

- all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Q. Public Disclosure

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

No public disclosures or news releases pertaining to this contract shall be made by Vendor without prior written approval of DIR.

R. Product and/or Services Substitutions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Substitutions are not permitted without the written permission of DIR or Customer.

S. Secure Erasure of Hard Disk Products and/or Services

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with 1 TAC 202.

T. Deceptive Trade Practices; Unfair Business Practices

1) Vendor represents and warrants that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

2) Vendor certifies that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

U. Drug Free Workplace Policy

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

V. Accessibility of Public Information

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Vendor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

2) Each State government entity should supplement the provision set forth in Subsection 1, above, with the additional terms agreed upon by the parties regarding the specific format by which the Vendor is required to make the information accessible by the public.

W. Vendor Reporting Requirements

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.

11. Contract Enforcement

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED TO A, B2, 5-7

A. Enforcement of Contract and Dispute Resolution

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

1) Vendor and DIR agree to the following: (i) a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision, (ii) for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used, and (iii) actions or proceedings arising from the Contract shall be heard in a state court of competent jurisdiction in Travis County, Texas.

2) Disputes arising between a Customer and the Vendor shall be resolved in accordance with the dispute resolution process of the Customer that is not inconsistent with subparagraph A.1 above. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

B. Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED FOR 2, 5-7

1) Termination for Non-Appropriation

a) Termination for Non-Appropriation by Customer

Customer may terminate Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiler will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments

ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

b) Termination for Non-Appropriation by DIR

DIR may terminate Contract if funds sufficient to pay its obligations under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

2) Absolute Right

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

3) Termination for Convenience

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order or other contractual document or relationship by giving the other party thirty (30) calendar days written notice.

4) Termination for Cause

a) Contract

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

b) Purchase Order

Customer or Order Fulfiller may terminate a Purchase Order or other contractual document or relationship upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order or other contractual document or relationship in accordance with Section 4.B.2 above, upon the following preconditions:

first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party ten (10) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Purchase Order. Customer may immediately suspend or terminate a Purchase Order without advance notice in the event Vendor fails to comply with confidentiality, privacy, security requirements, environmental or safety laws or regulations, if such non-compliance relates or may relate to vendor provision of goods or services to the Customer.

5) Immediate Termination or Suspension

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

DIR may immediately suspend or terminate this Contract without advance notice if DIR receives notice or knowledge of potentially criminal violations by Vendor or Order Fulfiller (whether or not such potential violations directly impact the provision of goods or services under this Contract). In such case, the Vendor or Order Fulfiller may be held ineligible to receive further business or payment but may be responsible for winding down or transition expenses incurred by Customer. DIR or Customer will use reasonable efforts to provide notice (to the extent allowed by law) to vendor within five (5) business days after imposing the suspension or termination. Vendor may provide a response and request an opportunity to present its position. DIR or Customer will review vendor presentation, but is under no obligation to provide formal response.

6) Customer Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event the Contract expires or is terminated for any reason, a Customer shall retain its rights under the Contract and the Purchase Order issued prior to the termination or expiration of the Contract. The Purchase Order survives the expiration or termination of the Contract for its then effective term.

7) Vendor or Order Fulfiller Rights Under Termination

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

In the event a Purchase Order expires or is terminated, a Customer shall pay: 1) all amounts due for products or services ordered prior to the effective termination date and ultimately accepted, and 2) any applicable early termination fees agreed to in such Purchase Order.

C. Force Majeure

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

12. Notification

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

A. Notices

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing.

B. Handling of Written Complaints

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, Texas 78701
(512) 475-4759, facsimile

13. Captions

Note: NO EXCEPTIONS OR REVISIONS WILL BE CONSIDERED

The captions contained in the Contract, Appendices, and its Exhibits are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

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Appendix F

MASTER OPERATING LEASE AGREEMENT

1. **Definitions.** Capitalized terms used in this Appendix and not otherwise defined will have the meanings set forth in the Contract.
 - (a) "Assets" refers to the Products as allowed within the Contract, including the Hardware, Software, and Related Services, which are specifically identified on the applicable Schedule. Assets includes any items associated with the foregoing, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, and documentation (technical and/or user manuals).
 - (b) "Contract" refers to DIR Contract number DIR-TSO-XXXX which this Appendix is incorporated.
 - (c) "Event of Default" is defined in Section 23, "Default."
 - (d) "Event of Loss" means an event of loss, theft, destruction or damage of any kind to any item of the Assets, including the loss, theft or taking by governmental action of any item of the Assets for a stated period extending beyond the Term of any Schedule.
 - (e) "Hardware" refers to the computer machinery and equipment specifically identified on the applicable Schedule.
 - (f) "Lease" means the financing transaction described in this MOLA.
 - (g) "Lessee" means any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003 (8-a), Texas Government Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code; any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.
 - (h) "Lessor" means the Vendor identified in the Contract.
 - (i) "MOLA" means this Master Operating Lease Agreement (Appendix F). Any reference to "MOLA" includes the Contract, the Opinion of Counsel, and any riders, amendments and addenda thereto, and

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any other documents as may from time to time be made a part hereof upon mutual agreement in a writing signed by authorized representatives of both parties.

- (j) "Rent Payment" means the amount payable by Lessee for the Assets as specified in the applicable Schedule.
- (k) "Schedule" or "Supplementary Schedule" to this MOLA means the form or format entered into between Lessor and Lessee which contains, at a minimum, a description of the Assets, the name of the Lessee, applicable Rent Payment, and term of the Lease. To be effective, a Schedule must be executed by both Lessor and Lessee.
- (l) "Services" refers to the configuration, installation, implementation, support, training, and other professional and consulting services specifically identified on the applicable Schedule.
- (m) "Software" refers to the computer programs specifically identified on the applicable Schedule.
- (n) "Stipulated Loss Value" is the value of each unit of Hardware at various times during the Lease as specified in the applicable Schedule; however, in no event will the Stipulated Loss Value of a Hardware unit exceed its fair market value.

2. Lease.

- (a) Lessor and Lessee intend that this MOLA constitute an operating lease and a true lease as those terms are defined in the Statement of Financial Accounting Standards No. 13 and as provided for under the Uniform Commercial Code – Leases, Tex. Bus. & Comm. Code Article 2A. Under no circumstances shall this MOLA or any Schedules entered into under it be construed as a "finance lease" as defined in Tex. Bus. & Comm. Code § 2A.103 (7). In addition, Lessor acknowledges that Lessee is not a "merchant lessee" for purposes of Tex. Bus. & Comm. Code § 2A.511.
- (b) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Assets described on each Schedule. Each such Schedule constitutes a separate agreement between Lessor and Lessee. In addition, each Schedule is subject to the terms and conditions of this MOLA as if a separate MOLA were executed for such Schedule by the parties.
- (c) In the event of Lessee's rightful rejection of the Assets as specified in Section 10 ("Inspection and Acceptance") of this MOLA, Lessee shall have the right, at its sole option, to cancel this Lease as to the rejected Assets or as to all of the Assets to be leased under the Schedule applicable to such Assets. Upon cancellation, Lessee shall have no obligations under this MOLA with respect to the portion of this Lease so cancelled.

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- (d) Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or provided any legal or management advice to Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with Lessor to satisfy individual procurements in which case such terms shall be set forth in a Rider to the MOLA or the Schedule. To the extent that any of the provisions of the MOLA conflict with any of the terms contained in any Schedule, the terms of this MOLA shall control.
- (e) If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Assets for its own use, DIR is not a party to any Schedule executed under this MOLA and is not responsible for Rent Payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or Lessor (or both of them) arising from the use of this MOLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both of those parties arising from the use of this MOLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 ("Default") of this MOLA.

3. Term of MOLA.

The term of this MOLA shall commence (a) upon commencement of the term of the Contract, if this MOLA was agreed to under the Contract, or (b) on the Effective Date specified in Amendment Number (XX), if this MOLA is added to the Contract under such Amendment. The term of this MOLA shall continue until the last to occur of the following: (i) the Schedule Term of each Schedule entered into by the parties has expired or been terminated, or (ii) the Contract has expired or been terminated. In the event of any termination or expiration of the Contract or termination of this MOLA, any provisions of the Contract and this MOLA as may be necessary to preserve the rights of Lessor or Lessee hereunder shall survive said termination or expiration.

4. Term of Schedule.

The term for each Schedule agreed to by a Lessee and Lessor under this MOLA shall commence on the date specified in the Lessee Certificate of Acceptance, as described in Section 10, unless earlier terminated as provided for herein; the Schedule shall continue for the number of whole months or other payment periods set forth in it (the "Schedule Term"). Specifically with respect to Hardware, under no circumstances shall the Schedule Term exceed seventy five percent (75%) of the economic life of the Hardware, nor shall the present value of the Rent Payments for the Hardware on the Schedule Commencement equal or exceed ninety percent (90%) of the value of the Hardware. Lessee shall provide confirmation that its lease of assets satisfies the two foregoing percentage limitations. The Schedule Term may be earlier terminated upon: (i) the non-appropriation of funds pursuant to Section 8 ("Appropriation

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of Funds”) of this MOLA, (ii) an Event of Loss, (iii) an Event of Default by Lessee and Lessor’s election to cancel the Schedule pursuant to Section 24 (“Remedies”) of this MOLA, (iv) an event of default or other breach of this Agreement by Lessor and Lessee's election to cancel the Schedule pursuant to Section 24 (“Remedies”) of this MOLA, or (v) as otherwise set forth herein.

5. Administration of MOLA.

- (a) When a prospective Lessee wishes to lease Assets under this MOLA, the prospect will submit its request directly to Lessor. Lessor shall apply the applicable pricing discounts as stated in Section 4 of the Contract or the price as agreed upon by Lessee and Lessor in the applicable Schedule, whichever is lower and submit the lease proposal to the prospective Lessee. If the prospective Lessee wishes to proceed to lease Assets based on the proposal, Lessor will negotiate the applicable Rent Payment, availability of Assets, and term of the Lease directly with the prospective Lessee.
- (b) With respect to Lessor’s obligations under Section 5 of the Contract to report the sale and make payment of the DIR administrative fee as defined in that Section, all leasing activities in conjunction to this MOLA shall be treated as a “purchase sale.” Notwithstanding treatment of this Lease as a “purchase sale” as to the transaction between Lessor and DIR under the Contract, however, under no circumstances shall this MOLA be construed as creating anything other than a true lease and operating lease as stated in Section 2 (“Lease”) hereof for the transaction(s) between Lessor and Lessee.
- (c) Upon agreement by Lessor and Lessee on the applicable Rent Payment, availability, Lease term, and the like, Lessee may issue a purchase order in the amount indicated on the applicable Schedule to Lessor for the Assets and reference the Contract number on the purchase order. Any pre-printed terms and conditions on the Schedule issued by Lessor (with respect to any item other than the specific Assets which are the subject of the Lease, the Schedule Term, and the Rent Payments), Lessor’s order acknowledgement, form or the like shall not be effective with respect to the lease of Assets hereunder. Rather, the terms and conditions of this MOLA shall control in all respects.
- (d) Until a Schedule is entered into by Lessor and a Lessee per the process set forth in this MOLA, neither DIR nor any Lessee is obligated under this MOLA to lease Assets from Lessor nor is Lessor obligated under this MOLA to lease Assets to a Lessee.

6. Rent Payments.

- (a) During the Schedule Term and any renewal terms agreed to by Lessee as specified herein, Lessee agrees to pay Lessor the Rent Payments set forth in the relevant Schedule for each Asset. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments

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in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made. Under no circumstances shall the present value of the Rent Payments exceed ninety percent (90%) of the value of the Assets.

- (b) Any amounts received by Lessor from Lessee in excess of Rent Payments and any other sums required to be paid by Lessee shall be refunded to Lessee within ninety (90) calendar days. All Rent Payments shall be paid to Lessor at the address stated on the Schedule or any other such place as Lessor or its assigns may hereafter direct to Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to Lessor. Lessor's (including its assignees') remedy for late payments is as set forth in Chapter 2251, Texas Government Code.

Lessee acknowledges and agrees, except as specifically provided for in Section 8 ("Appropriation of Funds") of this MOLA and excluding claims resulting from a breach of Lessor's obligations as set forth in this MOLA or any Schedule or of Lessee's rights under Section 16 ("Quiet Enjoyment") hereof, that Lessee's obligation to pay Rent and other sums payable hereunder, shall not be abated, reduced or subject to offset or diminished as a result of any past, present or future claims Lessee may have against Lessor under this Lease. Notwithstanding the foregoing, nothing in this Section or any other provision of this MOLA shall affect or preclude Lessee from enforcing any and all other rights it may have against Lessor and its assignees under this MOLA or otherwise affect any right Lessee may have against the manufacturer or licensor of the Assets or any party other than Lessor.

7. Liens.

Lessee shall keep the Assets free and clear of all levies, liens and encumbrances, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of the Assets.

8. Appropriation of Funds.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated

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to continue the Schedule Term for any fiscal period (as set forth on the Schedule) of Lessee beyond the fiscal period first in effect at the commencement of the Schedule Term, Lessee may terminate the Schedule with regard to those of the Assets on the Schedule so affected. Lessee shall endeavor to provide Lessor with written notice sixty (60) days prior to the end of its current Fiscal Period confirming which Assets on the Schedule will be so affected by the termination. All obligations of Lessee to make Rent Payments due with respect to those Assets after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in those Assets will terminate, Lessee shall surrender those Assets in accordance with Section 15 ("Option to Extend; Surrender of Assets") of this MOLA, and the applicable Schedule shall be deemed amended. Lessee represents and warrants it has adequate funds to meet its obligations during the first fiscal period of the Schedule Term. Lessor and Lessee intend that the obligation of Lessee to make Rent Payments under this MOLA shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas, as applicable, beyond the fiscal period for which sufficient funds have been appropriated to make Rent Payments hereunder.

9. Assignment of Warranties.

Each Schedule is intended to be a true lease and operating lease as defined in Tex. Bus. & Comm. Code Article 2A. Lessor has acquired or will acquire the Assets in connection with this MOLA and hereby agrees to assign to Lessee any warranties provided to Lessor with respect to the Assets during the Term of the applicable Schedule, to the extent the warranties are assignable. Unless Lessor is the manufacturer or is otherwise liable under the Contract, Lessor shall not be liable for damages for any reason for any act or omission of the manufacturer of the Assets. Except as provided in Section 24 ("Remedies") hereof, Lessee acknowledges that none of the following shall relieve Lessee from the obligations under this MOLA during the Schedule Term unless due to Lessor's acts or omissions: (i) Lessee's dissatisfaction with any unit of the Assets, (ii) the failure of an Asset to remain in useful condition for the Schedule Term, or (iii) the loss or right of possession of the Assets (or any part thereof) by Lessee. Lessee shall have no right, title or interest in or to the Assets except the right to use the same upon the terms and conditions herein contained. The Assets shall remain the sole and exclusive personal property of Lessor and not be deemed a fixture whether or not it becomes attached to any real property of Lessee.

10. Inspection and Acceptance.

Promptly upon delivery of the Assets, Lessee will inspect and test the Assets. No later than twenty (20) business days following its date of delivery (or, if the Assets are part of a system, the date of last delivery of the Assets comprising the system), Lessee will execute and deliver either (i) a Certificate of Acceptance, or (ii) written notification of any defects in the Assets. If Lessee has not given notice within such time

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period, the Assets shall be deemed accepted by Lessee as of the twentieth (20th) business day, as described above. In the event Lessee does not accept the Assets, Vendor will promptly remove the Assets from Lessee's premises and deliver conforming Assets within ten (10) business days thereafter. If conforming Assets are not delivered within that timeframe, Lessee may terminate the Schedule on written notice to Lessor. Lessee's acceptance of any Assets shall not be deemed to waive any rights Lessee may have against the manufacturer or licensor, as applicable. Lessor and its assigns, including either of their respective agents shall have the right to inspect the Assets upon reasonable notice to Lessee and during normal business hours provided that anyone who does so has first executed a non-disclosure agreement acceptable to Lessee.

11. Installation and Delivery; Use of Assets; Repair and Maintenance.

- (a) Except as set forth in this MOLA, all transportation, delivery, installation, and de-installation costs associated with the Assets shall be borne by Lessee. Lessee shall provide a place of installation for the Assets, which conforms to the requirements of the manufacturer and Lessor.
- (b) Subject to the terms hereof, Lessee shall be entitled to use the Assets for the conduct of its business in compliance with all laws, rules, and regulations of the jurisdiction in which the Assets are located. Lessee shall not use or permit the use of the Assets for any purpose for which, according to the specification of the manufacturer, the Assets are not designed.
- (c) Lessee, at its expense, shall take good and proper care of the Hardware and make all repairs and replacements necessary to maintain and preserve the Hardware and keep the Hardware in good order and condition (reasonable wear and tear excepted). Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each Hardware unit. Lessee shall furnish Lessor with a copy of such agreement, upon request. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Hardware without the prior written consent of Lessor, except for additions or attachments to the Hardware leased by Lessee from Lessor or purchased by Lessee from the manufacturer of the Hardware (or an authorized distributor of the manufacturer) or any other person approved by Lessor. Lessee shall affix on a prominent place on each item of Hardware any tags, decals or labels supplied by Lessor to Lessee which describe the ownership of the Hardware. Subject to the provisions of Section 15(b) under "Option to Extend; Surrender of Hardware and Software Assets," Lessee agrees to restore the Hardware to Return Condition prior to its return to Lessor.

12. Relocation of Hardware and Software.

Except as set forth on the applicable Schedule, Lessee shall at all times keep the Hardware and Software within its exclusive possession and control. Lessee may move the Hardware or Software to another

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location of Lessee within the continental United States, provided Lessee is not in default on any Schedule and pays all costs associated with such relocation. If such relocation requires Lessor's prior written consent, Lessee shall obtain such consent prior to relocating the Hardware or Software, as applicable, which consent Lessor shall not unreasonably withhold. Notwithstanding the foregoing, in those situations where consent is otherwise required, Lessee may move the Hardware or Software to another location within Texas without notification to, or the consent of, Lessor; provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Hardware and Software at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the Hardware and Software, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Hardware and Software.

13. Taxes.

Unless otherwise agreed by the parties on the applicable Schedule, Lessor will pay any Imposition or file any forms or returns with respect thereto. Lessee shall, when billed, and with copy of Imposition invoice(s) with respect to Assets specified on the Schedule, reimburse Lessor for such payment. For purposes of this paragraph "Impositions" means all taxes, including personal property taxes and fees, without pro-ration as described in the Financial Disclosure Summary Work Sheet (Attachment 1) hereafter imposed, assessed or payable during the term of the relevant Schedule including any extension thereof. Because the reimbursement date for an Imposition may occur after the expiration or termination of the term of the relevant Schedule, it is understood and agreed that Lessee's liability to reimburse for such Impositions shall survive the expiration or termination of the term of the relevant Schedule.

14. Ownership.

The Hardware and Software shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties' rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Hardware except a leasehold interest as provided for herein. Lessee agrees that the Hardware shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of Lessor. Upon Lessor's request, Lessee will enter into agreements necessary to ensure that the Hardware remains the personal property of Lessor.

15. Option to Extend; Surrender of Hardware and Software Assets.

- (a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term, Lessor shall notify Lessee in writing of options to extend the Schedule for continued use of the Hardware or Software specified in that Schedule. If Lessee desires to exercise any of the options offered by Lessor (and provided that, with respect to Hardware, any extension does not exceed seventy five percent (75%) of

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its economic life), Lessee shall give Lessor irrevocable written notice of the option Lessee intends to exercise at least forty-five (45) days before the expiration of such Schedule Term. In the event the Lease is extended for some but not all of the Hardware and Software specified on a Schedule, the Schedule shall be updated to reflect those changes. At the end of the Schedule Term (as well as with respect to any Hardware and Software not extended as described immediately above), Lessee will surrender and return the Hardware and Software to Lessor in compliance with Section 15(b) below.

- (b) Except as specified otherwise herein, upon the expiration, early termination as provided herein, or final termination of the Schedule, Lessee, at its cost and expense, shall promptly return the Hardware, freight prepaid, to Lessor in good repair and working order, with reasonably unblemished physical appearance and with no defects which affect the operation or performance of the Hardware ("Return Condition"), reasonable wear and tear excepted. If the Hardware is not in Return Condition, Lessee shall, at its option, either restore the Hardware (at Lessee's cost) to Return Condition or pay for the Hardware at its Stipulated Loss Value if the Hardware is not reasonably repairable. Lessee shall arrange and pay for the de-installation and packing of the Hardware in suitable packaging, and return the Hardware to Lessor at the location specified by Lessor; provided, however, that such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. At its option and expense, Lessor shall have the right to supervise and direct the preparation of the Hardware for return. If, upon termination or expiration of the Schedule for any reason, Lessee fails or refuses to return to Lessor a Hardware unit or Software program specified in that Schedule or to pay Lessor the Stipulated Loss Value for a Hardware unit, Lessee shall remain liable for Rent Payments for that unit or program up to the date on which the unit or program is returned to the address specified by Lessor (or on which Lessee has paid Lessor the Stipulated Loss Value). In such event and specifically with respect to the Hardware, Lessor shall also have the right to enter Lessee's premises or any other premises where the Hardware may be found upon reasonable written notice to the Lessee and during normal business hours, and subject to Lessee's reasonable safety and security requirements to take possession of and to remove the Hardware, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Hardware. However, as an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession except as provided by Paragraph b. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the Constitution and laws of the State of Texas, Lessee's obligation to return Hardware may, at Lessor's option, be specifically enforced by Lessor.

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16. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Assets as long as an Event of Default (as hereinafter defined in Section 23 ("Default") of the MOLA) has not occurred.

17. Warranties regarding the Assets.

Lessor acknowledges that warranties made by the manufacturer or licensor of the Assets, if any, inure to the benefit of Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer or licensor of the Assets and shall not pursue any such claim against Lessor.

18. No Warranties by Lessor regarding the Assets.

Except as set forth in the Contract, Lessee acknowledges that Lessor is not the manufacturer or licensor of the Hardware or Software Assets. Lessee agrees that Lessor makes no representations or warranties of whatsoever nature, directly or indirectly, express or implied, as to the suitability, durability, fitness for use, merchantability, condition, or quality of the Hardware or Software Assets or any unit thereof. Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessee specifically waives all right to make claim against Lessor for breach of any warranty of any kind whatsoever; and with respect to Lessor, Lessee leases the Hardware and Software "as is". Except to the extent Lessor is the manufacturer or licensor of the Hardware or Software Assets, Lessor shall not be liable to Lessee for any loss, damage, or expense of any kind or nature caused directly or indirectly by any Hardware or Software leased hereunder, or by the use or maintenance thereof, or by the repairs, service or adjustment thereto or any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof, or for any loss of business or damage whatsoever and howsoever caused. Lessor agrees to assign to Lessee, upon Lessee's request therefor, any warranty of a manufacturer or licensor or seller relating to the Hardware and Software that may have been given to Lessor.

19. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to the Hardware specified on the Schedule, whether partial or complete, from any cause whatsoever. Lessee shall promptly notify Lessor regarding any Event of Loss. Upon any Event of Loss, Lessee shall, at its option: (a) immediately repair the affected Hardware so that it is in good condition and working order, (b) replace the affected Hardware with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value for such affected Hardware unit, plus any other unpaid amounts then due under the Schedule. If an

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Event of Loss occurs as to part of the Hardware for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of a Hardware unit for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of Lessee with respect to such Hardware unit (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Section 2054.003 (8-a), Texas Government Code) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;
- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding true lease and operating lease agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, this MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of Lessee or on the Hardware or Software leased under any Schedule between Lessor and Lessee pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound;

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- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MOLA or any Schedule between Lessor and Lessee;
- (f) The use of the Assets is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that (i) It has authority to enter into any Schedule under this MOLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MOLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided Lessee or Lessor with any legal or management advice regarding the MOLA or any Schedule executed pursuant thereto;
- (b) This MOLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MOLA;
- (d) The entering into and performance of the MOLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Hardware or Software pursuant to any instrument to which DIR is a party or by which it or its assets may be bound;

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- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MOLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract; and
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law.

22. Representations and Warranties of Lessor.

Lessor represents and warrants for the benefit of DIR and each Lessee:

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MOLA and each Schedule executed in conjunction to this MOLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MOLA or any Schedule;
- (d) The entering into and performance of the MOLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of Lessor, including the Hardware or Software leased under the MOLA and Schedules thereto, pursuant to any instrument to which Lessor is a party or by which it or its assets may be bound;
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MOLA or any Schedule;
- (f) Lessor acknowledges that DIR and any Lessee that is a state agency, as government agencies, are subject to the Texas Public Information Act, and that DIR and Lessees that are state agencies will

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comply with such Act, including all opinions of the Texas Attorney General's Office concerning this Act.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (b) Lessee's material breach of this MOLA, any Schedule, or any applicable software license agreement, which is not cured within thirty (30) days after written notice thereof from Lessor; (c) Lessee's filing of any proceedings commencing bankruptcy or the taking of other similar action by Lessee under any state insolvency or similar law, (d) the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (e) subjection of a substantial part of Lessee's property or any part of the Hardware to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (f) any representation or warranty made by Lessee in this MOLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Assets being or becoming untrue in any material respect.

24. Remedies.

(a) Lessor's Remedies.

- i. Upon the occurrence of an "Event of Default," Lessor may, in its sole discretion, do any one or more of the following:
 - A. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, terminate any or all Schedules executed by Lessor and the defaulting Lessee;
 - B. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule;
 - C. after giving thirty (30) days prior written notice to Lessee of the Event of Default, during which time Lessee shall have the opportunity to cure such Default, and whether or not the Schedule is terminated, take possession of the Hardware and Software wherever located, without additional demand, liability, court order or other process of law. To the extent permitted by Texas law, Lessee hereby authorizes Lessor, its assigns or the agents of either to enter upon

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the premises where such Hardware or Software is located or cause Lessee, and Lessee hereby agrees, to return such Hardware and Software to Lessor in accordance with the requirements of Section 15 ("Option to Extend; Surrender of Hardware and Software Assets") hereof;

- D. by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of:
- I. the present value of the Rent owed from the earlier of the last date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Hardware is not returned to or repossessed by Lessor, the present value of the Stipulated Loss Value of the Hardware at the end of the Schedule Term, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis;
 - II. without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and
 - III. interest on (I) from the date of default at 1½ % per month or portion thereof (or the highest rate allowable by law, if less) and, on (II) from the date Lessor incurs such fees, costs or expenses.
- ii. Upon return or repossession of the Hardware, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Hardware, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Hardware, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Hardware shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Hardware shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Hardware, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated

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damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.

- iii. No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default by Lessee shall relieve Lessee from any of its obligations hereunder. 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.
 - iv. Neither DIR nor non-defaulting Lessees shall be deemed in default under the MOLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.
- (b) Lessee's Remedies. Anything herein to the contrary notwithstanding, Lessee shall have all rights provided under Tex. Bus. & Comm. Code § 2A.508 through § 2A.522, including without limitation, the right to cancel a Schedule and recover damages from Lessor in the event of nonperformance of or other default by Lessor hereunder.
- (c) Each party agrees that any delay or failure by the other party to enforce that party's rights under this MOLA or a Schedule does not prevent that party from enforcing its rights at a later time.

25. Notices and Waivers.

- (a) All notices relating to this MOLA shall be delivered to DIR or Lessor as specified in Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of Lessor or Lessee or shall be given by certified or registered mail or overnight carrier to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MOLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes.
- (b) A waiver of a specific default shall not be a waiver of any other or subsequent default. No waiver of any provision of this MOLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the waiving party. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

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26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Upon thirty (30) days advance written notice to Lessee and provided that any such assignee expressly assumes Lessor's obligations under this MOLA and each Schedule, Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MOLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MOLA, any Schedule and/or any Asset; and/or (iii) sell or transfer its title and interest as owner or licensor of the Hardware and Software and/or as Lessor under any Schedule; and DIR and each Lessee leasing Hardware under the MOLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MOLA. Each Lessee leasing Assets through Schedules under this MOLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Lessor shall remain liable for performance under the MOLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MOLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.
- (b) Lessee will not sell, assign, sublet, pledge or otherwise encumber, or permit a lien to exist on or against any interest in this MOLA or the Assets without Lessor's prior written consent except otherwise permitted under this MOLA; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the MOLA to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance (if Acceptance has taken place); (b) Opinion of Counsel; (c) Financial Statements; (d) incumbency certificate; and (e) other documents specified in the applicable Schedule as being reasonably required by Lessor.

28. Miscellaneous.

- (a) Prior to delivery of any Assets, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control. In such event, the obligation of Lessee to commence Rents for such Assets shall also be suspended.
- (b) Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Assets, other than as set forth in this MOLA, including the Contract, and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that

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this MOLA, including the Contract, and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee, order acknowledgement and other forms issued by Lessor, and the like. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MOLA and the Contract and that both contain the entire agreement between them. The terms and conditions of this MOLA may be amended only by written instrument executed by Lessor and DIR. The terms of a Schedule may only be amended in a writing signed by both Lessee and Lessor.

EXAMPLE

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Attachment 1 to the Master Operating Lease Agreement
Financial Disclosure Summary

Lease Rate Factor(s):	Response	Notes
Equipment Type A		
Equipment Type B		
Equipment Type C		
How is Daily Rental calculated?		
Is Daily Rental invoiced separately or rolled into monthly rental?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Is this a Step Lease?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
Does this lease include software?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, who owns the software?	<input type="checkbox"/> Agency <input type="checkbox"/> Lessor	
Personal Property Tax	Response	Notes
Estimated PPT		
PPT Payment made by	<input type="checkbox"/> Agency <input type="checkbox"/> Lessor on Agency behalf	
PPT calculation method	<input type="checkbox"/> Agency pays direct <input type="checkbox"/> Lessor pays and passes invoice through <input type="checkbox"/> Lessor estimates and includes <input type="checkbox"/> Lessor sets PPT at disclosed rate	
If PPT rate changes, how are charge backs or short falls handled?	<input type="checkbox"/> N/A - Agency pays direct <input type="checkbox"/> N/A - Lessor pays/passes invoice through <input type="checkbox"/> Lessor is responsible <input type="checkbox"/> Lessee is invoiced for short fall	
Equipment Schedule Details	Response	Notes
Can Agency make decisions at asset level (extend, purchase, return)?	<input type="checkbox"/> Asset level <input type="checkbox"/> All and not less than all	
Does this ES auto extend?	<input type="checkbox"/> Yes <input type="checkbox"/> No	

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If Yes, how long?			
What is the cost of the Auto extension?			
What is the notice period?			
Are negotiated extensions FMV based?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
On FMV, can Agency select own evaluator?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Is asset and lease information available online?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
End of Lease Details	Response		Notes
Where are the assets returned to?			
What is the return freight cost?			
Who pays the return freight cost?	<input type="checkbox"/> Agency <input type="checkbox"/> Lessor		
Do I need to return original packaging?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost if not returned?		
Do I need to return original manuals and documentation?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, what is the cost if not returned?		
Do I need to return software?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost if not returned?		
Is there an FMV purchase cost cap?	<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what is the cost cap percentage?		
What is the cost for a lost asset?			
What is the cost for missing equipment?			
What is the cost for data sanitization on assets with memory?			

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Managed Print Services, Printers, Copiers, 3D Printers, Scanning, Plotting and Facsimile Equipment and Related Services; Document Imaging Services/Solutions; Enterprise Content Management Products, Software and Services

What is the cost for data sanitization?		
What is the cost for on-site data destruction?		

Example

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Appendix G
MASTER LEASE AGREEMENT

1. Scope.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor the Equipment described on each Supplementary Schedule ("Schedule"), which is a separate agreement executed from time to time by Lessor and Lessee and makes specific reference to this Master Lease Agreement ("MLA"). The terms and conditions contained herein shall apply to each Schedule that is properly executed in conjunction with this MLA and made subject to such terms and conditions as if a separate MLA were executed for each Schedule by the Lessee. Each Lessee has made an independent legal and management determination to enter into each Schedule. DIR has not offered or given any legal or management advice to the Lessor or to any Lessee under any Schedule. Lessee may negotiate additional terms or more advantageous terms with the Lessor to satisfy individual procurements, such terms shall be developed by the Lessor and Lessee and stated within a Rider to the MLA or the Schedule. To the extent that any of the provisions of the MLA conflict with any of the terms contained in any Schedule, the terms of the Schedule shall control. It is expressly understood that the term "Equipment" shall refer to the Products and any related Services as allowed within said Contract number DIR-TSO-XXX, as described on a Schedule and any associated items therewith, including but not limited to all parts, replacements, additions, repairs, and attachments incorporated therein and/or affixed thereto, all documentation (technical and/or user manuals), operating system and application software as needed.

If more than one Lessee is named in a Schedule, the liability of each named Lessee shall be joint and several. However, unless DIR leases Equipment for its own use, DIR is not a party to any Schedule executed under this MLA and is not responsible for Rents, payments or any other obligations under such Lessee's Schedule. The invalidation, fulfillment, waiver, termination, or other disposition of any rights or obligations of either a Lessee or the Lessor or both of them arising from the use of this MLA in conjunction with any one Schedule shall not affect the status of the rights or obligations of either or both of those parties arising from the use of this MLA in conjunction with any other Schedule, except in the Event of Default as provided in Section 23 of this MLA.

Any reference to "MLA" shall mean this Agreement, including the Opinion of Counsel, and any riders, amendments and addenda thereto, and any other documents as may from time to time be made a part hereof upon mutual agreement by DIR and Lessor.

As to conditions precedent to Lessor's obligation to purchase any Equipment, (i) Lessee shall accept the MLA terms and conditions as set forth herein and execute all applicable documents such as the Schedule, the Acceptance Certificate, Opinion of Counsel, and any other documentation as may be required by the

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Lessor that is not in conflict with this MLA, and (ii) there shall be no material adverse change in Lessee's financial condition except as provided for within Section 7 of this MLA.

2. Term of MLA.

The term of this MLA shall commence on the last date of approval by DIR and Lessor of Amendment Number XXX (XX) and shall continue until (i) the obligations of Lessee under every Schedule are fully discharged, (ii) the full and final expiration date of the Contract, or (iii) either party exercises their termination rights as stated within Appendix A, Section 11B of the Contract. In regards to either the Contract expiration date or Contract termination date or the termination of this MLA, before all obligations of Lessee under every Schedule are fully discharged, such Schedules and such other provisions of the Contract and this MLA as may be necessary to preserve the rights of the Lessor or Lessee hereunder shall survive said termination or expiration.

3. Term of Schedule.

The term for each Schedule, executed in conjunction to this MLA, shall commence on the date of execution of an Acceptance Certificate by the Lessee or twenty (20) days after the delivery of the last piece of Equipment to the Lessee ("Commencement Date"), and unless earlier terminated as provided for in the MLA, shall continue for the number of whole months or other payment periods as set forth in the applicable Schedule Term, commencing on the first day of the month following the Commencement Date (or commencing on the Commencement Date if such date is the first day of the month). The Schedule Term may be earlier terminated upon: (i) the Non-appropriation of Funds pursuant to Section 7 of this MLA, (ii) an Event of Loss pursuant to Section 18 of this MLA, or (iii) an Event of Default by Lessee and Lessor's election to cancel the Schedule pursuant to Section 24 of this MLA.

4. Administration of MLA.

- (a) For requests involving the leasing of Equipment, each potential Lessee will submit its request directly to the Lessor. Lessor shall apply the then current Equipment pricing discounts as stated within the Contract or the price as agreed upon by Lessee and Lessor, whichever is lower. Lessor shall submit the lease proposal and all other applicable documents directly to the potential Lessee and negotiate the Schedule terms directly with the potential Lessee.
- (b) All leasing activities in conjunction to this MLA shall be treated as a "purchase sale" in regards to the requirements of the Lessor to report the sale and make payment of the DIR administrative fee as defined within Section 5 of the Contract.

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- (c) Upon agreement by Lessor and Lessee on pricing, availability and the like, Lessee may issue a purchase order in the amount indicated on the Schedule to Lessor for the Equipment and reference said Contract number DIR- TSO-XXX on the purchase order. Any pre-printed terms and conditions on the purchase order submitted by the Lessee shall not be effective with respect to the lease of Equipment hereunder. Rather, the terms and conditions of this MLA and applicable Schedule terms and conditions shall control in all respects.
- (d) Nothing herein shall require the Lessor to use this MLA exclusively with Lessees. Further, this MLA shall not constitute a requirements Agreement and Lessor shall not be obligated to enter into any Schedule for the lease of Equipment with any Lessee.

5. Rent Payments.

During the Schedule Term and any renewal terms, Lessee agrees to pay Lessor Rent Payments. Rent Payments shall be the amount equal to the Rent Payment amount specified in the Schedule multiplied by the amount of the total number of Rent Payments specified therein. Lessee shall pay Rent Payments in the amount and on the due dates specified by Lessor until all Rent Payments and all other amounts due under the Schedule have been paid in full. If the Schedule Commencement Date is other than the first day of a month, Lessee shall make an initial payment on the Schedule Commencement Date in an amount equal to one-thirtieth of the Rent Payment specified in the Schedule for each day from the Schedule Commencement Date (including the Schedule Commencement Date) through the last day of such month (including that day). For example, if a scheduled payment amount is \$3,000 and the Scheduled Commencement date is the 15th of the month, a payment of \$1,500 will be made.

Any amounts received by Lessor from the Lessee in excess of Rent Payments and any other sums required to be paid by the Lessee shall be held as non-interest bearing security for Lessee's faithful performance under the conditions of this MLA and any Schedule. All Rent Payments shall be paid to the Lessor at the address stated on the Schedule or any other such place as the Lessor or its assigns may hereafter direct to the Lessee. Lessee shall abide by Appendix A, Section 8J of the Contract in making payments to the Lessor. Any sum received by the Lessor later than ten (10) business days after its due date will bear interest from such due date at the rate of one-percent (1%) per month (or the maximum rate allowable by law, if less) until paid. Late charges, attorney's fees and other costs or expenses necessary to recover Rent Payments and any other amounts owed by Lessee hereunder are considered an integral part of this MLA.

Each Schedule is a net lease and except as specifically provided herein, Lessee shall be responsible for all costs and expenses arising in connection with the Schedule or Equipment. Lessee acknowledges and agrees, except as specifically provided for in Section 7 of this MLA, that its obligation to pay Rent and other sums payable hereunder, and the rights of Lessor and Lessor's assignees, shall be absolute and unconditional in all events, and shall not be abated, reduced or subject to offset or diminished as a result

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of any event, including without limitation damage, destruction, defect, malfunction, loss of use, or obsolescence of the Equipment, or any other event, defense, counterclaim or recoupment due or alleged to be due by reason of any past, present or future claims Lessee may have against Lessor, Lessor's assigns, the manufacturer, vendor, or maintainer of the Equipment, or any person for any reason whatsoever.

"Price" shall mean the actual purchase price of the Equipment. Rent Payments shall be adjusted proportionately downward if the actual price of the Equipment is less than the estimate (original proposal), and the Lessee herein authorizes Lessor to adjust the Rent Payments downward in the event of the decrease in the actual Equipment price. However, in the event that the Equipment price is more than the estimate (original proposal), the Lessor may not adjust the Rent Payment without prior written approval of the Lessee.

6. Liens and Taxes.

Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances, except those in favor of Lessor or its assigns, and shall give Lessor immediate notice of any attachment or other judicial process affecting any item of Equipment. Unless Lessee first provides proof of exemption therefrom, Lessee shall promptly reimburse Lessor, upon receipt of an accurate invoice, as an additional sum payable under this MLA, or shall pay directly if so requested by Lessor, all license and registration fees, sales, use, personal property taxes and all other taxes and charges imposed by any federal, state, or local governmental or taxing authority, from which the Lessee is not exempt, whether assessed against Lessee or Lessor, relating to the purchase, ownership, leasing, or use of the Equipment or the Rent Payments, excluding all taxes computed upon the net income of Lessor. Any tax statement received by the Lessor, for taxes payable by the Lessee, shall be promptly forwarded by the Lessor to the Lessee for payment.

7. Appropriation of Funds.

- (a) This paragraph applies only to Lessees designated as state agencies defined in Section 2054.003, Texas Government Code, including institutions of higher education as defined in Texas Education Code, Section 61.003 and those state agencies utilizing a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of Lessee beyond the Fiscal Period first in effect at the Commencement of the Schedule

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Term, Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be so terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period for which such termination applies will cease, all interests of Lessee in the Equipment will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rent hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general revenues, funds or monies of Lessee or the State of Texas beyond the Fiscal Period for which sufficient funds have been appropriated to pay Rent hereunder.

(b) This paragraph applies only to Lessees designated as local government entities.

Lessee intends to continue each Schedule to which it is a party for the Schedule Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Schedule Term can be obtained. Lessee further intends to act in good faith to do those things reasonably and lawfully within its power to obtain and maintain funds from which the Rent may be paid. Notwithstanding the foregoing, in the event sufficient funds are not appropriated for Lessee to continue the Schedule Term for any Fiscal Period (as set forth on the Schedule) of the Lessee beyond the Fiscal Period first in effect at the commencement of the Schedule Term, the Lessee may terminate the Schedule with regard to not less than all of the Equipment on the Schedule so affected. Lessee shall endeavor to provide Lessor written notice sixty (60) days prior to the end of its current Fiscal Period confirming the Schedule will be terminated. All obligations of Lessee to pay Rent due after the end of the Fiscal Period first in effect at the commencement of the Schedule Term will cease, all interests of Lessee in the Asset(s) will terminate and Lessee shall surrender the Equipment in accordance with Section 13 of this MLA. Notwithstanding the foregoing, Lessee agrees, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, that it will use reasonable efforts to obtain appropriation of funds to avoid termination of the Schedule by taking reasonable and appropriate action including the inclusion in Lessee's budget request for each Fiscal Period during the Schedule Term hereof a request for adequate funds to meet its obligations and to continue the

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Schedule in force. Lessee represents and warrants it has adequate funds to meet its obligations during the first Fiscal Period of the Schedule Term.

8. Selection of Equipment.

The Equipment is the size, design, capacity and manufacture selected by Lessee in its sole judgment and not in reliance on the advice or representations of Lessor. No representation by the manufacturer or a vendor shall in any way affect Lessee's duty to pay Rent and perform its other obligations hereunder. Each Schedule is intended to be a "finance lease" as defined in Article 2A of the Uniform Commercial Code. Lessor has acquired or will acquire the Equipment in connection with this MLA. Lessor shall not be liable for damages for any reason, for any act or omission of the supplying manufacturer. Lessor agrees, to the extent they are assignable, to assign the Lessee, without recourse to Lessor, any warranties provided to Lessor with respect to the Equipment during the Term of the applicable Schedule. Lessee acknowledges that neither its dissatisfaction with any unit of Equipment, nor the failure of any of the Equipment to remain in useful condition for the Schedule Term, nor the loss of possession or the right of possession of the Equipment or any part thereof by the Lessee, shall relieve Lessee from the obligations under this MLA or Schedule Term. Lessee shall have no right, title or interest in or to the Equipment except the right to use the same upon the terms and conditions herein contained. The Equipment shall remain the sole and exclusive personal property of the Lessor and not be deemed a fixture whether or not it becomes attached to any real property of the Lessee. Any labels supplied by Lessor to Lessee, describing the ownership of the Equipment, shall be affixed by Lessee upon a prominent place on each item of Equipment.

9. Inspection and Acceptance.

Promptly upon delivery of the Equipment, Lessee will inspect and test the Equipment, and not later than ten (10) business days following the Commencement Date, Lessee will execute and deliver either (i) an Acceptance Certificate, or (ii) written notification of any defects in the Equipment. If Lessee has not given notice within such time period, the Equipment shall be conclusively deemed accepted by the Lessee as of the tenth (10th) business day. Lessor, its assigns or their agents, shall be permitted free access at reasonable times authorized by the Lessee, the right to inspect the Equipment.

10. Installation and Delivery; Use of Equipment; Repair and Maintenance.

- (a) All transportation, delivery, and installation costs associated with the Equipment shall be borne by the Lessee. Lessor is not and shall not be liable for damages if for any reason the manufacturer of the Equipment delays the delivery or fails to fulfill the order by the Lessee's desired timeframe. Any delay in delivery by the manufacturer shall not affect the validity of any Schedule. Lessee shall provide a place of installation for the Equipment, which conforms to the requirements of the manufacturer and Lessor.

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- (b) Subject to the terms hereof, Lessee shall be entitled to use the Equipment in compliance with all laws, rules, and regulations of the jurisdiction wherein the Equipment is located and will pay all cost, claims, damages, fees and charges arising out of its possession, use or maintenance. Lessee agrees to solely use the Equipment in the conduct of Lessee's business. Lessee agrees, at its expense, to obtain all applicable permits and licenses necessary for the operation of the Equipment, and keep the Equipment in good working order, repair, appearance and condition (reasonable wear and tear is acceptable). Lessee shall not use or permit the use of the Equipment for any purpose, which according to the specification of the manufacturer, the Equipment is not designed or reasonably suited. Lessee shall use the Equipment in a careful and proper manner and shall comply with all of the manufacturer's instructions, governmental rules, regulations, requirements, and laws, and all insurance requirements, if any, with regard to the use, operation or maintenance of the Equipment.
- (c) Lessee, at its expense, shall take good and proper care of the Equipment and make all repairs and replacements necessary to maintain and preserve the Equipment and keep it in good order and condition. Unless Lessor shall otherwise consent in writing, Lessee shall, at its own expense, enter into and maintain in force a maintenance agreement covering each unit of Equipment. Lessee shall furnish Lessor with a copy of such agreement upon request. Lessee shall pay all costs to install and dismantle the Equipment. Lessee shall not make any alterations, additions, or improvements, or add attachments to the Equipment without the prior written consent of Lessor, except for additions or attachments to the Equipment purchased by Lessee from the original supplier of the Equipment or any other person approved by Lessor. If Lessee desires to lease any such additions or attachments, Lessee hereby grants to Lessor the right of first refusal to provide such lease financing to Lessee for such items. Subject to the provisions of Section 13B of this MLA, Lessee agrees to restore the Equipment to Return Condition prior to its return to the Lessor.

11. Relocation of Equipment:

Lessee shall at all times keep the Equipment within its exclusive possession and control. Upon Lessor's prior written consent, which shall not be unreasonably withheld, Lessee may move the Equipment to another location of Lessee within the continental United States, provided (i) Lessee is not in default on any Schedule, (ii) Lessee executes and causes to be filed at its expense such instruments as are necessary to preserve and protect the interests of Lessor and its assigns in the Equipment, (iii) Lessee pays all costs of, and provides adequate insurance during such movement, and (iv) Lessee pays all costs otherwise associated with such relocation. Notwithstanding the foregoing, Lessee may move the Equipment to another location within Texas without notification to, or the consent of, Lessor. Provided, however, that not later than December 31 of each calendar year, Lessee shall provide Lessor a written report detailing the total amount of Equipment at each location of Lessee as of that date, and the complete address for each location. Lessor shall make all filings and returns for property taxes due with respect to the

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Equipment, and Lessee agrees that it shall not make or file any property tax returns, including information returns, with respect to the Equipment.

12. Ownership.

The Equipment shall at all times be and remain the sole and exclusive property of Lessor, subject to the parties rights under any applicable software license agreement. Lessee shall have no right, title or interest in the Equipment except a leasehold interest as provided for herein. Lessee agrees that the Equipment shall be and remain personal property and shall not be so affixed to realty as to become a fixture or otherwise to lose its identity as the separate property of the Lessor. Upon request, Lessee will enter into any and all agreements necessary to ensure that the Equipment remain the personal property of Lessor.

13. Purchase and Renewal Options; Location and Surrender of Equipment.

(a) Not less than ninety (90) days prior to the expiration of the initial Schedule Term Lessor shall notify Lessee of options for continued use of Equipment. Lessee shall have the option to: (i) renew the Schedule as to all but not less than all of the Equipment, or (ii) purchase all but not less than all of the Equipment for cash or by the Lessor's acceptance of a purchase order from Lessee upon the last business day on or prior to the expiration of the Schedule Term thereof for a price equal to the amount set forth in the Schedule. If the Fair Market Value (FMV) Purchase Option was selected on the Schedule, the FMV shall be determined on the basis of and shall be equal in amount to, the value which would be obtained in an arms-length transaction between an informed and willing buyer-user (other than a used equipment dealer), who would be retaining the Equipment as part of its current operations, in continuing and consistent use, and an informed and willing seller under no compulsion to sell, and in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessee desires to exercise either option, it shall give Lessor irrevocable written notice of its intention to exercise such option at least sixty (60) days (and not more than 180 days) before the expiration of such Schedule Term. In the event that Lessee exercises the purchase option described herein, upon payment by Lessee to Lessor of the purchase price for the Equipment, together with all Rent Payments and any other amounts owing to Lessor hereunder, Lessor shall transfer to Lessee without any representation or warranty of any kind, express or implied, title to such Equipment. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IF LESSEE FAILS TO NOTIFY LESSOR OF ITS INTENT WITH RESPECT TO THE EXERCISE OF THE OPTIONS DESCRIBED IN THIS SECTION 13 WITHIN THE TIME FRAMES CONTEMPLATED HEREIN, THE INITIAL SCHEDULE TERM SHALL BE TERMINATED ON THE DATE AS STATED IN THE SCHEDULE.

(b) The Equipment shall be delivered to and thereafter kept at the location specified in the Schedule and shall not be removed therefrom without Lessor's prior written consent and in accordance with Section 11 of this MLA. Upon the expiration, early termination as provided herein, or upon final termination

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of the Schedule, upon at least ninety (90) days prior written notice to Lessor, Lessee at its cost and expense, shall immediately disconnect, properly package for transportation and return all (not part) of the Equipment (including, without limitation, all service records and user manuals), freight prepaid, to Lessor in good repair, working order, with unblemished physical appearance and with no defects which affect the operation or performance of the Equipment ("Return Condition"), reasonable wear and tear excepted. Lessee shall, at Lessor's request, affix to the Equipment, tags, decals or plates furnished by Lessor indicating Lessor's ownership and Lessee shall not permit their removal or concealment. Lessee shall return the Equipment to Lessor at a location specified by Lessor, provided, however, such location shall be within the United States no farther than 500 miles from the original Lessee delivery location, unless otherwise agreed to on the applicable Schedule. If the Equipment is not in Return Condition, Lessee shall remain liable for all reasonable costs required to restore the Equipment to Return Condition. Lessee shall arrange and pay for the de-installation and packing of the Equipment and the de-installation shall be performed by manufacturer-certified technicians, approved by Lessor and the Lessor shall have the right to supervise and direct the preparation of the Equipment for return. IF, UPON TERMINATION OR EXPIRATION OF THE SCHEDULE FOR ANY REASON, LESSEE FAILS OR REFUSES FORTHWITH TO RETURN AND DELIVER THE EQUIPMENT TO LESSOR, LESSEE SHALL REMAIN LIABLE FOR ANY RENT PAYMENTS ACCRUED AND UNPAID WITH RESPECT TO ALL OF THE EQUIPMENT ON THE SCHEDULE AND SHALL PAY RENT UP TO THE DATE THAT THE EQUIPMENT IS RETURNED TO THE ADDRESS SPECIFIED BY LESSOR. Notwithstanding the foregoing, Lessor shall have the right, without notice or demand, to enter Lessee's premises or any other premises where the Equipment may be found and to take possession of and to remove the Equipment, at Lessee's sole cost and expense, without legal process. Lessee understands that it may have a right under law to notice and a hearing prior to repossession of the Equipment. As an inducement to Lessor to enter into a transaction, but only to the extent that Lessee, if a state agency, has statutory authority to do so, Lessee hereby expressly waives all rights conferred by existing law to notice and a hearing prior to such repossession by Lessor or any officer authorized by law to effect repossession and hereby releases Lessor from all liability in connection with such repossession. Without waiving the doctrines of sovereign immunity and immunity from suit and to the extent authorized by the constitution and laws of the State of Texas, Lessee's obligation to return Equipment may, at Lessor's option, be specifically enforced by Lessor.

14. Quiet Enjoyment.

During the Schedule Term, Lessor shall not interfere with Lessee's quiet enjoyment and use of the Equipment provided that an Event of Default (as hereinafter defined in Section 23 of the MLA) has not occurred.

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15. Warranties.

Lessor and Lessee acknowledge that manufacturer Equipment warranties, if any, inure to the benefit of the Lessee. Lessee agrees to pursue any warranty claim directly against such manufacturer of the Equipment and shall not pursue any such claim against Lessor. Lessee shall continue to pay Lessor all amounts payable under any Schedule under any and all circumstances.

16. No Warranties.

LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER OR LICENSOR OF THE EQUIPMENT. LESSEE AGREES THAT LESSOR HAS NOT MADE AND MAKES NO REPRESENTATIONS OR WARRANTIES OF WHATSOEVER NATURE, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, OR QUALITY OF THE EQUIPMENT OR ANY UNIT THEREOF. LESSEE SPECIFICALLY WAIVES ALL RIGHT TO MAKE CLAIM AGAINST LESSOR FOR BREACH OF ANY EQUIPMENT WARRANTY OF ANY KIND WHATSOEVER; AND WITH RESPECT TO LESSOR, LESSEE LEASES EQUIPMENT "AS IS". LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND OR NATURE CAUSED DIRECTLY OR INDIRECTLY BY ANY EQUIPMENT LEASED HEREUNDER, OR BY THE USE OR MAINTENANCE THEREOF, OR BY THE REPAIRS, SERVICE OR ADJUSTMENT THERETO OR ANY DELAY OR FAILURE TO PROVIDE ANY THEREOF, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEROF, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED WITHOUT IN ANY WAY IMPLYING THAT ANY SUCH WARRANTY EXISTS AND WITHOUT INCREASING ITS LIABILITY HEREUNDER, TO ASSIGN TO LESSEE UPON LESSEE'S REQUEST THEREFOR ANY WARRANTY OF A MANUFACTURER OR LICENSOR OR SELLER RELATING TO THE EQUIPMENT THAT MAY HAVE BEEN GIVEN TO LESSOR.

17. Indemnification.

- (a) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee shall indemnify, protect, save and hold harmless Lessor, its agents, servants and successors from and against all losses, damages, injuries, claims, demands and expenses, including legal expenses and attorney's fees, of whatsoever nature, arising out of the use, misuse, condition, repair, storage, return or operation (including, but not limited to, latent and other defects, whether or not discoverable by it) of any unit of Equipment, regardless of where, how and by whom operated, and arising out of negligence (excluding the gross negligence or willful misconduct of Lessor). Lessee is liable for the expenses of the defense or the settlement of any suit or suits or other legal proceedings brought to enforce any such losses, damages, injuries, claims, demands, and expenses and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the termination of the MLA or a

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Schedule whether by expiration of time, by operation of law or otherwise. With respect to Lessor, Lessee is an independent contractor, and nothing contained herein authorizes Lessee or any other person to operate the Equipment so as to impose or incur any liability or obligation for or on behalf of Lessor.

- (b) Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR individually and collectively assume all risks and liabilities with respect to any claim made by any third party that the lease arrangements herein are not authorized by law. Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent permitted by the laws and Constitution of the State of Texas, Lessee and DIR agree to indemnify, save and hold harmless Lessor from any and all such claims and all expenses incurred in connection with such claims or to defend against such claims, including without limitation any judgments by a court of competent jurisdiction or settlement or compromise with such claimant.
- (c) Lessor is the owner of the Equipment and has title to the Equipment. If any other person attempts to claim ownership of the Equipment by asserting that claim against Lessee or through Lessee, Lessee agrees, at its expense, to protect and defend Lessor's title to the Equipment. Lessee further agrees that it will at all times keep the Equipment free from any legal process, encumbrance or lien whatsoever, and Lessee shall give Lessor immediate notice if any legal process, encumbrance or lien is asserted or made against the Equipment.

18. Risk of Loss.

Commencing upon delivery and continuing throughout the Schedule Term, Lessee shall bear the entire risk of loss or damage in respect to any Equipment, whether partial or complete, from any cause whatsoever. In the event of loss, theft, destruction or damage of any kind to any item of Equipment, or if any Equipment is lost, stolen, or taken by governmental action for a stated period extending beyond the Term of any Schedule (an "Event of Loss"), Lessee shall promptly notify Lessor. Lessee shall, at its option: (a) immediately place the affected Equipment in good condition and working order, (b) replace the affected Equipment with identical equipment of at least equal value, in good condition and repair, and transfer clear title thereto to Lessor, or (c) to the extent permitted by law, pay to Lessor, within thirty (30) days of the Event of Loss, an amount equal to the Stipulated Loss Value ("SLV" as hereafter defined) for such affected Equipment, plus any other unpaid amounts then due under the Schedule. If an Event of Loss occurs as to part of the Equipment for which the SLV is paid, a prorated amount of each Rent Payment shall abate from the date the SLV payment is received by Lessor. The SLV shall be an amount equal to the sum of all future Rent Payments from the last Rent Payment date to the end of the Schedule Term with such Rent Payments discounted to present value at the like-term Treasury Bill rate for the remaining

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Schedule Term in effect on the date of such Event of Loss, or if such rate is not permitted by law, then at the lowest permitted rate.

In the event of a governmental taking of Equipment for an indefinite period or for a stated period, which does not extend beyond the Schedule Term, all obligations of the Lessee with respect to such Equipment (including payment of Rent) shall continue. So long as Lessee is not in default hereunder, Lessor shall pay to Lessee all sums received by Lessor from the government by reason of such taking.

19. Insurance.

At its expense, Lessee shall keep the Equipment insured against all risks of loss and damage with companies acceptable to Lessor for an amount equal to the original cost of the Equipment, with Lessor or its assign(s) named as a loss payee. Lessee shall also maintain comprehensive general liability insurance, with Lessor or its assign(s) named as an additional insured. Lessee shall be liable for any loss not covered by insurance. All said insurance shall be in form and amount satisfactory to Lessor. Lessee shall pay the premiums therefor and deliver to Lessor or its assign(s) the certificates of insurance or duplicates thereof or other evidence satisfactory to Lessor or its assign(s) of such insurance coverage. Evidence of such insurance coverage shall be furnished no later than the Schedule Commencement Date of each Schedule and from time to time as Lessor or its assign(s) may request. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any said insurance policy. Lessee may self-insure with respect to the required coverage.

Further, Lessees that are defined as state agencies in accordance with Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, may self-insure their obligations in this section.

20. Representations and Warranties of Lessee.

Lessee represents and warrants for the benefit of Lessor and its assigns, and Lessee will provide an opinion of counsel to the effect that, as of the time of execution of the MLA and each Schedule between Lessor and Lessee:

- (a) Lessee is either a Texas state agency or Texas local government, as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003) or a state agency purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code. Lessee has made an independent legal and management determination to enter into this transaction;

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- (b) Each Schedule executed by Lessee has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessee of any Schedule between Lessor and Lessee;
- (d) The entering into and performance of any Schedule between Lessor and Lessee, the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of the Lessee or on the Equipment leased under any Schedule between Lessor and Lessee pursuant to any instrument to which the Lessee is a party or by which it or its assets may be bound;
- (e) To the best of Lessee's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessee, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the MLA or any Schedule between Lessor and Lessee;
- (f) The use of the Equipment is essential to Lessee's proper, efficient and economic operation, and Lessee will sign and provide to Lessor upon execution of each Schedule between Lessor and Lessee hereto written certification to that effect; and
- (g) Lessee represents and warrants that: (i) it has authority to enter into any Schedule under this MLA, (ii) the persons executing a Schedule have been duly authorized to execute the Schedule on Lessee's behalf, (iii) all information supplied to Lessor is true and correct, including all credit and financial information and (iv) it is able to meet all its financial obligations, including the Rent Payments hereunder.

21. Representation and Warranties of DIR.

DIR represents and warrants for the benefit of Lessor and its assigns, and DIR will provide an opinion of counsel to the effect that, as of the time of execution of the MLA:

- (a) DIR is a State agency as defined in Section 2251.001, Texas Government Code. DIR has not provided the Lessee or the Lessor with any legal or management advice regarding the MLA or any Schedule executed pursuant thereto;

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- (b) This MLA has been duly authorized, executed and delivered by DIR and constitutes a valid, legal and binding Agreement of DIR, enforceable in accordance with its terms;
- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or governmental authority or instrumentality with respect to the entering into or performance by DIR of this MLA;
- (d) The entering into and performance of the MLA does not violate any judgment, order, law or regulation applicable to DIR or result in any breach of, constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon assets of DIR or on the Equipment pursuant to any instrument to which DIR is a party, or by which it or its assets may be bound;
- (e) To the best of DIR's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting DIR, which if determined adversely to DIR will have a material adverse effect on the ability of DIR to fulfill its obligations under the MLA;
- (f) DIR is authorized to charge and collect the administrative fee as set forth within Section 5 of the Contract;
- (g) Lessor's payment of the administrative fee to DIR shall not constitute an illegal gratuity or otherwise violate Texas law; and
- (h) DIR is a government agency subject to the Texas Public Information Act. Lessor acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney Generals' office concerning this Act.

22. Representations and Warranties of Lessor.

- (a) Lessor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas and any of its political subdivisions;
- (b) The MLA and each Schedule executed in conjunction to this MLA have been duly authorized, executed and delivered by Lessor and constitute valid, legal and binding agreements of Lessor, enforceable with respect to the obligations of Lessor herein in accordance with their terms;

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- (c) No approval, consent or withholding of objection is required from any federal or other governmental authority or instrumentality with respect to the entering into or performance by Lessor of this MLA or any Schedule;
- (d) The entering into and performance of the MLA or any Schedule will not violate any judgment, order, law or regulation applicable to Lessor or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon the assets of the Lessor, including Equipment leased under the MLA and Schedules thereto, pursuant to any instrument to which the Lessor is a party or by which it or its assets may be bound; and
- (e) To the best of Lessor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Lessor, which if determined adversely to Lessor will have a material adverse effect on the ability of Lessor to fulfill its obligations under the MLA or any Schedule.

23. Default.

Lessee shall be in default under a Schedule upon the occurrence of any one or more of the following events (each an "Event of Default"): (a) nonpayment or incomplete payment by Lessee of Rent or any other sum payable; (b) nonpayment or incomplete payment by Lessee of Rent or any other sum payable on its due date; (c) failure by Lessee to perform or observe any other term, covenant or condition of this MLA, any Schedule, or any applicable software license agreement, which is not cured within ten (10) days after notice thereof from Lessor; (d) insolvency by Lessee; (e) Lessee's filing of any proceedings commencing bankruptcy or the filing of any involuntary petition against Lessee or the appointment of any receiver not dismissed within sixty (60) days from the date of said filing or appointment; (f) subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) any representation or warranty made by Lessee in this MLA, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment being or becoming untrue in any material respect.

24. Remedies.

- (a) Upon the occurrence of an "Event of Default" and at any time thereafter Lessor may, in its sole discretion, do any one or more of the following: (i) After giving fifteen (15) days prior written notice to Lessee of default, during which time Lessee shall have the opportunity to cure such default, terminate any or all Schedules executed by Lessor and the defaulting Lessee; (ii) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessor may proceed by appropriate court action to enforce the performance of the terms of the Schedule and/or recover damages, including all of

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Lessor's economic loss for the breach thereof; (iii) whether or not the Schedule is terminated, upon notice to Lessee, take possession of the Equipment wherever located, without demand, liability, court order or other process of law, and for such purposes Lessee, to the extent authorized by Texas law, hereby authorizes Lessor, its assigns or the agents of either to enter upon the premises where such Equipment is located or cause Lessee, and Lessee hereby agrees, to return such Equipment to Lessor in accordance with the requirements of Section 13 of the MLA; (iv) by notice to Lessee, and to the extent permitted by law, declare immediately due and payable and recover from Lessee, as liquidated damages and as a remedy, the sum of (a) the present value of the Rent owed from the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee until the end of the Schedule Term plus, if the Equipment is not returned to or repossessed by Lessor, the present value of the estimated in-place fair market value of the Equipment at the end of the Schedule Term as determined by Lessor, each discounted at a rate equal to the rate used by Lessor for business opportunity analysis; (b) all Rent and other amounts due and payable on or before the earlier of the date of payment by Lessee or the date Lessor obtains a judgment against Lessee; and (c) without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, costs, fees (including all attorneys' fees and court costs) and expenses associated with collecting said sums; and (d) interest on (a) and (b) from the date of default at 1 1/2% per month or portion thereof (or the highest rate allowable by law, if less) and, on (c) from the date Lessor incurs such fees, costs or expenses.

- (b) Upon return or repossession of the Equipment, Lessor may, if it so decides in its sole discretion, upon notice to Lessee, use reasonable efforts to sell, re-lease or otherwise dispose of such Equipment, in such manner and upon such terms as Lessor may determine in its sole discretion, so long as such manner and terms are commercially reasonable. Upon disposition of the Equipment, Lessor shall credit the Net Proceeds (as defined below) to the damages paid or payable by Lessee. Proceeds upon sale of the Equipment shall be the sale price paid to Lessor less the Stipulated Loss Value in effect as of the date of default. Proceeds upon a re-lease of the Equipment shall be all rents to be received for a term not to exceed the remaining Schedule Term, discounted to present value as of the commencement date of the re-lease at the Lessor's current applicable debt rate. Without Lessee and DIR waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, "Net Proceeds" shall be the Proceeds of sale or re-lease as determined above, less all costs and expenses incurred by Lessor in the recovery, storage and repair of the Equipment, in the remarketing or disposition thereof, or otherwise as a result of Lessee's default, including any court costs and attorney's fees and interest on the foregoing at eighteen percent (18%) per annum or the highest rate allowable by law, if less, calculated from the dates such costs and expenses were incurred until received by Lessor. Lessee shall remain liable for the amount by which all sums, including liquidated damages, due from Lessee exceeds the Net Proceeds. Net Proceeds in excess thereof are the property of and shall be retained by Lessor.

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- (c) No termination, repossession or other act by Lessor in the exercise of its rights and remedies upon an Event or Default shall relieve Lessee from any of its obligations hereunder. 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
- (d) Neither DIR nor non-defaulting Lessees shall be deemed in default under the MLA or Schedules because of the default of a particular Lessee. Lessor's remedies under this Section 24 shall not extend to DIR and those non-defaulting Lessees.

25. Notices and Waivers.

All notices relating to this MLA shall be delivered to DIR or the Lessor as specified within Section 6 of the Contract, or to another representative and address subsequently specified in writing by the appropriate parties hereto. All notices relating to a Schedule shall be delivered in person to an officer of the Lessor or Lessee or shall be mailed certified or registered to Lessor or Lessee at its respective address shown on the Schedule or to another address subsequently specified in writing by the appropriate parties thereof. DIR, Lessee, and Lessor intend and agree that a photocopy or facsimile of this MLA or a Schedule and all related documents, including but not limited to the Acceptance Certificate, with their signatures thereon shall be treated as originals, and shall be deemed to be as binding, valid, genuine, and authentic as an original signature document for all purposes. This MLA and those Schedules in conjunction hereof are a "Finance Lease" as defined in Article 2A of the Uniform Commercial Code ("UCC"). A waiver of a specific Default shall not be a waiver of any other or subsequent Default. No waiver of any provision of this MLA or a provision of a Schedule shall be a waiver of any other provision or matter, and all such waivers shall be in writing and executed by an officer of the Lessor. No failure on the part of Lessor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof.

26. Assignment by Lessor; Assignment or Sublease by Lessee.

- (a) Lessor may (i) assign all or a portion of Lessor's right, title and interest in this MLA and/or any Schedule; (ii) grant a security interest in the right, title and interest of Lessor in the MLA, any Schedule and/or any Equipment; and/or (iii) sell or transfer its title and interest as owner of the Equipment and/or as Lessor under any Schedule; and DIR and each Lessee leasing Equipment under the MLA understand and agree that Lessor's assigns may each do the same (hereunder collectively "Assignment"). All such Assignments shall be subject to each Lessee's rights under the Schedule(s) executed between it and Lessor and to DIR's rights under the MLA. Each Lessee leasing Equipment through Schedules under this MLA and DIR hereby consent to such Assignments and agree to execute and deliver promptly such acknowledgements, Opinions of Counsel and other instruments reasonably requested to effect such Assignment. Each Lessee leasing Equipment through

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Schedules under this MLA and DIR acknowledge that the assigns do not assume Lessor's obligations hereunder and agree to make all payments owed to the assigns without abatement and not to assert against the assigns any claim, defense, setoff or counterclaim which DIR or the Lessee(s) may possess against the Lessor or any other party for any other reason. Lessor shall remain liable for performance under the MLA and any Schedule(s) executed hereunder to the extent Lessor's assigns do not perform Lessor's obligations under the MLA and Schedule(s) executed hereunder. Upon any such Assignment, all references to Lessor shall also include all such assigns, whether specific reference thereto is otherwise made herein.

- (b) **LESSEE WILL NOT SELL, ASSIGN, SUBLET, PLEDGE OR OTHERWISE ENCUMBER, OR PERMIT A LIEN TO EXIST ON OR AGAINST ANY INTEREST IN THIS LEASE, OR THE EQUIPMENT, OR REMOVE THE EQUIPMENT FROM ITS LOCATION REFERRED TO ON THE SCHEDULE, WITHOUT LESSOR'S PRIOR WRITTEN CONSENT EXCEPT AS PROVIDED IN SECTION 11 OF THIS MLA. LESSOR MAY ASSIGN ITS INTEREST IN THIS LEASE AND SELL OR GRANT A SECURITY INTEREST IN ALL OR ANY PART OF THE EQUIPMENT WITHOUT LESSEE'S CONSENT. LESSEES THAT ARE STATE AGENCIES, WITHOUT WAIVING THE DOCTRINE OF SOVEREIGN IMMUNITY AND IMMUNITY FROM SUIT, AND ONLY AS MAY BE AUTHORIZED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, AGREE THAT IN ANY ACTION BROUGHT BY AN ASSIGNEE AGAINST LESSEE TO ENFORCE LESSOR'S RIGHTS HEREUNDER, LESSEE WILL NOT ASSERT AGAINST SUCH ASSIGNEE AND EXPRESSLY WAIVES AS AGAINST ANY ASSIGNEE, ANY BREACH OR DEFAULT ON THE PART OF LESSOR HEREUNDER OR ANY OTHER DEFENSE, CLAIM OR SET-OFF WHICH LESSEE MAY HAVE AGAINST LESSOR EITHER HEREUNDER OR OTHERWISE. NO SUCH ASSIGNEE SHALL BE OBLIGATED TO PERFORM ANY OBLIGATION, TERM OR CONDITION REQUIRED TO BE PERFORMED BY LESSOR HEREUNDER.** Without the prior written consent of Lessor, DIR shall not assign, sublease, transfer, pledge or hypothecate the Master Lease Agreement; provided, however, that no such prior written consent from Lessor is necessary in the event of a legislative mandate to transfer the contract to another state agency.

27. Delivery of Related Documents.

For each Schedule, Lessee will provide the following documents and information satisfactory to Lessor: (a) Certificate of Acceptance; (b) Opinion of Counsel; (c) proof of self-insurance acceptable to Lessor; (d) Financial Statements; (e) Incumbency Certificate; and (f) Other documents as reasonably required by Lessor.

28. Lessee's Waivers.

To the extent permitted by applicable law, Lessee hereby waives the following rights and remedies conferred upon Lessee by the Uniform Commercial Code: to (i) cancel any Schedule under the MLA; (ii)

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repudiate any Schedule; (iii) reject the Equipment; (iv) revoke acceptance of the Equipment; (v) recover damages from Lessor for any breach of warranty by the manufacturer; (vi) claim a security interest in the Equipment in Lessee's possession or control for any reason; (vii) deduct all or any part of any claimed damages resulting from Lessor's default, if any, under any Schedule; (viii) accept partial delivery of the Equipment; (ix) "cover" by making any purchase or lease of or contract to purchase or lease equipment in substitution for the Equipment due from Lessor; (x) recover any special, punitive, incidental or consequential damages, for any reason whatsoever. Lessee agrees that any delay or failure to enforce Lessor's rights under this MLA or a Schedule does not prevent Lessor from enforcing any rights at a later time.

29. Security Interest and UCC Filings.

To secure payments hereunder, Lessor reserves and Lessee hereby grants to Lessor a continuing security interest in the Equipment and any and all additions, replacements, substitutions, and repairs thereof. When all of the Lessee's obligations under this MLA and respective Schedules have been fully paid and satisfied, Lessor's security interest shall terminate. Nothing contained herein shall in any way diminish Lessor's right, title, or interest in or to the Equipment. Lessor and Lessee agree that a reproduction of this MLA and/or any associated Schedule may be filed as a financing statement and shall be sufficient as a financing statement under the Uniform Commercial Code ("UCC"). Lessee hereby appoints Lessor, its agents, successors or assigns its true and lawful attorney-in-fact for the limited purpose of executing and filing on behalf of Lessee any and all UCC Financing Statements which in Lessor's sole discretion are necessary or proper to secure Lessor's interest in the Equipment in all applicable jurisdictions. Lessee shall execute or obtain and deliver to Lessor, upon Lessor's request, such instruments, financing statements and assurances, as Lessor deems necessary or advisable for the protection or perfection of this Lease and Lessor's rights hereunder and will pay all costs incident thereto.

30. Miscellaneous.

- (a) **Applicable Law and Venue.** The MLA and each Schedule SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. In the event of a dispute between the parties, exclusive venue for any legal action shall be in the state court where Lessee has its principal office or where the Equipment is located, with the following exception: if a Lessee is designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, then exclusive venue shall be in the state district court of Travis County, Texas.
- (b) **Counterpart.** Only original counterpart No. 1 of each Schedule shall be deemed to be an "Original" for chattel paper purposes under the Uniform Commercial Code. Any and all other counterparts

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shall be deemed to be a "Copy". NO SECURITY INTEREST IN THIS MLA, IN ANY SCHEDULE, OR IN ANY OF THE EQUIPMENT MAY BE CREATED, TRANSFERRED, ASSIGNED OR PERFECTED BY THE TRANSFER AND POSSESSION OF THIS MLA ALONE OR OF ANY "COPY" OF THE SCHEDULE, BUT RATHER SOLELY BY THE TRANSFER AND POSSESSION OF THE "ORIGINAL" COUNTERPART OF THE SCHEDULE INCORPORATING THIS MLA BY REFERENCE.

- (c) Suspension of Obligations of Lessor. Prior to delivery of any Equipment, the obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from performing because of causes beyond its control.
- (d) Severability. In the event of any provision of this MLA or any Schedule shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the parties hereto agree that such provision shall be ineffective without invalidating the remaining provisions thereof.
- (e) Entire Agreement. Lessor and Lessee acknowledge that there are no agreements or understanding, written or oral, between them with respect to the Equipment, other than as set forth in this MLA and in each Schedule to which Lessee is a signatory party. Lessor and Lessee further acknowledge that this MLA and each Schedule to which Lessee is a party contain the entire agreement between Lessor and Lessee and supersedes all previous discussions and terms and conditions of any purchase orders issued by Lessee. DIR and Lessor acknowledge that there are no agreements or understandings, written or oral, between them other than as set forth in this MLA and Contract Number DIR-TSO-XXX and that both contain the entire agreement between them. Neither this MLA nor any Schedule may be altered, modified, terminated, or discharged except by a writing signed by the party against whom enforcement of such action is sought.
- (f) Headers. The descriptive headings hereof do not constitute a part of any Schedule and no inferences shall be drawn therefrom.
- (g) Language context. Whenever the context of this MLA requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural, and whenever the word Lessor is used herein, it shall include all assignees of Lessor.
- (h) Lessor Certifications. Lessor certifies that:
 - (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this MLA and/or any Schedules executed hereunder;

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- (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges this MLA may be terminated and payment withheld if this certification is inaccurate;
- (iii) neither it , nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) it has not received payment from DIR, Lessee or any of their employees for participating in the preparation of this MLA and the Schedule(s) hereunder;
- (v) during the term of this MLA, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision making authority,
- (vi) under Section 2155.004, Texas Government Code, the Lessor certifies that the individual or business entity named in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate;
- (vii) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the MLA;
- (viii) Lessor and its principals are not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (ix) as of the effective date of the MLA, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (x) to the extent applicable to this scope of this MLA, Lessor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;

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- (xi) Vendor represents and warrants that, for its performance of this contract, it shall purchase products and materials produced in the State of Texas when available at the price and time comparable to products and materials produced outside the state, to the extent that such is required under Texas Government Code, Section 2155.4441;
- (xii) agrees that all equipment and materials used in fulfilling the requirements of this contract are of high-quality and consistent with or better than applicable industry standards, if any. All Works and Services performed pursuant to this Contract shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- (xiii) Lessor agrees that any payments due under this MLA will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xiv) Lessor certifies that they are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency; if Section 669.003 applies, Vendor will complete the following information: Name of Former Executive; Name of State Agency; Position with Vendor and Date of Employment with Vendor.
- (xv) Lessor represents and warrants that the provision of goods and services or other performance under the MLA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the MLA, Lessor certifies it shall disclose for itself and on behalf of subcontractors the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (xvi) Lessor represents and warrants that the Lessee's payment to Lessor and Lessor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
- (xvii) Under Section 2155.006, Government Code, Lessor certifies that the individual or business entity in this MLA is not ineligible to receive the specified MLA and acknowledges that this MLA may be terminated and payment withheld if this certification is inaccurate. In addition, Lessor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the MLA; and (xviii) Lessor certifies that it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

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Managed Print Services, Printers, Copiers, 3D Printers, Scanning, Plotting and Facsimile Equipment and Related Services; Document Imaging Services/Solutions; Enterprise Content Management Products, Software and Services

During the term of the MLA, Lessor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Lessor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

- (i) **Dispute Resolution.** The following paragraph applies only to Lessees designated as a State agency as defined in Section 2054.003, Texas Government Code, including a university system or institution of higher education, and those purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this chapter. To the extent that Chapter 2260 of the Texas Government Code, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260, and rules promulgated there under shall be used by the Lessee and Lessor to attempt to resolve any claim for breach of agreement made by Lessor.

- (j) **Sovereign Immunity.** Nothing herein shall be construed to waive the State's sovereign immunity.

(k) **31. Amendments.**

The terms and conditions of this MLA may be amended only by written instrument executed by the Lessor and DIR.