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| <b>Request<br/>for Bids</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  <p><b>Marshall University</b><br/>Office of Purchasing<br/>One John Marshall Drive<br/>Huntington, WV 25755-4100</p> <p>Direct all inquiries regarding this order to: (304) 696-</p> | <b>Bid #</b><br><br>R1801972                                                                                                                                                                                                                                                 |                                        |                              |                                                                                                                                                                                                                                                                              |
| <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"><b>Vendor:</b><br/><br/><b>FEIN/SSN:</b></td> <td style="width: 33%; vertical-align: top;"><b>Phone:</b><br/><b>Fax:</b></td> <td style="width: 33%; vertical-align: top;"><b>For information call:</b><br/><b>Purchasing Contact:</b> Tracey Brown-Dolinski<br/><b>Phone:</b> (304) 696-3157<br/>Email: <a href="mailto:browndolinsk@marshall.edu">browndolinsk@marshall.edu</a> and <a href="mailto:purchasing@marshall.edu">purchasing@marshall.edu</a></td> </tr> </table>                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                              | <b>Vendor:</b><br><br><b>FEIN/SSN:</b> | <b>Phone:</b><br><b>Fax:</b> | <b>For information call:</b><br><b>Purchasing Contact:</b> Tracey Brown-Dolinski<br><b>Phone:</b> (304) 696-3157<br>Email: <a href="mailto:browndolinsk@marshall.edu">browndolinsk@marshall.edu</a> and <a href="mailto:purchasing@marshall.edu">purchasing@marshall.edu</a> |
| <b>Vendor:</b><br><br><b>FEIN/SSN:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Phone:</b><br><b>Fax:</b>                                                                                                                                                                                                                                           | <b>For information call:</b><br><b>Purchasing Contact:</b> Tracey Brown-Dolinski<br><b>Phone:</b> (304) 696-3157<br>Email: <a href="mailto:browndolinsk@marshall.edu">browndolinsk@marshall.edu</a> and <a href="mailto:purchasing@marshall.edu">purchasing@marshall.edu</a> |                                        |                              |                                                                                                                                                                                                                                                                              |
| Sealed requests to bid for furnishing the supplies, equipment or services described below will be received by the Institution. TO RECEIVE CONSIDERATION FOR AWARD, UNLESS OTHERWISE NOTED, THE BID WILL BE SUBMITTED ON THIS FORM IN ORIGINAL AND (1) COPY, SIGNED IN FULL IN INK, AND RECEIVED IN THE OFFICE OF PURCHASING TO HAVE A DATE/TIME STAMP AFFIXED, ON OR BEFORE THE DATE AND TIME SHOWN FOR THE BID OPENING. When applicable, prices will be based on units specified; and Bidders will enter the delivery date or time for items contained herein. The Institution reserves the right to accept or reject bids on each item separately or as a whole, to reject any or all bids, to waive informalities or irregularities and to contract as the best interests of the Institution may require. BIDS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS PRINTED ON THE REVERSE SIDE HEREOF AND AS SET FORTH HEREIN. |                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                              |                                        |                              |                                                                                                                                                                                                                                                                              |
| <b>DATE</b><br>4/25/2018                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | DELIVERY IS REQUIRED<br>NO LATER THAN                                                                                                                                                                                                                                  | DEPARTMENT<br>REQUISITION NO.                                                                                                                                                                                                                                                |                                        |                              |                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                        | <b>BIDS OPEN:</b><br><b>3:00 pm on</b><br><b>4/20/2018</b>                                                                                                                                                                                                                   |                                        |                              |                                                                                                                                                                                                                                                                              |
| BIDDER MUST<br>ENTER<br>DELIVERY<br>DATE FOR<br>EACH ITEM BID                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                              |                                        |                              |                                                                                                                                                                                                                                                                              |
| Item #                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Quantity                                                                                                                                                                                                                                                               | Description                                                                                                                                                                                                                                                                  |                                        |                              |                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                        | <b>ADDENDUM #1</b><br><br>The purpose of this addendum is to respond to written question.<br><br>Addenda must be signed and included with your RFB response.                                                                                                                 |                                        |                              |                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                        | Unit Price                                                                                                                                                                                                                                                                   |                                        |                              |                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                        | Extended Price                                                                                                                                                                                                                                                               |                                        |                              |                                                                                                                                                                                                                                                                              |
| <b>Total</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                              |                                        |                              |                                                                                                                                                                                                                                                                              |

To the Office of Purchasing,  
In compliance with the above, the undersigned offers and agrees, if this offer is accepted within \_\_\_\_\_ calendar days (30 calendar days unless a different period is inserted by the purchaser) from the bid open date, specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified.

Bidder guarantees shipment from \_\_\_\_\_

within \_\_\_\_\_ days

FOB \_\_\_\_\_ After receipt of order at address shown

Terms \_\_\_\_\_

Bidder's name Vendor \_\_\_\_\_

Signed By \_\_\_\_\_

Typed Name \_\_\_\_\_

Title \_\_\_\_\_

Street Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Date \_\_\_\_\_

Phone \_\_\_\_\_

Fein \_\_\_\_\_

**Question**

Are you asking for us to respond with a leasing / financing option?

**Answer**

The purchase will be financed through the State; however, vendors are given the option to use a third party for financing services. A request to use the third party must be in advance. The State of WV Master Lease Purchase Financing Agreement sample is attached.

**STATE COLLEGE AND UNIVERSITY SYSTEM OF WEST VIRGINIA**  
**LEASE PURCHASE AGREEMENT**

**THIS LEASE PURCHASE AGREEMENT**, Made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, ("Lessor"), and \_\_\_\_\_, STATE OF WEST VIRGINIA ("Lessee").

The parties hereto do mutually covenant and agree as follows:

1. **Lease:** Pursuant to the provisions of Chapter 18B of the West Virginia Code, \_\_\_\_\_, Lessee, a body politic duly organized and existing under the laws of the State of West Virginia, agrees to lease from Lessor the items of equipment specified in Exhibit A attached hereto ("Equipment"), and Lessor, as specified above, agrees to lease to Lessee the Equipment in accordance with the terms and conditions of this Lease Purchase Agreement ("Lease"). Upon execution, this Lease is binding on and enforceable against Lessor and Lessee in accordance with its terms.
2. **Covenants of Lessor:** Lessor, and any assignee of Lessor, shall allow Lessee to quietly have, hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor during the term of this Lease, except as expressly set forth in this Lease.
3. **Covenants of Lessee:** Lessee is authorized under the Constitution and laws of the State of West Virginia to enter into this Lease. No approval, consent or withholding of objection is required from any governmental authority not a signatory to this Lease with respect to the performance or obligations of Lessee under this Lease. This Lease will not violate any judgment, 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 or encumbrance upon the assets of the Lessee or on the Equipment pursuant to, any other instrument to which Lessee is a party.
4. **Equipment Delivery and Acceptance:** Lessee shall accept the Equipment when and if delivered and placed in good working order in accordance with the Purchase Order for such item of Equipment and hereby authorizes the Lessor to add to this Lease the serial number of each item of Equipment so delivered. Lessee shall have sixty (60) days from date of delivery to accept the Equipment and deliver an Equipment Acceptance Certificate, as shown in Exhibit C, or to have the Equipment returned. Notice of any Equipment defects shall be given to Lessor within thirty (30) days of delivery, unless not discovered at that time by reasonable efforts.

Lessor agrees to pay the invoices for the accepted Equipment within seven (7) days of receipt of the Equipment Acceptance Certificate, but shall not be liable for the specific performance of the Lease or for damages, if for any reason, the supplier delays or fails to fill the order. Any delay in such delivery shall not affect the validity of this Lease.

In the event any portion of the Equipment is not accepted or the cost of the Equipment is less than the funding under this Lease, then the amount of the funding remaining shall be applied as a partial prepayment.

5. **Term:** The term of this Lease shall commence on the date of execution of this Lease and shall terminate upon the first to occur:
  - (a) The payment of the purchase option price;
  - (b) The payment of all lease payments;
  - (c) An event of non-appropriation;
  - (d) An event of default; or
  - (e) Cancellation at the option of the Lessee pursuant to Section 19.
6. **Event of Non-Appropriation:** An event of non-appropriation shall be deemed to have occurred if:
  - (a) Sufficient funds are not appropriated for lease payments in any fiscal year; and
  - (b) Lessee shall have at such time no funds duly authorized or otherwise available for the lease payments.

Upon the occurrence of an event of non-appropriation, this Lease shall terminate without penalty at the end of the then current fiscal year and the lease and other payments shall be canceled. Lessee agrees to return the Equipment to Lessor, together with a release of Lessee's title and interest therein. It is the intention of the parties that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee agrees, nevertheless, to execute and deliver any such instruments as Lessor may reasonably request to evidence such transfer. Lessee agrees to provide written notice of an event of non-appropriation to Lessor as soon as Lessee determines that such an event exists.

7. Warranties/Guarantees: Lessee acknowledges that it has selected the Equipment financed under this Lease and that Lessor is not the manufacturer or dealer in the Equipment herein leased. As Lessor is not the manufacturer or dealer in the Equipment, Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of warranties by the vendor of any item(s) of Equipment. Lessor hereby assigns to each Lessee for and during the lease term all manufacturers' warranties or guarantees, expressed or implied, issued on or applicable to the Equipment acquired by that Lessee, if any.

LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR ANY OTHER WARRANTY WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEES' USE OF ANY ITEM(S) OF EQUIPMENT PROVIDED IN THIS LEASE. HOWEVER, LESSOR AGREES TO BE LIABLE FOR ANY LOSS TO PERSONAL PROPERTY OR INJURY TO PERSONS CAUSED BY THE NEGLIGENCE OF LESSOR.

8. Lease Payments: Lessee agrees to pay to Lessor lease payments, comprised of the principal and interest, in the amounts set forth in the payment schedule attached hereto as Exhibit B.

All payments shall be made in arrears for the preceding period, and shall be absolute and unconditional in all events, without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, except as expressly provided in Section 6 of this Lease, provided with respect to any item of Equipment Lessor has provided the funds to finance such item of Equipment and no payment with respect to such item of Equipment has been withheld from a vendor. Lessor shall provide invoices to Lessee in a timely manner.

The obligation of Lessee to pay lease payments hereunder constitutes a special obligation of the State of West Virginia. The obligation may be met from any funds legally available to the Lessee and shall be cancelable at the option of the Lessee at the end of any fiscal year. The obligation, or any assignment or securitization of the obligation, never constitutes an indebtedness of the State of West Virginia or any department, agency or political subdivision of the state, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision of the state.

Lessee reasonably believes that sufficient funds can be obtained to make all lease payments during the term of this Lease and hereby covenants that it will use its best efforts to obtain, maintain and properly request funds from which the lease payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved. Lessee intends to make lease payments for the full term of this Lease and represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to their proper, efficient and economic operation.

9. Use and Maintenance: Lessee agrees to comply with all federal, state and local laws, ordinances, and regulations applicable to the possession, use or maintenance of the Equipment.

Lessee will not use, operate or maintain the Equipment improperly, carelessly, or in violation of any applicable law. Lessee will, at its expense, maintain, preserve and keep the Equipment in good repair, working order and condition.

Material alterations, modifications, additions or attachments to the Equipment must have the written approval of the Lessor, which consent shall not be unreasonably withheld or delayed, and such action shall be performed at the sole

expense of Lessee. All alterations, modifications, additions or attachments shall not reduce the value or usefulness of the Equipment.

During the term of this Lease, Lessor and its officers, employees or agents shall have the right at all reasonable times during business hours of Lessee to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

10. Insurance and Loss of Equipment: Lessee is insured through the West Virginia Board of Risk and Insurance Management and will protect the interests of the Lessor and Lessee against Equipment losses or damage. Lessee is also insured against liability related to the Equipment. In the event of any loss, damage, injury or accident involving the Equipment, Lessee shall promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation thereof.

If any Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or if title to, or the temporary use of, the Equipment or any part thereof is taken under the exercise of the power of eminent domain, Lessee and Lessor will cause the net proceeds of any insurance claim or condemnation award to be applied either to the prompt repair, restoration, modification or replacement of the Equipment or, at Lessee's option, to the payment of the appropriate portion of the purchase option price.

Any balance of the net proceeds remaining after such work or purchase has been completed shall be paid to the Lessee. Net proceeds shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses incurred in the collection of such claims or award. If the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, Lessee shall either (a) complete the work and pay any cost in excess of the amount of net proceeds, or (b) Lessee shall pay to Lessor the purchase option price. The amount of the net proceeds in excess of the then applicable purchase option price, if any, may be retained by Lessee.

In the event the purchase option payment for any item(s) of Equipment is paid in accordance with this section, Lessor agrees to release any security interest on that item(s) of Equipment.

11. Title to Leased Equipment: During the term of this Lease, title to the Equipment shall vest in the Lessee so long as Lessee shall not be in default or this Lease shall not have been terminated as to such Equipment. To secure all obligations hereunder, Lessee hereby grants to Lessor a security interest in any and all right, title and interest of Lessee in the Equipment. Lessee shall promptly discharge any mechanics', materialmen's or other liens placed on the Equipment.

Lessor shall convey all of the Lessor's right and interest in and to the Equipment to Lessee upon payment of all the lease payments required in accordance with the payment schedule through the maximum lease term for such Equipment or the purchase option price set forth in the payment schedule, if the Lessee is not on such date in default as to any terms of this Lease.

12. Taxes and Other Charges: Lessee represents that it is exempt from federal, state and local taxation, and as such, shall not be liable or responsible for the payment or reimbursement of any tax of any type incurred in connection with this Lease, nor will it file any tax returns or reports on behalf of Lessor or its assignees.

As title to the Equipment shall vest in the Lessee during the term of this Lease, the Equipment is exempt from personal property tax pursuant to West Virginia Code § 11-3-9(a)(27). Lessee also represents that, to the best of its knowledge, no licensing or titling fees based upon the use, possession or acquisition of the Equipment are due under the current laws of West Virginia.

Pursuant to West Virginia Code § 18B-19-11(f), the interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the West Virginia Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of the lease payments made under this Lease be and remain exempt from the gross income of the Lessor for purposes of federal income taxation.

Lessee covenants that it will take any and all action reasonably necessary to maintain the exemption from federal income taxation of the interest portion of the lease payments, and that it will not perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall have the effect of terminating or denying the exemption from federal income taxation of the interest portion of the lease payments, including, without limitation, leasing all or any portion of the Equipment or contracting with a third party for the use or operation of all or any portion of the Equipment if entering into such lease or contract would have such effect.

13. Assignment: This Lease, and the obligation of Lessee to make payments hereunder, may be sold, assigned or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees or sub-assignees by Lessor only upon the written consent of Lessee. Upon any sale, disposition, assignment or reassignment, Lessee shall be provided with an executed, duplicate original counterpart of the document(s) by which the same is made and shall be informed of the effective date of and modifications to such sale, disposition, assignment or reassignment. Any assignment document(s) or other instruments of sale must also be approved as to form by the Attorney General.

Lessee agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, set-off or counterclaim whatsoever, whether arising from a breach of this Lease or otherwise (except a breach by Lessor), that Lessee may from time to time have against Lessor or any provider of the Equipment. Lessee agrees to execute all documents, including notices of assignment, chattel mortgages or financing statements, which may be reasonably requested by Lessor or assignee to protect its interests in the Equipment and in this Lease.

Lessor hereby covenants not to sell or offer to sell this Lease through, nor shall this Lease be sold through, (1) a certificate of participation program, whereby two or more interests are created in the Lease, the Equipment or the lease payments; or (2) other similar instruments, agreements, securitizations and obligations through a pool, trust, limited partnership, or other entity, without the express written consent of Lessee and approval of the agreement as to form by the Attorney General.

Lessor shall be the initial registrar and, as such, shall maintain the books for the registration and transfer of this Lease. Each transferee of Lessor, by acceptance of this Lease, agrees to act as the successor registrar if so appointed in writing by the Lessee. The transfer of this Lease may be registered, upon presentation and surrender of this Lease at the office of the registrar designated for such purpose, together with the assignment. The registrar shall maintain a book-entry system by which a record of the names and addresses of all holders of this Lease, or interests therein, is kept. The Lessee or the registrar may require the person requesting any transfer to reimburse it for any tax or other governmental charge payable in connection therewith.

This Lease and the interest of the Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor, except that Lessee shall have the right to assign or lease the Equipment, in whole or in part, to other agencies of the State of West Virginia for governmental use only.

During the term of this Lease, Lessee shall keep a complete and accurate record of all assignments and other transfers in form and substance necessary to comply with Section 149(a) of the Internal Revenue Code of 1986, as amended. Prior to assignment of Lessor's interest herein, Lessor will cause written notice of such requested assignment to be sent to the Lessee, requesting approval. Upon receipt of an approved notice of assignment, Lessee shall (i) acknowledge the same in writing to Lessor, and (ii) record the assignment in Lessee's book entry system as that term is defined in the Internal Revenue Code of 1986, as amended. Upon assignment of Lessee's interest herein, Lessee will cause written notice of such assignment to be sent to Lessor disclosing the name and address of assignee. Lessee shall initiate any required change order to effectuate an approved assignment.

14. Indemnification: The laws and Constitution of West Virginia prohibit Lessee from protecting, holding harmless or indemnifying Lessor from and against any liability, obligations, losses, claims, or damages whatsoever. Therefore, Lessee only agrees to be responsible for its own actions under this Lease.
15. Personal Property: The Equipment is and shall at all times during the lease term be and remain, personal property.

16. Option to Purchase: Lessee shall be entitled to purchase the Equipment as follows:

- (a) Upon payment of all lease and other payments required under this Lease; or
- (b) Upon written notice delivered to Lessor by Lessee at least thirty (30) days before the proposed date for payment, and upon the payment on such date of the purchase option price.

As used herein, purchase option price means the amount equal to the outstanding principal, as set forth in the payment schedule, plus any unpaid interest that has accrued on such principal to the date of payment of the purchase option price, provided that any other sum due under this Lease has or is being paid, payable at the option of Lessee for the purpose of purchasing the Equipment.

Lessee may, at Lessee's option, make partial prepayments of a portion of the purchase option price upon written notice delivered at least thirty (30) days in advance of the proposed date for payment and upon payment on such date of the partial prepayment, being an amount equal to a portion of the outstanding principal set forth in the payment schedule and any unpaid interest that has accrued on such portion of the outstanding principal to the date of payment of the partial prepayment. As provided herein, if any portion of the Equipment is not accepted or the cost of the Equipment is less than the funding under this Lease, then the amount of the funding remaining shall be applied as a partial prepayment.

A revised payment schedule reflecting all partial prepayments, consistent with the financing structure contemplated herein, to reflect such partial prepayment shall be attached to this Lease as a change order. Partial prepayments shall entitle Lessee to a release of any security interest on the item(s) of Equipment prepaid in full.

17. Event of Default: The following constitute an "Event of Default" under this Lease:

- (a) Failure by Lessee to pay any lease payment or other payment required to be paid within sixty (60) days of when due; or
- (b) Failure by Lessee to maintain insurance on the Equipment in accordance with this Lease; or
- (c) Failure by Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of thirty (30) days after written notice is given to the Lessee by Lessor, specifying such failure and requesting that it be remedied, provided that if the failure stated in such notice cannot be corrected within such thirty (30) day period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected; or
- (d) Initiation by or against Lessee of a proceeding under any federal or state bankruptcy or insolvency laws.

An event of non-appropriation shall not be deemed an event of default.

18. Remedies on Default: Upon the occurrence of an event of default as specified in this Lease, Lessor shall provide written notification of default which Lessee must remedy within thirty (30) days from the date of notice of default, or Lessor shall have the right, at its option, without any further demand or notice, to pursue any one or more of the following remedial steps:

- (a) Terminate this agreement and retake possession of the Equipment and sell, lease, sublease or make other disposition of the Equipment in a reasonable and commercial manner.
- (b) Declare an amount equal to all payments due during the fiscal year in which the default occurred to be immediately due and payable, whereupon the same shall become immediately due and payable; or
- (c) Proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this Lease or to recover for the breach thereof.

All of Lessee's right, title and interest in any Equipment the possession of which is retaken by Lessor upon the occurrence of an event of default shall terminate immediately upon such repossession. Lessee agrees to return the Equipment to Lessor, together with a release of all Lessee's title and interest therein. It is the intent of the parties hereto that any transfer of title to Lessor shall occur automatically without the necessity of any bill of sale, certificate of title or other

instrument of conveyance. Lessee agrees, nevertheless, to execute and deliver any such instruments as Lessor may reasonably request to evidence such transfer.

No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now hereafter existing at law or in equity.

19. Cancellation of Lease: Pursuant to West Virginia Code § 18B-19-11(d), this Lease shall be cancelable at the option of the Lessee at the end of any fiscal year. In such event, the Lessee shall redeliver possession of the Equipment to Lessor, and upon such redelivery shall be relieved from any further obligations hereunder. Cancellation of the Lease pursuant to this section shall not be deemed an event of default.
20. Force Majeure: If by reason of force majeure, Lessor or Lessee is unable, in whole or in part, to carry out its obligations under this Lease, Lessor or Lessee, as the case may be, shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: Acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State of West Virginia or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.
21. Notices: All notices to be given under this Lease shall be made in writing and mailed to the other party at its address set forth in Exhibit D or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five (5) days subsequent to mailing.
22. Binding Effect: This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.
23. Severability: In the event any provision of this Lease shall be held invalid, prohibited or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
24. Amendments: All amendments, modifications, alterations or changes to this Lease shall be in writing and signed by both parties.
25. Execution in Counterparts: This Lease may be executed in several counterparts. The parties hereto agree that multiple originals of this Lease have been executed.
26. Section Headings: All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
27. Governing Law: This Lease shall be governed by and construed in accordance with the laws of the State of West Virginia.
28. Delivery of Related Documents: Upon the request of one party, the other party will provide all documentation reasonably requested. In the event an Internal Revenue Service Form 8038-G or 8038-GC needs to be filed in connection with this transaction, Lessee will execute and file the form.
29. Entire Agreement; Waiver: This Lease, together with any request for quotation, Purchase Order(s) and other attachments hereto, and other documents or instruments executed by Lessor and Lessee in connection herewith, constitute the entire agreement between the parties with respect to the Equipment. The waiver by one party of any breach of any term, covenant or condition hereto must be in writing and shall not operate as a waiver of any subsequent breach thereof.

WITNESS THE FOLLOWING SIGNATURES:

LESSOR: \_\_\_\_\_

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

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

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

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

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

APPROVED AS TO FORM THIS

\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

ATTORNEY GENERAL

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

Deputy Attorney General

DRAFT

EXHIBIT A

**EQUIPMENT**

CONFIDENTIAL

|

EXHIBIT B  
PAYMENT SCHEDULE

| PAYMENT DATE | PAYMENT | INTEREST | PRINCIPAL | PURCHASE OPTION PRICE<br>AND PRINCIPAL BALANCE |
|--------------|---------|----------|-----------|------------------------------------------------|
|--------------|---------|----------|-----------|------------------------------------------------|

DRAFT

## EXHIBIT C

**ACCEPTANCE CERTIFICATE AND REQUEST FOR PAYMENT**

NUMBER \_\_\_\_\_

The Lessee, \_\_\_\_\_, hereby accepts the Equipment described below and requests the Lessor, \_\_\_\_\_, to pay to the person or corporation designated below as Payee, the sum set forth below in payment of the acquisition and installation costs of the Equipment in accordance with the Lease between Lessor and the Lessee, dated \_\_\_\_\_, 20\_\_\_\_. The amount shown below is due and payable under the invoice of the Payee with respect to the Equipment and has not formed the basis of any prior request for payment. This Certificate is based upon facts, circumstances, estimates and expectations of Lessee as of the date on which the Lease was executed, and to the best of my knowledge and belief, as of this date, such facts, circumstances and estimates are true and correct and such expectations are reasonable.

PAYEE:

AMOUNT: \$

DESCRIPTION OF EQUIPMENT: See Attached

DATED: \_\_\_\_\_

LESSEE:

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

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

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

LESSOR:

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

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

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

EXHIBIT D

**PARTIES**

**LESSOR:**

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Contact Person:

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Telephone No.:

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FAX No.:

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**LESSEE:**

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Contact Person:

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Telephone No.:

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FAX No.:

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## OPINION OF LESSEE'S COUNSEL

Lessor \_\_\_\_\_

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

RE: State College and University System of West Virginia  
Lease Purchase Agreement with \_\_\_\_\_

Gentlemen:

As counsel for \_\_\_\_\_, Lessee, I have examined a duly executed original of the Lease Purchase Agreement ("Lease") dated \_\_\_\_\_, between Lessee and \_\_\_\_\_, Lessor. Based upon the examination and upon such other examination as I have deemed appropriate, I am of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of the State of West Virginia.
2. The Lease has been duly authorized, executed and delivered by Lessee and is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms.
3. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, in any way affecting the validity of the Lease.
4. The signature of the official of Lessee, as it appears on the Lease, is true and genuine. I know said official and know him/her to hold the position set forth below his/her name.
5. The Equipment leased pursuant to the Lease, as shown on Exhibit A, constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.
6. West Virginia is a state within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended, and the related regulations and rulings.

Very truly yours,

DAWN E. WARFIELD  
DEPUTY ATTORNEY GENERAL