delivered in connection with this Lease (collectively, the “Documents”);

Lessee’s execution, delivery and performance of the Documents have been duly authorized by all necessary corporate or

partnership action and constitute valid, legal and valid binding agreements, enforceable in accordance with their terms; there are

no proceedings presently pending or threatened against Lessee which will impair its ability to perform under the Lease; and all information supplied to Lessor by Lessee is complete, accurate and not materially misleading.

Lessee’s entering into the Lease and leasing the Equipment and financing any Fees hereunder does not and will

not: (i) violate any judgment, order or law applicable to Lessee, or any other agreement entered into by Lessee with its creditors

or any other party, or Lessee’s certificate of incorporation or bylaws (if Lessee is a corporation) or Lessee’s partnership

agreement or certificate of partnership (if Lessee is a partnership); or (ii) result in the creation of any lien, security interest or other encumbrance upon the Equipment or this Lease.

Lessee represents that (a) the Government Contract constitutes a legal, valid and binding obligation of Lessee,

enforceable in accordance with its own terms and (b) the Term of each Schedule does not exceed the total period of

performance of the Government Contract, if all option periods are exercised.

All financial data of Lessee, or of any consolidate group of companies of which Lessee is a member (“Lessee

Group”), delivered to Lessor now or in the future have been and will be prepared in accordance with generally accepted

accounting principles applied on a consistent basis with prior periods and fairly present the financial position and results from operations of Lessee, or of the Lessee Group, as of the stated date and period(s). Since the date of the most recently delivered financial data, there has been no material adverse change in the financial or operating condition of Lessee or of the Lessee Group.

If Lessee is a corporation or partnership, it is and will be validly existing and in good standing under the laws of the

state of its incorporation or formation; and Lessee is duly qualified to do business as a foreign corporation and is in good

standing in each jurisdiction in which the character of its properties or the nature of its business or the performance of its

obligations under this Lease requires such qualification; the persons signing the Documents are acting with the full authority of its board of directors or partners (if Lessee is a partnership) and hold the offices indicated below their signatures, which are genuine.

The Equipment and Software shall only be used in Lessee’s trade or business, in accordance with applicable law.

Lessee has not and will not take any action or maintain any position inconsistent with treating this Lease as creating a valid leasehold interest in the Equipment.

**21. ASSIGNMENT BY LESSEE:** WITHOUT LESSOR’S PRIOR WRITTEN CONSENT, LESSEE MAY NOT, BY

OPERATION OF LAW OR OTHERWISE, (A) ASSIGN, TRANSFER, PLEDGE, ENCUMBER OR OTHERWISE DISPOSE OF THIS LEASE OR THE EQUIPMENT OR ANY INTEREST THEREIN, OR (B) SUBLEASE OR LEND THE EQUIPMENT OR PERMIT THE EQUIPMENT TO BE USED BY ANYONE OTHER THAN LESSEE OR LESSEE’S EMPLOYEES; provided, however, that Lessee may allow third parties under Lessee’s supervision to use the Equipment so long as Lessee retains uninterrupted possession and control of the Equipment.

**22. ASSIGNMENT BY LESSOR:** LESSOR MAY ASSIGN, SELL OR ENCUMBER ALL OR ANY PART OF THIS

LEASE, THE EQUIPMENT AND THE RENTAL PAYMENTS AND OTHER AMOUNTS DUE HEREUNDER. In the event of any such assignment and written direction by Lessor to Lessee, Lessee shall pay directly to any such assignee without abatement, deduction or set-off all Rental Payments and other sums under this Lease. ANY SUCH ASSIGNEE SHALL HAVE ALL OF THE RIGHTS, BUT NONE OF THE OBLIGATIONS, OF LESSOR UNDER THIS LEASE, AND LESSEE SHALL NOT ASSERT AGAINST ANY SUCH ASSIGNEE ANY DEFENSE, COUNTERCLAIMS OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR. Any such assignment (a) shall be subject to Lessee’s right to possess and use the Equipment pursuant to Section 10, and (b) shall not release any of Lessor’s obligations hereunder or any claim which Lessee has against Lessor.

**23. RETURN OF EQUIPMENT:** At least 90 days prior to expiration of the Rental Term or any extension or renewal

thereof, Lessee shall (unless Lessee is exercising a purchase option under Section 19 or renewing the Lease under Section 20) give Lessor written notice of its intent to return the Equipment. Upon any notice to return Equipment, Lessee at its own risk and expense, (i) will immediately have the Equipment deinstalled and returned to Lessor in the same condition as when delivered, ordinary wear and tear excepted, to such location as Lessor shall designate; and (ii) will, on request from Lessor, obtain from the Supplier (or other maintenance service provider previously approved by Lessor) a certificate stating that the Equipment qualifies for full maintenance service at the standard rates and terms then in effect.

**24. DEFAULT:** Lessee shall be in default under this Lease upon the happening of any of the following events or

conditions (each, an “Event of Default”): (i) Lessee fails to make any Rental Payment or any other payment when due under this Lease and such failure continues for 10 days after written notice thereof by Lessor; or (ii) Lessee fails to maintain in effect any insurance required under this Lease; or (iii) Lessee fails to perform or breaches any other term, provision, representation or warranty contained in this Lease, and such failure continues for 30 days after Lessor’s written notice; or (iv) the attempted sale, lease, rejection, revocation of acceptance or encumbrance of this Lease, any Equipment, or any attachments thereto; or (v) the dissolution, termination of existence or discontinuance of Lessee’s business, or Lessee’s insolvency, business failure, or failure to pay debts as they mature; or (vi) the appointment of a receiver or assignment for the benefit of creditors of any substantial part of Lessee’s property, or the commencement of any proceedings under any bankruptcy, insolvency, reorganization or arrangement laws by or against Lessee, and if commenced against Lessee, such proceedings are not vacated within 60 days; or (vii) the sale of all or substantially all of Lessee’s assets, (viii) upon the occurrence of a default or an event of default under the Government Contract; or (ix) any of the foregoing events or conditions occur with respect to any guarantor of Lessee’s obligations hereunder; or (x) any of the foregoing events or conditions occur with respect to any other lease, conditional sale or installment purchase agreement between Lessee and Lessor.

Upon the occurrence of any Event of Default and at any time thereafter, Lessor may, without any further notice, do

any one or more of the following in its sole discretion: (i) terminate this Lease; (ii) personally, or by its agents, take immediate possession from Lessee of any or all items of Equipment wherever found and for this purpose enter upon Lessee’s premises where any item of Equipment is located and remove such items of Equipment with due process of law, and free from all claims by Lessee, including but not limited to claims for storage fees or for any data or information remaining in or accompanying any such repossessed Equipment; (iii) declare the Stipulated Loss Value (as defined in Section 12b), together with all other sums then due and payable hereunder (including, but not limited to, accrued and unpaid Rental Payments, late charges, indemnity amounts, legal fees and costs), to be immediately due and payable without any presentment, demand or protest (all of which are hereby expressly waived by Lessee) as liquidated damages for loss of a bargain and not as a penalty and in lieu of further Rental Payments; (iv) cause Lessee to promptly return any or all items of Equipment to Lessor pursuant to Section 25; (v) sell any or all of the Equipment at public or private sale, with or without notice to Lessee or advertisement, or otherwise dispose of, hold, use, operate, lease to others or keep idle such Equipment, all free and clear of any rights of Lessee and without any duty to account to Lessee for such action or inaction or for any proceeds with respect thereto; (vi) by written notice to any escrow agent who is holding proceeds of a Schedule, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Schedule; and (vii) exercise any other right or remedy which may be available to it under Article 2A of the Colorado Commercial Code or other applicable law including the right to recover damages for the breach hereof. The parties acknowledge that the Stipulated Loss Value under this Lease (plus all other sums then due and payable hereunder) reasonably reflects Lessor’s anticipated loss in an Event of Default under this Lease.

Lessee shall be liable for, and reimburse Lessor for, all reasonable and necessary legal fees and all commercially

reasonable costs and expenses incurred by Lessor as a result of an Event of Default hereunder, or the exercise of Lessor’s remedies, including placing any Equipment in the condition required by Section 25 hereof.

The proceeds of sale, lease or other disposition of the Equipment shall be applied, upon receipt, as follows: (i) to

the extent not previously paid by Lessee, to pay Lessor the Stipulated Value and all other sums, including any accrued Rental Payments and late charges, indemnity amounts, legal fees and costs due hereunder; then (ii) to reimburse Lessee any sums previously paid by Lessee to Lessor as liquidated damages; and (iii) surplus shall be retained by Lessor, except that any surplus from Equipment under a Schedule with a $1.00 purchase option shall be paid to Lessee. In the event such proceeds are less than the sum of all amounts due under (i), Lessee shall promptly pay such deficiency to Lessor.

No remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity.

**25. SURVIVAL/SEVERABILITY:** All of Lessee’s indemnities and assumptions of liability in Sections 9, 15 and 18

shall continue in full force and effect notwithstanding the expiration or termination of any Rental Term. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions hereof. Such remaining provisions shall be construed to effectuate the intent of the parties as set forth herein. To the extent permitted by applicable law, Lessee hereby waives any provision of law which prohibits or renders unenforceable any provision hereof in any respect.

**26. NOTICE; PARTIES:** All notices or demands required or permitted hereunder shall be given to the parties in

writing and by personal delivery, certified mail, facsimile or overnight courier service at the address herein set forth or to such other address as the parties may hereafter substitute by written notice given in the manner prescribed in this Section. Such notices or demands shall be deemed given upon receipt in the case of personal delivery and upon mailing or transmission or pickup in the case of mail, facsimile or overnight courier service, respectively. The provisions of this Lease shall be binding upon, and (subject to the limitations of Section 23 hereof) shall inure to the benefit of the assigns, representatives and successors of Lessor and Lessee. If more than one party executes a Schedule as Lessee, the liability of each shall be joint and several.

**27. CONSTRUCTION; JURY TRIAL:**. The titles of the Sections of this Lease are for convenience only and shall not define or limit any of the terms or provisions hereof. LESSEE AND LESSOR WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION ARISING FROM THIS LEASE.

**28. FINANCING, SECURITY INTEREST:** In the event that this lease is deemed to constitute a secured

transaction disguised as a lease, Lessee grants to Lessor a first priority security interest in the Equipment and any additions, attachments, upgrades, accessions, repairs, modifications, replacements thereto and proceeds thereof, including insurance proceeds, to secure Lessee’s payment of the Rental Payments and all other payment obligations when due, and Lessee’s performance of all of the terms and conditions of this Lease.

If under applicable law any part of the Rental Payments are deemed or determined to be imputed interest, finance

charges or time-price differential (“Interest”), the parties agree that the Rental Payments shall be deemed to be level payments of principal and interest, with such Interest accruing on principal amounts outstanding from time to time. The rate of such Interest is not intended to exceed the maximum amount of Interest permitted by applicable law. If the Interest exceeds such maximum, then at Lessor’s option, if permitted by law, the Interest payable will be reduced to the legally permitted maximum amount of interest, and any excessive Interest will be used to reduce the principal amount of Lessee’s obligation or refunded.

**29. ARTICLE 2A WAIVERS:** In the event that Article 2A of the Uniform Commercial Code is adopted under

applicable state law and applies to this Lease, then Lessee, to the extent permitted by law, waives any and all rights and

remedies conferred upon a lessee by Sections 2A-508 through 2A-522 of such Article 2A, including, but not limited to, Lessee’s rights to: (i) cancel or repudiate this Lease; (ii) reject or revoke acceptance of the Equipment, Software or Services; (iii) claim, grant or permit a security interest in the Equipment in Lessee’s possession or control for any reason; (iv) deduct from Rental payments or other amounts due hereunder, all or any part of any claimed damages resulting from Lessor’s default, if any, under this Lease; (v) accept partial delivery of the Equipment; (vi) “cover” by making any purchase or lease of or contract to purchase or lease equipment in substitution for Equipment designated in this Lease; and (vii) obtain specific performance, replevin, detinue, sequestration, claim and delivery or the like for any Equipment identified to this Lease. To the extent permitted by applicable law, Lessee also hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use any Equipment in mitigation of Lessor’s damages or which may otherwise limit or modify any of Lessor’s rights or remedies.

**30. NO ACCORD AND SATISFACTION:** No payment by Lessee or receipt by Lessor of a lesser amount than the

Rental Payments specified in a Schedule shall be deemed to be other than on account of the Rental Payments, nor shall any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction.

Lessor may accept any such check or payment without prejudice to Lessor’s right to recover the balance of Rental Payments or any other amount then due and owing hereunder or to pursue any other remedy provided in this Lease.

**31. ENTIRE AGREEMENT, AMENDMENTS AND WAIVERS:** This Lease and the Certificate of Acceptance

executed by Lessor and Lessee constitute the entire agreement between Lessor and Lessee with respect to the Equipment, its lease, the Rental Payments and other amounts due hereunder, and the Software, Services, and Fees, and supersede all prior proposals, communications and agreements, both written and oral, between the parties. NO TERM OR PROVISION OF THIS LEASE OR ANY CERTIFICATE OF ACCEPTANCE MAY BE CHANGED, WAIVED, AMENDED OR TERMINATED EXCEPT BY A WRITTEN AGREEMENT SIGNED BY BOTH LESSOR AND LESSEE, except that Lessor may insert the serial numbers of any Equipment into the applicable Schedule.

Lessor’s failure at any time to require strict performance by Lessee of any provisions of this Lease or the Certificate of

Acceptance shall not waive or diminish Lessor’s right thereafter to demand strict performance. Waiver of any Event of Default shall not be a waiver of any other or further Event of Default.

LESSEE HEREBY ACKNOWLEDGES THAT IT HAS READ, RECEIVED, RETAINED A COPY OF, AND

UNDERSTANDS THIS LEASE, AND AGREES TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS.

**IN WITNESS WHEREOF**, Lessor and Lessee have each caused this Master Lease to be duly executed as of the date

first above written.

**LESSOR: LESSEE:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Lease Schedule No. [[SCHED. #]]**

**LESSOR:**

**LESSOR’S PRINCIPAL PLACE OF BUSINESS:**

**LESSEE:**

**LESSEE’S PRINCIPAL PLACE OF BUSINESS:**

**U.S.GOVERNMENT END USER:**

**GOVERNMENT CONTRACT NO.:**

**THIS LEASE SCHEDULE NO.** [[SCHED. #]] dated [[Start Date]] incorporates by reference the terms of the Master Equipment Lease Agreement dated [[Master Date]] (“Master Lease”) BETWEEN <<Lessor>> **LESSOR**, and <<Lessee>>, as **LESSEE**.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the above-referenced Master Lease.

Lessee’s execution of this Schedule shall obligate Lessee to lease the Equipment from Lessor and pay the Rental Payments and other amounts described under the term and conditions of the above-referenced Master Lease and this Schedule.

1. DESCRIPTION OF EQUIPMENT LEASED HEREUNDER AND/OR SOFTWARE AND SERVICES FOR WHICH FEES ARE FINANCED HEREUNDER: See Schedule A attached hereto and incorporated herein by this reference.

2. EQUIPMENT LOCATION:

3. RENTAL TERM:

4. RENTAL PAYMENTS:

5. LEASE TYPE:

6. END OF TERM PURCHASE OPTION:

[[**DOLLAR PURCHASE:** Lessee shall pay Lessor $(***enter proposed purchase amount at end of lease preferably a nominal amount commensurate with the anticipated value of the leased equipment at the end of the lease period***)

Upon payment in full by Lessee of all Payments payable to Lessor hereunder, Lessor shall release its interest in Equipment *ON AN "AS IS/WHERE IS/WHAT IS" BASIS, WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. LESSOR HEREBY SPECIFICALLY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY AND MAY INCLUDE THESE AND OTHER DISCLAIMERS IN ANY RELEASE DOCUMENTATION*]]

**[[FAIR MARKET VALUE:** Within the notice period set forth in the Lease, Lessee shall deliver to Lessor written notice choosing one of the following options, which choice must be for all but not less than all the Equipment; provided Lessee shall not be entitled to elect any of the options if a Default has occurred.

**END OF TERM OPTION 1:** purchase the Equipment for an amount (the “Market Price”) equal to its then FMV sale

price, plus applicable taxes. Upon receipt of the Market Price, Lessor will convey to Lessee all Lessor’s right, title and

interest in Equipment **ON AN “AS IS/WHERE IS/WHAT IS” BASIS, WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION OF EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. LESSOR HEREBY SPECIFICALLY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY AND MAY INCLUDE THESE AND OTHER DISCLAIMERS IN ANY SALE DOCUMENTATION.**

**END OF TERM OPTION 2:** renew this Lease on a month to month basis at the same rent payable at the expiration of

the initial Term.

**END OF TERM OPTION 3:** renew this Lease for not less than 12 consecutive months at the then FMV rent.

**END OF TERM OPTION 4:** return the Equipment to Lessor pursuant to, and in the condition required by, this Lease.

Lessee agrees that it will not list or report any Equipment for property tax purposes unless otherwise directed in

writing by Lessor. Upon receipt of any property tax bill pertaining to the Equipment from the appropriate taxing authority,

Lessor will pay such tax and invoice Lessee for the expense. Lessee will reimburse Lessor for such expense on the next

Rental Payment date. Lessee shall be responsible for claiming or obtaining any exemption from property taxes to which

Lessee may be entitled under applicable law, and for informing Lessor of any such exemption.]]

7. OTHER TERMS AND CONDITIONS:

Lessee represents and warrants that it is financing the equipment, software and services described on Schedule A (the

“Equipment”) for use in the Government Contract (or any successor thereto) and Lessor acknowledges this

representation. Therefore, Lessee shall be permitted, subject to the conditions contained in the Master Equipment

Lease Agreement, to terminate this Schedule when, and only when, the Government terminates the Government

Contract because of non-availability of funds for the next fiscal year and funds are not made available that are sufficient

to reimburse Lessee for its Rental Payment obligations under the Schedule or for functionally similar equipment or

product ("Non-Appropriation"). Lessee shall promptly provide Lessor with true copies of all documentation relating to

this non-appropriation.

8. List any Addenda or Amendments attached to and made a part of this schedule:

**LESSOR: LESSEE:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SCHEDULE A**

EQUIPMENT DESCRIPTION

Quantity Style Description

Serial No. \*

(if any)

**\*Lessee permits Lessor to insert serial number of Equipment when determined by Lessor.**

Attached to Lease Schedule Number [[SCHED. #]] under Master Equipment Lease Agreement Dated [[Master Date]].

**LESSOR: LESSEE:**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Certificate Of Acceptance**

**LESSOR:**

**LESSOR’S PRINCIPAL PLACE OF BUSINESS:**

**LESSEE:**

**LESSEE’S PRINCIPAL PLACE OF BUSINESS:**

**U.S.GOVERNMENT END USER:**

**GOVERNMENT CONTRACT NO.:**

**MASTER EQUIPMENT LEASE AGREEMENT DATED**. . . . . . . . . . . . . . . . . . **[[Master Date]]**

**LEASE SCHEDULE NUMBER** . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .**[[Sched. #]]**

**THE UNDERSIGNED ACKNOWLEDGES THAT:**

1. The Equipment and products described in the above-referenced Lease Schedule are delivered, installed, available

for use and are placed in service as of the Acceptance Date indicated below.

2. Such Equipment and products are in good operating condition and repair and are accepted as satisfactory in all

respects for the purpose of the above-referenced Master Lease Agreement.

3. The undersigned will commence payment in accordance with the provisions of the above-referenced Master Lease, beginning on the Acceptance Date noted below.

**Acceptance Date:** x \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Authorized Signature:** x \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name Typed or Printed:** x \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Title:** x \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**LESSEE’S SECRETARY'S CERTIFICATE**

As the secretary or an assistant secretary of <<LESSEE>>, a <<VendorState>> <<VendorEntityType>> (the

"LESSEE"), I hereby (a) deliver this certificate pursuant to that certain Master Equipment Lease Agreement (herein so called “Master Lease”) dated <<Master Date>> between <<LESSOR NAME>> and <<LESSEE>> (the "LESSEE"), and (b) certify to Lessor with the knowledge and intent that Lessor may rely fully upon the matters herein that the following matters are true and correct on the date hereof (terms defined in the Master Equipment Lease Agreement are used herein as therein defined, unless otherwise indicated):

Each of the following-named individuals is duly elected, qualified and acting officer of Seller who is

authorized to execute the Master Equipment Lease Agreement, the Lease Schedules and the other agreements and documents executed in connection herewith, and holds the office set forth opposite his name as of the date hereof, and the signature set forth opposite his name is his true and authentic signature:

*Name Title Specimen Signature*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN WITNESS WHEREOF, I have duly executed this certificate as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

**LESSEE:**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TITLE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_