

NASPO ValuePoint
PARTICIPATING ADDENDUM



OFFICE FURNITURE (2018-2023)
Led by the State of Utah

Master Agreement #: MA145

Contractor: **HERMAN MILLER INC.**

Participating Entity: **STATE OF OREGON BY AND THROUGH ITS
DEPARTMENT OF ADMINISTRATIVE SERVICES,
PROCUREMENT SERVICES (“PARTICIPATING
ENTITY”)**

Contractor

This State of Oregon Participating Addendum (“**Participating Addendum**”) establishes a price agreement between Contractor and Participating Entity pursuant to ORS 279B.140, including the provisions of that certain Master Agreement # MA145 (including all attachments), executed between the Contractor and the State of Utah, effective January 22, 2018 (“**Master Agreement**”) and as further defined in Section 1 of Exhibit 1 to the Participating Addendum, the terms and conditions of which are incorporated herein by reference (the Master Agreement together with this Participating Addendum are, collectively, the “**Oregon Agreement**”).

The term of this Participating Addendum is co-terminus with the NASPO ValuePoint Master Agreement # MA145.

Notwithstanding the foregoing, any amendments to Master Agreement agreed upon between the State of Utah and Contractor shall not automatically become a part of this Participating Addendum, instead, Participating Entity shall have an opportunity to review any and all such amendments and if acceptable to Participating Entity then Contractor and Participating Entity will negotiate a substantially similar amendment to this Participating Addendum. All capitalized terms in this Participating Addendum shall have the meaning set forth in the Master Agreement (including all attachments) unless otherwise defined in this Participating Addendum.

The goods and services offered under the Master Agreement that may be procured under this Participating Addendum are described in Section I.2, below. This Participating Addendum contains the additional terms and conditions specifically applicable to individual Contracts between Contractor and Purchasing Entities. In the event of a conflict between the terms and conditions of this Participating Addendum and the Master Agreement, the conflict will be resolved as set forth in Section II.2, below.

I. Participating Addendum Terms and Conditions:

1. Participation:

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This Participating Addendum may be used by all agencies, boards, and commissions of the State of Oregon, as defined in Section 1 of the Oregon Terms (collectively, “**State Agencies**” and individually, a “**State Agency**”), and by State of Oregon institutions of higher education, political subdivisions, and other entities authorized to use statewide contracts in the State of Oregon including without limitation, members of the Oregon Cooperative Procurement Program (“**ORCPP**”). Each of the aforementioned is a (“**Purchasing Entity**”). Issues of interpretation and eligibility for participation as a Purchasing Entity are solely within the authority of the Participating Entity’s Chief Procurement Official..

2. **Scope:**

This Participating Addendum covers the Master Agreement # MA145 for Office Furniture (“**Goods**” or “**Products**”) and related design, installation and customer services (“**Services**”) led by the State of Utah for use by Purchasing Entities as authorized by the Participating State’s statutes to utilize price agreements solicited and entered into by other states with the prior approval of the Participating State’s Chief Procurement Official.

Pursuant to this Participating Addendum, Contractor shall provide to Purchasing Entities, as requested by Purchasing Entities from time to time, the Goods and Services specifically identified in Section I.2 of this Participating Addendum.

2.1 No Exclusivity. This Participating Addendum is not exclusive. There may be one or more contractors who may provide similar goods and services to Purchasing Entities. If the Participating Entity has awarded more than one master agreement for Goods and Services, Purchasing Entities shall select a contractor from among those master agreements in accordance with the selection process set forth in the buyer’s guide provided to Purchasing Entities by the Contract Administrator.

2.1.1 The following Products and Services are available for purchase under this Participating Addendum portfolio:

Note: The term “wooden” when used to describe Goods includes wood, veneer and wood laminate.

Workspace Furniture:

The Workspace Furniture category includes three (3) categories of coordinating furniture. This category permits end users of the resulting contracts to have the option of selecting from a group of coordinating furniture for the office environment.

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Systems Furniture and Accessories: Systems furniture, including monolithic and frame and tile, is a generic term for panels, work-surfaces, shelves, and other items sold by a single manufacturer as a package for furnishing offices. Cubicles and the sea of cubicles are the items most often associated with systems furniture, but other open plan arrangements are included.

Desks/Tables and Accessories: A desk/table is a freestanding unit having a work surface that is supported by legs or pedestals, in some instances; the unit will have sit-to-stand capability, drawers, doors, or other storage elements. Free-standing desks, conference room tables, small office tables, side tables, and dining tables are included in this category.

Filing and Storage and Accessories: The filing and storage category includes but is not limited to bookcases, wardrobes, cabinets, Free-standing and mobile pedestals, and wall mounted shelving. This category does not include shelving units that are attached to system furniture cubicle walls.

Desks/Tables and Accessories:

A desk/table is a freestanding unit having a work surface that is supported by legs or pedestals, in some instances; the unit will have sit-to-stand capability, drawer(s), doors, or other storage elements. Free-standing desks, conference room tables, small office tables, side tables, and dining tables are included in this category. The term wooden is meant to include, wood, or wood veneer, or wood laminate.

Filing and Storage and Accessories:

The filing and storage category includes but is not limited to bookcases, wardrobes, cabinets, Free-standing and mobile pedestals, and wall mounted shelving. This category does not include shelving units that are attached to system furniture cubicle walls. The term wooden is meant to include wood, or veneer, or wood laminate.

Seating and Accessories:

The seating category includes both high back and standard executive chairs, conference room chairs, task/work chairs that may have multiple seat pan sizes and are either mesh back or fabric with arms or without and guest/side chairs that have both four point and star bases. This category also includes optional reception/lounge seating, dispatch chairs, stackable/foldable chairs, collaborative, and stationary and height adjustable stools.

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Service Categories

Design Services:

Design Services include but are not limited to space planning, installation plans, furniture migration strategies, reconfiguration of existing systems, inventory of existing furniture, assistance with furniture selection, interior office design, and computerized installation drawings.

Customer Service:

Includes but is not limited to, sales service, customer service, product information services, and warranty services. See Section 18 of the Master Agreement.

II. Master Agreement Terms and Conditions:

2.1 Not Exclusive; Selection Process:

2.1.1 This Participating Addendum is not exclusive. Participating Entity is free to enter into a Participating Addendum with one or more of the other awardees in the Office Furniture and Services solicitation as set forth in the RFP #RC17020 lead by the State of Utah.

If multiple Master Agreements are awarded under the above-referenced RFP, Participating Entity may elect to not enter into any additional Participating Addendum with the other Awardees following Participating Entity's award to the highest-ranked Proposer under the RFP. If the Participating Entity to not enter into a Participating Addendum with all of the Awardees, Participating Entity may enter into a Participating Addendum with the highest-ranked Proposer under the above-referenced RFP, and the number of the next highest-ranked Proposers, in descending order of rank, as Participating Entity deems in its best interest.

2.1.2 Purchasing Entities - Selection Process for State Agencies. From time to time, Purchasing Entities that are State Agencies may purchase Products and Services from contractors under master agreements or other contractors.

2.1.3 Purchasing Entities that are State Agencies shall use one of the following three selection processes to select the contractor for Goods and Services:

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1) Highest Ranked Proposer in RFP # RC17020: Purchasing Entity may issue purchase orders or contracts for Products or Services, or both, to the Awardee who received the highest total points in RFP #RC17020;

OR

2) Highest Ranked Proposer in Product Comparison: Purchasing Entity, on an annual basis (beginning upon the Effective Date of this Participating Addendum and then on each anniversary date thereafter) may make a selection to be effective for the entire contract year period, as follows:

(a) Purchasing Entity may create its own Products and Services list comprised of up to 100 most used Products and Services (“Market Basket”);

(b) Purchasing Entity may then define the criteria for, and assign a total possible point award amount, to the attributes most important to Purchasing Entity in the selection of a contractor for Products and Services, such as: price, functionality, accounting/invoicing issues, use, availability, past performance;

(c) Purchasing Entity shall request quotes for the Market Basket contents from each of the contractors for the upcoming contract year period;

(d) Purchasing Entity shall then evaluate and score the market basket from each contractor; and

(e) Purchasing Entity shall acquire the Products and Services from the proposer with the highest-ranking Market Basket.

OR

3) Cost Comparison: Purchasing Entity may conduct a Product –specific or Service-specific, or both, comparison for each required Good and Service, based upon price.

2.1.4 Purchasing Entity must document its selection process in its procurement file.

2.1.5 Contractors chosen in accordance with one of the above selection processes are final, per Purchasing Entity’s decision.

2.1.5.1 Orders: Any Order placed by a Purchasing Entity for a Product or Service, or both, available from this Participating Addendum shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

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Order of Precedence:

In the event of a conflict between the terms and conditions of this Participating Addendum and the Master Agreement, the following order of precedence applies:

- (a) This Participating Addendum, less its exhibits;
- (b) Exhibit No. 1 of the Participating Addendum (State of Oregon Specific Terms and Conditions);
- (c) Exhibit No. 2 of the Participating Addendum (Insurance);
- (d) Exhibit No. 3 of the Participating Addendum (Tax Certification);
- (e) Exhibit No 4. List of Herman Miller, Inc. Product Categories and Services;
- (f) The Master Agreement, including all attachments;
- (g) Any Shipping Label, Purchase Order, or any other documentation pursuant to which a Purchasing Entity purchases Contractor's Services or Goods, or both;
- (h) Exhibit No. 5 of the Participating Addendum (Price List by reference for Product & Service Categories);
- (i) Exhibit No. 6 of the Participating Addendum (Master Lease Agreement)
- (j) Exhibit 7 of the Participating Addendum (Volume Sales Report Template)

4 **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

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Contractor

Name:	Tom Doolittle
Address:	855 East Main Ave. Zeeland, MI 49464
Telephone:	616 654-7036
Fax:	
Email:	Tom_doolittle@hermanmiller.com

Participating Entity

Name:	State of Oregon
Address:	1225 Ferry St. SE., Salem, OR 97301
Telephone:	(503) 378-4731
Fax:	(503) 373-1626
Email:	Pam.johnson@oregon.gov

- 5 **PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT**
 These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes modify and supplement the Master Agreement terms and conditions.

- 6 **Master Lease Agreement:** Purchasing Entities may lease Goods from Contractor. If a State Agency desires to lease the Goods, the applicable lease agreement is included as Exhibit No. 6 to this Participating Addendum.

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- 7 **Subcontractors:** All contactors, dealers, and resellers authorized in the State of *Oregon*, as shown on Oregon's dedicated contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer participation must be in accordance with the terms and conditions set forth in the Master Agreement.
- 8 **Orders:** Any order placed by Participating Entity or Purchasing Entity for a Product or Service, or both, available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.
- 9 **Non-Discrimination in Employment:** Contractor certifies that Contractor has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material term of the MPA, to maintain the policy and practice in force during the entire MPA term
- 10 **Tax Compliance:**
- Contractor has complied with the tax laws of this State and the applicable tax laws of any political subdivision of this State. Contractor shall, throughout the duration of this Participating Addendum and any extensions, comply with all tax laws of this State and all applicable tax laws of any political subdivision of this State. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to Goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any violation of this Section 9 constitutes a material breach of this Participating Addendum and any Contract issued under this Participating Addendum. Further, any violation of Contractor's warranty set forth in Exhibit No. 3 also shall constitute a material breach of this Participating Addendum and any Contract issued under this Participating Addendum. Any

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violation shall entitle DAS PS or Authorized Purchaser to terminate this Participating Addendum or the applicable Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Participating Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Participating Addendum, a Contract, at law, or in equity, including but not limited to:

- Termination of this Addendum or the applicable Contract, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Authorized Purchaser's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods or Services or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and DAS PS or Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.


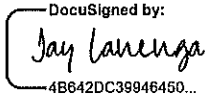
This Addendum will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Addendum or any Contract or (ii) exercising a right of setoff against Contractor's compensation under this Addendum or any Contract for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

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IN WITNESS, WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: State of Oregon	Contractor: Herman Miller Inc.
Signature: 	Signature: 
Name: Pam Johnson State of Oregon Procurement Services 1225 Ferry St. SE. Salem, Oregon 97301 (503) 378-4731	Name: Jay Lanenga
Title: Procurement Analyst <i>State Procurement Analyst</i>	Title: Director of Contracts
Date: <i>12 JUN 2018</i>	Date: June 8, 2018 10:32 AM EDT

[Additional signatures may be added if required by the Participating Entity]

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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	sberry@naspovaluepoint.org

***[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org
to support documentation of participation and posting in appropriate data bases.]***

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Exhibit No. 6

LEAF Capital Funding, LLC Master Lease Agreement

This Master Lease Agreement ("Lease") is dated as of _____, 20____, and is by and between **LEAF Capital Funding, LLC**, with offices located at 110 S. Poplar Street, Suite 101, Wilmington, DE 19801, its successors and assigns ("**Lessor**") and the state of Oregon ("**State**") acting by and through its _____ ("**Lessee**"). The parties hereto for good and valuable consideration and intending to be legally bound hereby agree as follows:

1. **LEASE.** This Lease establishes the general terms and conditions under which Lessor may lease Goods (as hereinafter defined) to Lessee. The terms hereof include the terms of Exhibit A, Master Lease Schedule, and Exhibit B, State and Local Government Addendum, which are attached and incorporated into this Lease. Items of equipment, licensed materials, project costs and maintenance must be as identified in this Lease and, together with all other property described herein and all substitutions, replacements, parts, additions and accessories hereto shall be collectively referred to as the "**Goods.**" Lessee hereby requests Lessor to purchase the Goods from the supplier(s) thereof (hereinafter called "**Vendor**") and to lease the Goods to Lessee on the terms and conditions contained herein.

2. **LEASE TERM AND PAYMENTS.** This Lease shall become effective on on the date it has been execed by Lessee and Lessor, and all required state of Oregon approvals have been obtained.. This Lease shall remain effective for five (5) years following the effective date ("**Lease Term**"). Payment amounts under this Lease ("**Lease Payments**") are based upon the estimated total cost of the Goods. . Each Lease Payment is due and payable on the _____ day of each month following the effective date. All payments made by or on behalf of Lessee hereunder shall be nonrefundable. **LESSEE'S OBLIGATION TO PAY SUCH LEASE PAYMENTS SHALL BE ABSOLUTE AND UNCONDITIONAL AND IS NOT SUBJECT TO ANY ABATEMENT, SET-OFF, CANCELLATION, TERMINATION, DEFENSE OR COUNTERCLAIM FOR ANY REASON WHATSOEVER.** All Lease Payments shall be made to Lessor at its address specified above (or such other place as Lessor directs in writing to Lessor) without notice or demand therefor. If the Lease Term is extended by the parties' written agreement, "Lease Term" is deemed to include all extensions thereof.

Whenever any Lease Payment is not made by Lessee within five (5) days of when due, Lessee agrees to pay to Lessor, not later than one month thereafter, an amount equal to the lesser of five percent (5%) of such delayed payment or the maximum amount permitted by applicable law. Such amount shall be payable in addition to all amounts payable by Lessee as a result of the exercise of any of the remedies herein provided. Lessee agrees to pay Lessor \$25.00 for each check by phone payment and \$35.00 for each returned check.

3. **DELIVERY AND ACCEPTANCE.** As between Lessee and Lessor, delivery and installation arrangements and costs are the sole responsibility of Lessee. Lessee agrees to accept the Goods when delivered and inspected to Lessee's satisfaction and to execute the **Delivery and Acceptance Certificate** supplied by Lessor as evidence thereof. Lessee agrees to hold Lessor harmless from specific performance of this Lease and from damages, if for any reason, the Vendor fails to deliver, or delays in delivery of, the Goods so ordered or if the Goods is unsatisfactory for any reason whatsoever. Lessee's execution of the Delivery and Acceptance Certificate shall conclusively establish that the Goods covered thereby is acceptable to Lessee for all purposes of this Lease.

4. **SELECTION OF GOODS AND DISCLAIMER OF WARRANTY.** If the Goods is not properly installed, does not operate as represented or warranted by the Vendor, or is unsatisfactory for any reason, Lessee shall make any claim on account thereof solely against the Vendor and shall, nevertheless, pay Lessor all Lease Payments under the Lease and shall not set off against Lessee's obligations any such claims as a defense, counterclaim, set-off or otherwise. So long as Lessee is not in breach or default of this Lease, Lessor hereby assigns to Lessee any rights which Lessor may have against the Vendor for breach of warranty or other representation respecting any item of the Goods. All proceeds of any warranty recovery by Lessee from the Vendor of any item of the Goods shall first be used to repair or replace the affected item. **NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN TO THE CONTRARY, LESSEE DOES NOT WAIVE ANY RIGHTS OR REMEDIES IT MAY HAVE AGAINST THE VENDOR OF THE GOODS.**

Lessee has selected both the Goods and the Vendor from whom Lessor covenants to purchase the Goods at Lessee's request. **LESSEE ACKNOWLEDGES THAT LESSOR HAS NO EXPERTISE OR SPECIAL FAMILIARITY ABOUT OR WITH RESPECT TO THE GOODS. LESSEE AGREES THAT THE GOODS IS LEASED "AS-IS" AND IS OF A SIZE, DESIGN AND CAPACITY SELECTED BY LESSEE AND THAT LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR LESSEE'S PURPOSES, AND THAT LESSOR HAS MADE NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE SUITABILITY OR DURABILITY OF SAID GOODS FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT THERETO, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LESSOR FURTHER DISCLAIMS ANY LIABILITY**

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FOR LOSS, DAMAGE OR INJURY TO LESSEE OR THIRD PARTIES AS A RESULT OF ANY DEFECTS, LATENT OR OTHERWISE, IN THE GOODS WHETHER ARISING FROM THE APPLICATION OF THE LAWS OF STRICT LIABILITY OR OTHERWISE.

LESSEE ACKNOWLEDGES THAT NEITHER THE VENDOR NOR ANY SALESPERSON, EMPLOYEE, REPRESENTATIVE OR AGENT OF THE VENDOR IS AN AGENT OR REPRESENTATIVE OF LESSOR, AND THAT NONE OF THE ABOVE IS AUTHORIZED TO WAIVE OR ALTER ANY TERM, PROVISION OR CONDITION OF THIS LEASE, OR MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THIS LEASE OR THE GOODS LEASED HEREUNDER. REGARDLESS OF CAUSE, LESSEE WILL NOT ASSERT ANY CLAIM WHATSOEVER AGAINST LESSOR FOR LOSS OF ANTICIPATORY PROFITS OR ANY OTHER INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, NOR SHALL LESSOR BE RESPONSIBLE FOR ANY DAMAGES OR COSTS WHICH MAY BE ASSESSED AGAINST LESSEE IN ANY ACTION FOR INFRINGEMENT OF ANY PATENT, COPYRIGHT OR INTELLECTUAL PROPERTY RIGHTS. LESSOR MAKES NO WARRANTY AS TO THE TREATMENT OF THIS LEASE FOR TAX OR ACCOUNTING PURPOSES.

5. **TITLE, PERSONAL PROPERTY AND LOCATION.** The Goods is, and shall at all times be and remain the sole and exclusive property of Lessor. Notwithstanding any trade-in or down payment made by Lessee or on its behalf with respect to the Goods, Lessee shall have no right, title or interest therein or thereto, except as to the use thereof subject to the terms and conditions of the related Lease. Notwithstanding anything to the contrary in this Lease, this Lease does not grant any right, title or interest in or to that portion of any Goods constituting or containing software or operation manuals, plans, specifications and documentation related thereto (collectively, "Licensed Materials"). Any rights that Lessee may have with respect to Licensed Materials shall arise only pursuant to license agreements between Lessee and the licensor(s) of such Licensed Materials (collectively, the "Licensors") which license agreements (the "Licenses") may be contained within the packaging associated with the Goods. All title to and ownership of the Licensed Materials (together with all rights in patents, copyrights, trade secrets and other intellectual property rights applicable thereto) are and shall remain in the Licensors during and after the term of the applicable Lease.

Lessee will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Goods or Lessor's interest thereto, except such liens as may arise through the independent acts or omissions of the Lessor. Lessee, at its own expense, will promptly pay, satisfy or otherwise take such actions as may be necessary to keep the Goods free and clear of any and all such liens. The Goods is, and at all times shall remain, personal property notwithstanding that the Goods or any item thereof may now be, or hereafter become, in any manner affixed or attached to, or imbedded in, or permanently resting upon real property or any improvement thereof or attached in any manner to what is permanent. If requested by Lessor prior to or at any time during the Lease term, Lessee will obtain and deliver to Lessor waivers of interest or liens in recordable form, satisfactory to Lessor, from all persons claiming any interest in the real property on which an item of the Goods is installed or located.

The Goods shall be kept at the address designated in this Lease and shall not be removed therefrom without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

6. **USE; MAINTENANCE AND INSPECTION.** Lessee shall use the Goods solely in the conduct of its business and in a careful and proper manner consistent with the requirements of all applicable insurance policies and shall permit only qualified personnel to operate the Goods. Lessee will not modify the Goods in any way without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee shall not attach or incorporate the Goods or Licensed Materials to or in any other item of equipment or software in such a manner that the Goods or Licensed Materials becomes or may be deemed to have become an accession. If any parts or accessories forming part of the Goods become worn out, lost, destroyed, damaged beyond repair or otherwise permanently rendered unfit for use, Lessee, at its own expense, shall within a reasonable time cause such parts or accessories to be replaced by replacement parts or accessories which are free and clear of all liens, encumbrances or rights of others and have a utility at least equal to the parts or accessories replaced. All equipment, accessories, upgrades, parts and replacements which are added to or become attached to the Goods, which are essential to the operation of the Goods or which cannot be detached from the Goods without materially interfering with the operation of the Goods or adversely affecting the value and utility which the Goods would have had without the addition thereof, shall immediately become the property of Lessor, and shall be deemed incorporated in the Goods and subject to the terms of this Lease as if originally leased hereunder. Lessee shall not make any material alterations to the Goods without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Upon reasonable advance notice, Lessor shall have the right to inspect the Goods and all maintenance records with respect thereto, if any, at any reasonable time during Lessee's normal business hours.

At its own expense, Lessee will cause the Goods to be kept, used and maintained as recommended by the Vendor and Vendor's maintenance manuals and plans by competent and duly qualified personnel in accordance with applicable governmental regulations, if any, and in as good operating condition as when delivered to Lessee hereunder, ordinary wear and tear resulting from proper use alone excepted. In the event the Lease Payments include the cost of maintenance and/or service being provided by Vendor, Lessee acknowledges that Lessor is not responsible for providing any required maintenance or service for the Goods. Lessee shall make all claims for service and maintenance solely to the Vendor and Lessee's obligation to make all required Lease Payments shall remain unconditional.

7. **ASSIGNMENT.** LESSEE MAY NOT ASSIGN THIS LEASE OR THE RIGHTS HEREUNDER, NOR SHALL THE LESSEE SUBLEASE OR LEND THE GOODS OR PERMIT IT TO BE USED BY ANYONE OTHER THAN LESSEE'S EMPLOYEES WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD. Lessor may at any time assign all or part of any interest in this Lease and in each item of the Goods and monies to become due to Lessor hereunder; and, Lessor may grant security interests in the Goods, subject to the Lessee's rights therein. In such events, all the provisions of this Lease for the benefit of Lessor shall inure to the benefit of and be exercised by or on behalf of such assignee or transferee (an "Assignee"), but Lessor, and not the Assignee, shall remain liable for or be required to perform all of Lessor's obligations to Lessee. The Lessor may direct that all Lease Payments due and to become due under this Lease

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and assigned by Lessor shall be paid directly to Assignee, upon notice of such assignment to Lessee. The right of the Assignee to the payment of the assigned Lease Payments, the performance of all Lessee's obligations and to exercise any other of Lessor's rights hereunder shall not be subject to any defense, counterclaim or set-off which the Lessee may have or assert against the Lessor, and the Lessee hereby agrees that it will not assert any such defenses, set-offs, counterclaims and claims against the Assignee. No such assignment by Lessor shall relieve Lessor of its obligations or limit or otherwise affect Lessee's rights and obligations hereunder.

8. **RETURN OF GOODS.** At the expiration or earlier termination of this Lease, unless Lessee is permitted and exercises an option to purchase the Goods, the Lessee shall, at its sole expense, surrender each item of the Goods then subject to this Lease by providing the required notice to Lessor and delivering the item to the location designated by the Lessor within the continental United States. In the case of Licensed Materials, Lessee shall terminate its use of all Licensed Materials subject to this expiring or terminating Lease and assign to Lessor all of Lessee's rights to Licensed Materials that Lessee is authorized by Licensor to assign. Lessee shall arrange for the return shipment of the Goods, including the Licensed Materials, and its insurance in transit in accordance with the Lessor's instructions and at the Lessee's sole expense.

When an item of the Licensed Materials or Goods is surrendered to the Lessor it shall be in the condition and repair required to be maintained under this Lease and as required by any asset specific return provisions in this Lease. It will also be free of all evidence of advertising or insignia placed on it by the Lessee, meet all legal and regulatory requirements and be free of all liens. If Lessor and Lessee reasonably determine that an item of Licensed Materials or Goods, once it is returned, is not in the condition required hereby, Lessor may cause the repair, service, upgrade, modification or overhaul of the item of Licensed Materials or Goods to achieve such condition and upon demand, Lessee shall promptly reimburse Lessor for all amounts reasonably expended in connection with the foregoing that Lessee has pre-approved for expenditure. Upon request, Lessee shall certify in writing to Lessor that Lessee has ceased all use of the Licensed Materials.

Should Lessee notify Lessor of Lessee's election to return the Goods (or any portion thereof) at the end of the applicable Lease Term, but fail to do so or continue to use the Licensed Materials, Lessee shall continue to make Lease Payments to Lessor in the sum equal to the last Lease Payment and at the same intervals as set out in this Lease as a month-to-month lease term (or other term as designated by Lessor) until, with proper notice, the Goods is returned by Lessee. The acceptance of said Lease Payments by Lessor shall not waive Lessor's right to have the Goods promptly returned to Lessor pursuant to the provisions hereof, nor shall the acceptance of said Lease Payments be deemed to be an extension of the Lease Term.

9. **RISK OF LOSS.** Lessee hereby assumes and shall bear the entire risk of loss (including theft, requisition of use, erasure or inoperability) or destruction of or damage to the Goods from any and every cause whatsoever, whether or not insured, until the Goods is returned to Lessor. No such loss or damage shall relieve Lessee from any obligation under this Lease, which shall continue in full force and effect. In the event of damage to or loss or destruction of the Goods (or any item thereof), Lessee shall promptly notify Lessor in writing of such fact and shall, at the option of Lessor, (a) place the same in good repair, condition and working order, (b) replace the Goods with like equipment in good repair, condition and working order, acceptable to Lessor and transfer clear title to or a right to use, as appropriate, such replacement equipment to Lessor, whereupon such equipment shall be subject to this Lease and be deemed Goods for purposes hereof, or (c) on the due date for the next Lease Payment or upon the expiration of this Lease, whichever first occurs, pay to Lessor: all amounts then due but unpaid, plus the present value of the total of all unpaid Lease Payments for the entire remaining Lease Term plus the estimated fair market value of the Goods at the end of the originally scheduled Lease Term or the agreed upon purchase option price, if any, all of which shall be discounted to the date of payment by Lessee at an annual rate equal to the lesser of three percent (3%) or the rate then available for United States Treasury obligations having an average life equal to one half of the remaining Lease Term, plus all taxes, whereupon this Lease shall terminate with respect thereto (the "**Stipulated Loss Value**").

10. **INSURANCE.** Lessee shall obtain, maintain and keep the Goods insured, as a self-insured governmental entity, against all risks of loss or damage, in an amount not less than the replacement cost or the Stipulated Loss Value of the Goods, whichever is greater, without deductible and without co-insurance. Lessee shall maintain such insurance coverage for the entire Lease Term. Lessee shall pay all premiums for such insurance and shall deliver to Lessor certificates of insurance or other evidence satisfactory to Lessor evidencing the insurance required hereby. . Unless Lessee is in default, Lessee may with the prior written approval of Lessor, settle and adjust all such claims. If Lessee fails to maintain insurance satisfactory to Lessor or fails to timely provide proof of such insurance, Lessor has the option, but not the obligation, to secure insurance from a carrier of Lessor's choosing in such forms and amounts as Lessor deems reasonable to protect Lessor's interests. If Lessor secures insurance on the Goods, Lessor will not name Lessee as an insured party, Lessee's interests may not be fully protected, and Lessee will reimburse Lessor the premium(s) which must be no higher than the premium(s) Lessee would pay if Lessee obtained the required insurance. If an Event of Default has occurred and remains uncured at the time of loss, any insurance proceeds received will be applied, at Lessor's option, to repair or replace the Goods, or to pay Lessor the Stipulated Loss Value.

11. **INDEMNIFICATION.** Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (**ORS 30.260 through 30.300**), the State shall indemnify, **within the limits of and subject to the restrictions in the Tort Claims Act**, the Lessor against any liability for personal injury or damage to life or property arising from the State's negligent activity under this Lease provided, however, the State shall not be required to indemnify the Lessor for any such liability arising out of the wrongful acts of Lessor, its officers, employees or

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agents. Lessor shall give Lessee notice of any claim or liability hereby indemnified against. The obligations contained in this paragraph continue beyond the termination of this Lease if the liability occurred during the Lease Term.

12. **EVENTS OF DEFAULT.** The term “**Event of Default**” shall mean any one or more of the following: (a) Lessee or any guarantor of Lessee's obligations hereunder (“**Guarantor**”) shall fail to make any Lease Payment, or any other payment under any Lease, as it becomes due and such failure is not cured within ten (10) days; or (b) Lessee shall fail to perform or observe any of the covenants set forth in Section 10; or (c) Lessee or any Guarantor shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within 30 days after the date of notice thereof by Lessor to Lessee; or (d) Lessee or any Guarantor shall enter into any transaction of merger or consolidation in which it is not the surviving entity or sell, transfer or otherwise dispose of all or substantially all of its assets (“**Assets**”) unless the surviving entity or the entity acquiring such Assets assumes all the duties and obligations of Lessee hereunder (or Guarantor under the applicable guaranty) and which merger, consolidation, sale or transfer must be approved in writing by Lessor; or (e) (i) Lessee or any Guarantor shall commence any action (A) for relief under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (B) seeking appointment of a receiver, custodian or other similar official for it or for its Assets or making a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Lessee any action (A) of a nature referred to in clause (i) which results in the entry of an order for relief or any such other relief and remains undismissed or undischarged for a period of 30 days, or (B) seeking attachment, execution or similar process against its assets which results in the entry of an order for any such relief which shall not be vacated or discharged within 30 days from the entry thereof; or (iii) Lessee or any Guarantor shall generally not, or be unable to, pay its debts as they come due; or (f) Lessee or any Guarantor shall die or (if an entity) liquidate or dissolve itself or be liquidated or terminated; or (g) any representation or warranty made by Lessee or any Guarantor herein or otherwise furnished Lessor in connection with this Lease shall prove at any time to have been untrue or misleading in any material respect; or (h) Lessee or any Guarantor defaults on any indebtedness for borrowed money, lease, or installment sale obligation to Lessor or any affiliate of Lessor when any applicable grace period for such obligation has expired; or (i) Lessee or any Guarantor defaults on any indebtedness for borrowed money, lease, or installment sale obligation, in each case when any applicable grace period for such obligation has expired and the lender, lessor or creditor has commenced to exercise any remedy, but only if the indebtedness or other obligation is in an amount equal to or in excess of \$50,000; or (j) Lessor shall reasonably deem itself insecure as a result of a material adverse change in Lessee's or any Guarantor's financial condition, operations or ownership; or (k) Lessee shall default in its obligations under a License; or (l) any License is terminated without Lessor's prior written consent.

13. **REMEDIES.** Upon the occurrence of any Event of Default, Lessor may declare this Lease to be in default and exercise any one or more of the following remedies: (a) declare the entire unpaid balance of Lease Payments for the unexpired term of the Lease immediately due and payable, (b) sue for and recover the Stipulated Loss Value, as defined in Section 9 hereof, this Lease, but only to the extent permitted by law, (c) charge Lessee interest on all monies more than thirty days past due at the lesser of one and one half percent (1.5%) per month or the maximum rate permitted by law from the date of default until paid, (d) require Lessee to assemble all Goods at Lessee's expense, at a place reasonably designated by Lessor, (e) remove any physical obstructions for removal of the Goods from the place where the Goods is located and take possession of any or all items of Goods, without demand or notice, wherever same may be located, disconnecting and separating all such items of the Goods from any other property, and (f) exercise any remedies available to Lessor under the applicable Uniform Commercial Code or applicable law. Lessee hereby waives any and all damages occasioned by such retaking except such damages as may be caused by Lessor's gross negligence or willful misconduct. In the event Lessor seeks to take possession of any or all of the Goods (or Collateral as defined herein) by court process, Lessee further irrevocably waives to the fullest extent permitted by law any bonds and any surety or security relating thereto required by any statute, court rule or otherwise as an incident to such possession. Lessor may, at its option, use, ship, store or repair any or all items of the Goods so removed and shall sell, lease or otherwise dispose of any such Goods at a private or public sale. Lessee agrees that if notice of sale is required by law, 10 days' notice shall constitute reasonable notice. In the event Lessor disposes of the Goods, Lessor shall give Lessee credit for any sums received by Lessor from the sale or lease of the Goods after deduction of the expenses of sale or lease. Lessor and Lessee agree that the provisions of this paragraph represent an agreed measure of damages and are not to be deemed a forfeiture or penalty. Lessor reserves a right of set-off in all deposits and other amounts which are held by Lessor and in which Lessee has rights (collectively, “**Deposits**”) and Lessee authorizes Lessor to charge or setoff all sums owing by Lessee to Lessor against any and all such Deposits.

All remedies of Lessor hereunder are cumulative, are in addition to any other remedies provided for by law, and may, to the extent permitted by law, be exercised concurrently or separately. 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 shall operate as a waiver thereof or modify the terms of this Lease. A waiver of default shall not be a waiver of any other or subsequent default. Lessor's recovery hereunder shall in no event exceed the maximum recovery permitted by law. Notwithstanding any provision contained herein to the contrary, the termination or cancellation of this Lease shall not affect Lessee's duty to perform Lessee's obligations under such Lease that have accrued as of the date of termination or cancellation.

14. **LAWS, REGULATIONS AND TAXES.** Lessee shall comply with all laws, regulations and orders relating or pertaining to the Goods and this Lease. For administrative purposes, unless otherwise directed in writing by Lessor, and if Lessee is subject to property taxes by law, Lessee shall list itself as owner of the Goods for property tax purposes, pay all such property taxes when due and if requested promptly provide Lessor with evidence of such compliance. In the event Lessee does not pay any of the sums specified above, Lessor has the right, but not the obligation, to pay the same. If Lessor shall so pay any of the aforementioned, then Lessee shall pay Lessor on demand, as additional rent, the amount of the

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tax. The obligations contained in this Section shall continue beyond the Lease Term if the obligations occurred during the Lease Term. If Lessee is tax exempt, it agrees to furnish Lessor with evidence of its exemption.

15. **FURTHER ASSURANCES, UCC FILINGS.** Lessee shall execute and deliver to Lessor upon Lessor's request such additional documents, instruments and assurances as Lessor deems necessary (a) to acknowledge and confirm, for the benefit of Lessor or any Assignee, all of the terms and conditions of all or any part of this Lease and Lessor's or Assignee's rights with respect thereto, and Lessee's compliance with all of the terms and provisions thereof and (b) to preserve, protect and perfect Lessor's or Assignee's right, title or interest in any Goods and Collateral, including, without limitation, such Uniform Commercial Code ("UCC") financing statements or amendments, control agreements, corporate resolutions, certificates of compliance, notices of assignment or transfers of interests, and restatements and reaffirmations of Lessee's obligations and its representations and warranties with respect thereto as of the dates requested by Lessor from time to time. Lessee hereby irrevocably authorizes Lessor to file and record UCC financing statements, amendments thereto and other lien recordation documents with respect to the Goods and Lessee agrees to pay or reimburse Lessor for any lien searches, filing, recording or stamp fees or taxes arising from or relating to any such filings that have been pre-approved by Lessee. Lessee hereby covenants and agrees that it shall not file any corrective or termination statement with respect to any UCC financing statements recorded by or for the benefit of Lessor with respect to the Goods without Lessor's prior written consent. Lessee agrees to pay Lessor a documentation fee of \$250.00, which amount shall be payable as invoiced, to cover Lessor's expense in processing this Lease and perfecting Lessor's interest in the Goods.

It is the intent of the parties that this Lease is a true lease, and the filing of a financing statement under the UCC or other applicable law shall not be construed as evidence that any security interest was intended to be created, but only to give public notice of Lessor's ownership of the Goods. To secure the payment and performance in full of all of Lessee's obligations under this Lease, Lessee hereby grants to Lessor a security interest in all Goods and all parts, accessories, accessions and attachments thereto, and all replacements, substitutions and exchanges (including trade-ins) for such Goods (the "Collateral").

16. **LESSEE REPRESENTATIONS AND WARRANTIES.** Lessee hereby represents, warrants and covenants to Lessor the following with respect to this Lease as of the Lease effective date: (a) Lessee is a governmental entity with adequate power and capacity to enter into this Lease, all documents related to the purchase of the Goods and any other documents required to be delivered in connection with this Lease (hereinafter "Documents") and is duly qualified to do business wherever necessary to carry on its present business, including all jurisdictions where the Goods is to be located, and Lessee will not change its form or jurisdiction of organization without the prior written consent of Lessor, such consent not to be unreasonably withheld; (b) the Documents have been duly authorized, executed and delivered by Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms, except as may be limited under applicable bankruptcy and insolvency laws; and (c) Lessee: (i) is not an individual, entity or organization identified on any Office of Foreign Assets Control ("OFAC") "watch list", including, without limitation, OFAC's list of Specially Designated Nationals and Blocked Persons, or any Federal Bureau of Investigation "watch list" or Bureau of Industry and Security list of unverified persons or denied persons, and it is not an affiliation of any kind with such an individual, entity or organization; (ii) does not have a shell bank or offshore bank; and (iii) is not a Person or entity resident in or whose funds are transferred from or through or has operations in, a jurisdiction identified as non-cooperative by the Financial Action Task Force or sanctioned by OFAC. Lessee hereby warrants and represents that the Goods will be used for business purposes, and not for personal, family or household purposes. Lessee acknowledges that Lessor has relied upon these representations in entering into this Agreement and each Lease.

17. **NOTICES.** Written notices to be given hereunder shall be deemed to have been given when delivered personally or deposited in the United States mails or nationally recognized delivery service, postage prepaid, addressed to such party at its address set forth above or at such other address as such party may have subsequently provided in writing. **Lessee agrees that all communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt or as "payment in full" or containing any restrictive endorsement are to be sent to Lessor's address set forth above, attention General Counsel, or at such other address as Lessor may have subsequently provided in writing.**

18. **SUPPLIER'S CONTRACT AND LESSEE'S WAIVERS.** Lessor and Lessee agree that this Lease is a "Finance Lease" as that term is defined in Article 2A of the UCC. Lessee acknowledges that Lessor has apprised Lessee of the identity of the Goods supplier. Lessor hereby notifies Lessee that Lessee may have rights pursuant to the contract with the supplier and the Lessee may contact the supplier for a description of any rights or warranties that Lessee may have under such contract.

19. **FINANCIAL STATEMENTS AND CREDIT REPORTS.** Subject to the Oregon Public Records Law, ORS 192.410 through 192.505, Lessee agrees to deliver to Lessor at any time or times hereafter such information or documents as Lessor may request.

20. **CHOICE OF LAW.** This shall be deemed to have been made in the State of Oregon and, except for local filing requirements and laws relating to conflict of laws, shall be governed by and construed in accordance with the laws of the State of Oregon. Lessor hereby consents to and agrees

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that personal jurisdiction over Lessor and subject matter jurisdiction over the Goods shall be with the state or federal courts in Oregon with respect to any provision of this Lease.

21. ENTIRE AGREEMENT, NON-WAIVER AND SEVERABILITY. This Leases contain the entire agreement and understanding between Lessee and Lessor relating to the subject matter of this Lease. No agreements or understandings shall be binding on the parties hereto unless set forth in writing and signed by the parties. Any provision of this Lease, which for any reason may be held unenforceable in any one jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Lease, and any such unenforceability in any one jurisdiction shall not render such provision unenforceable in any other jurisdiction. Any signature, execution and delivery of any document or instrument, including any Lease, may be satisfied, in Lessor's sole discretion and to the extent permitted by the UCC, by authentication of such document or instrument as a record within the meaning of Article 9 of the UCC, including the acceptance of and reliance upon facsimile and other electronically transmitted documents and signatures. A photocopy, printed electronic image or facsimile of this Lease shall be treated as an original document and proof of the agreement between the parties.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their authorized representatives as of the date first above written.

LESSEE: _____

By: _____

Print Name: _____

Title: _____

E-mail Address: _____

Date: _____

LEAF CAPITAL FUNDING, LLC

By: _____

Print Name: _____

Title: _____

Date: _____

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Exhibit A to Lease Agreement

This Master Lease Schedule is by and between **LEAF Capital Funding, LLC** ("**Lessor**") and the state of Oregon acting by and through its Department of Administrative Services ("**Lessee**") for the benefit of the State of Oregon acting by and through its Department of Environmental Quality is a part of the Lease Agreement between Lessor and Lessee ("**Lease**"). Pursuant to the Lease, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following Equipment for the Lease Term and on terms and conditions set forth herein..

1. GOODS DESCRIPTION: (see Attachment A)

GOODS INSTALLATION LOCATION: BILLING ADDRESS (if other than Equipment location)

2. LEASE PAYMENTS:

(a) Base Term Rent consists of the following monthly payments:

NUMBER	AMOUNT	TAXES	TOTAL
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$

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Lessee shall pay Lessor an amount equal to:

(a) Advance Lease Payment**: \$ _____

(b) One time Documentation Fee: \$ _____

Total due: \$ _____

** The Advance Payment shall be applied to Lessee's first Lease Payment, with any balance to be applied at the end of the Base Lease Term or any Extended Term.

(b) Interim Rent is due and payable in full on the date specified in Lessor's invoice(s) therefor and shall be computed by dividing one payment of Base Term Rent by thirty (30) and multiplying the result by the number of days from and including the Commencement Date to the day preceding the Base Term Commencement Date.

3. LEASE END OPTIONS:

Provided no Event of Default shall have occurred and remain uncured, Lessee may upon the expiration of the Lease Term exercise the selected option and pay the corresponding "Cash Price" with respect to not less than all items of Equipment leased hereunder. (Check only one. Fair Market Value will be selected unless another option is indicated.)

Purchase the Equipment for a Cash Price equal to the Equipment's then Fair Market Value, plus any and all applicable taxes. "Fair Market Value" shall mean an amount which would be obtained in an arm's-length transaction between an informed and willing buyer/lessee (other than a dealer) and an informed and willing seller/lessor under no compulsion to sell or lease (assuming for this purpose that the Equipment shall have been maintained in accordance with this Lease) and will be determined by agreement between Lessor and Lessee.

Purchase the Equipment for a Cash Price equal to \$1.00, plus any and all applicable taxes.

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Purchase the Equipment for a Cash Price equal to ___% of Equipment cost, plus any and all applicable taxes.

Lessee agrees to provide Lessor with at least 90 days written notice prior to the expiration of the Lease Term of Lessee's decision to either (i) return the Equipment or (ii) purchase the Equipment pursuant to the selection indicated above. If Lessee elects to return the Equipment, then prior to the return of the Equipment, Lessor shall be entitled to expose the Equipment for resale or lease at the Lessee's premises during Lessee's business hours (so long as such exposure does not unreasonably interfere with Lessee's business operations).

If by proper notice Lessee elects to purchase the Equipment and upon receipt by Lessor of the Cash Price and all other sums due hereunder, Lessor shall convey all of Lessor's right, title and interest in and to the Equipment to Lessee free of liens and encumbrances created by Lessor, but otherwise on an AS-IS, WHERE-IS basis and without representation or warranty and cause Licensors to permit Lessee to continue to use the Licensed Materials in accordance with the applicable License Agreement.

4. ADDITIONAL PROVISIONS: (None)