

STATE OF MONTANA TERM CONTRACT

Department of Administration
 State Procurement Bureau
 165 Mitchell Building
 PO Box 200135
 Helena, MT 59620-0135
 Phone: (406) 444-2575 Fax: (406) 444-2529
 TTY Users-Dial 711
<http://gsd.mt.gov/>

T.C. #: SPB10-1910D-3
Title: Master IT Equipment Lease Agreement
This is a non-exclusive contract.

CONTRACT TERM	FROM	May 1, 2010	CONTRACT STATUS	NEW (x)
	TO	February 28, 2020		RENEW ()
VENDOR ADDRESS	IBM Global Financing 13214 Misty Hills Drive Cypress, Texas 77429		ORDER ADDRESS	
ATTN:	Marie Beane		ATTN:	
PHONE:	(612) 251-4168		PHONE:	
FAX:	(845) 489-9889		FAX:	
E-MAIL:	mbeane@us.ibm.com		E-MAIL:	

PRICES: Per Contract
 DELIVERY: Per Agency Request
 F.O.B.: Per Contract
 TERMS: Net 30 Days

REMARKS:

IFB/RFP No.: RFP10-1910D	 Rick Dorvall, CONTRACTS OFFICER	DATE: 12/23/2015
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AUTHORIZED SIGNATURE

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The Lessor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 181-118, MCA). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The Lessor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 184-141, MCA.)

AUTHORITY: The attached bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The Lessor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Lessor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Lessor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The Lessor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases, or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the Procurement Officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The Lessor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All Lessors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for non construction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://gsd.mt.gov/procurement/preferences.asp>.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

SEVERABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the master contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#810302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Lessor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Section 185-603, MCA.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the Lessor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

U.S. FUNDS: All prices and payments must be in U.S. dollars.

Revised 2/09

Master IT Equipment Lease Agreement

State of Montana

and

IBM Credit, LLC

March 1, 2010

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U.S. FUNDS: All prices and payments must be in U.S. dollars.

MASTER IT EQUIPMENT LEASE AGREEMENT

STATE AND LOCAL GOVERNMENT MASTER IT EQUIPMENT LEASE AGREEMENT

This State and Local Government Master Lease Agreement, together with Exhibits A and B attached hereto and made a part hereof, ("**Master Agreement**"), dated as of March 2, 2010, is entered into by and between IBM Credit LLC ("**Lessor**"), and the State of Montana, Department of Administration, Information Technology Services Division ("**Lessee**").

1. **PURPOSE OF MASTER AGREEMENT.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor all of the equipment and other tangible personal property described in each of the Schedules that are executed from time to time by Lessor and Lessee pursuant to this Master Agreement. Each Schedule shall constitute a separate lease on the terms and conditions stated therein and, to the extent not inconsistent with the Schedule, on the terms and conditions stated in the Master Agreement, which shall be incorporated by reference in the Schedule. The term "**Equipment**" as used herein shall mean, with respect to any Schedule, the Equipment described therein. The term "**Unit**" as used herein shall mean an individual machine on a Schedule or an individual feature when such feature is leased separately from a machine. The term of this Master Agreement shall begin on the date set forth above and shall continue in effect for a period of ten (10) years thereafter, unless terminated earlier in accordance with the terms of this Master Agreement.

A Financing Transaction under this Master Agreement is effective when a Schedule listing software program licenses, maintenance, services, and other one-time charges to be financed ("**Financed Items**") is signed by both parties. The terms of (a) the Schedule; (b) any applicable attachments; and (c) this Master Agreement; each as may be amended by addenda, constitute the financing transaction for the Financed Items ("**Financing Transaction**") listed in the applicable Schedule.

The Schedule as shown in Exhibit A may be modified by agreement of the parties.

2. **COMMENCEMENT PROCEDURES.** Subject to the other terms and conditions contained in this Master Agreement and the applicable Schedule, Lessee shall enter into individual Leases (hereinafter defined) and/or Financing Transaction with Lessor as follows:

a) **Execution of Schedule.** Lessor and Lessee shall enter into a Lease or Financing Transaction by executing a Schedule in the form of Exhibit A. Each Schedule shall specifically identify (by serial number, model number, feature codes, equipment configurations, component names or other identifying characteristics) the items of Equipment to be leased under the Schedule. Each Schedule, when executed by both Lessee and Lessor, together with this Master Agreement, shall constitute a separate and distinct lease for the Equipment ("**Lease**") and/or Financing Transaction, enforceable according to its terms. If any conflict exists between the documents, the order of precedence will be as follows: (a) attachments or addenda to a Schedule, (b) schedule, (c) attachments or addenda to this Master Agreement, (d) this Master Agreement.

b) **Acceptance; Term of Leases.** Lessee shall accept the Equipment subject to a Lease in accordance with Section 3. The Lease or Financing Transaction commences on the Acceptance Date specified for the Schedule, however, lease payment starts on the first day of the following month and shall continue for the period described in the applicable Schedule, unless a Non-appropriation or other Lessee Default has occurred.

c) **Payment by Lessor.** Within 30 days after Lessee's delivery to Lessor of a properly completed and executed Acceptance Certificate and all other necessary documentation, and Lessor's acceptance of such documentation and Acceptance Certificate, Lessor shall pay for the Equipment. Despite the foregoing, Lessor shall not be obligated to pay for the Equipment if a Lessee Default has occurred or an event has occurred and is continuing that with the passage of time or provision of notice would constitute a Lessee Default. Lessor and Lessee acknowledge that the date the Lessor pays for the Equipment shall be the issue date of the obligation for federal income tax purposes in accordance with the Code, and no Rent shall accrue prior to such date.

3. **SELECTION; ACCEPTANCE OF EQUIPMENT.** Lessee acknowledges that the Equipment or Financed Items is of a size, design, capacity and manufacturer selected by Lessee in its sole judgment and not in reliance on Lessor's advice or representations. Lessee further acknowledges that Lessee has reviewed and approved any written purchase order, supply contract or purchase agreement ("**Purchase Document**"), covering the Equipment purchased from the Manufacturer/Supplier for lease to Lessee. Lessee assigns to Lessor, effective upon Lessor signing the Schedule, its right to purchase from and its obligation to pay its Supplier. All other rights and obligations as defined in the Purchase Document shall remain with Lessee. Lessee shall inspect all Equipment no later than thirty (30) days after the delivery thereof to Lessee or, if acceptance requirements for such Equipment are specified in the applicable Purchase Document, as soon as reasonably practicable after being advised by the Manufacturer/Supplier that such requirements have been met. Lessee further agrees to complete, execute and deliver to Lessor an Acceptance Certificate after its satisfactory completion of such inspection, when the Acceptance Certificate is required by the Lessor. Acceptance Date for Equipment which does not require an Acceptance Certificate, shall be the day following the date of installation of the Equipment as provided for in the Purchase Document. Acceptance Date for Financed Items shall be the date Lessor makes funds available to Lessee or Lessee's Supplier.

Once the Term of any Lease or Financing Transaction has begun, as described in this Section 2, Lessee's commitments hereunder become irrevocable and pending of acceptance of the Equipment. Lessee's obligation to pay all Rent and other amounts required to be paid by Lessee under this Master Agreement is absolute and unconditional and shall not be affected by any right of set-off or defense of any kind whatsoever, including any failure of the Equipment or a Financed Item to perform, or any representations by Lessee's Supplier. Lessee shall make any claim solely against Lessee's Supplier, the Equipment manufacturer or other third party if the Equipment or a Financed Item is unsatisfactory for any reason.

4. **RENT; PAYMENT OBLIGATIONS; LATE CHARGES.** Each lease shall be a net lease. [IGF-DUPLICATION OF STATEMENT IN SEC. 14] As Rent for the Equipment or Financed Item, Lessee shall pay Lessor the amounts on the due dates set forth in the Schedule. In addition to Rent, Lessee shall pay all expenses incurred in connection with Lessor's purchase of the Equipment, including all Taxes. Lessor may, at the option of the parties, invoice Lessee for estimated personal property tax with the Rent payment. Lessor and Lessee agree that any interest on Late Payments shall be paid by Lessee in accordance with the payment provisions of sections 18-1-404, and 17-8-242 MCA.

5. **LESSEE'S MID-LEASE OPTIONS.** Lessee shall have the following options with respect to each individual Unit covered by a Schedule:

- a) **Upgrade.** Lessee may elect to upgrade mid-lease and lease upgrades at the same time provided no security interest is created that encumbers or conflicts with Lessor's ownership of the Equipment.
- b) **Return.** Not before 12 months after commencement of the Schedule, and on 30 days written notice to Lessor, Lessee, at Lessee's discretion, may elect to terminate and return Equipment, paying the Lessor the Present Value of the remaining payments. Terms and conditions of the return will follow Section 6 b).
- c) **Buy.** Not before 12 months after commencement of the Schedule, and on 30 days written notice to Lessor, Lessee, at Lessee's discretion, may elect to purchase on any Rent payment date any Unit of Equipment then subject to the Lease (other than items of Software that may not be sold by Lessor under the terms of any applicable License Agreement) for an amount equal to (i) the sum of the Rent then due including any applicable taxes, (ii) present value of remaining payments and (iii) plus the end-of-Lease purchase option purchase price; provided no Lessee Default shall have occurred and be continuing or no event has occurred which with notice or lapse of time could constitute a Lessee Default. In the event of such an election, Lessee shall pay such amount to Lessor, in immediately available funds, on or before the designated Rent payment date. If Lessee shall have elected to purchase the Equipment, shall have so paid the purchase price and shall have fulfilled the terms and conditions of this Master Agreement and the related Schedule, then (1) the Lease with respect to such Equipment shall terminate on the designated Rent payment date and Lessee shall be relieved of all of its obligations in favor of Lessor with respect to such Equipment, and (2) Lessor shall transfer all of its

interest in such Equipment to Lessee "AS IS, WHERE IS," without any warranty, express or implied, from Lessor, other than the absence of any liens or claims by or through Lessor.

6. LESSOR END-OF-LEASE NOTICE; LESSEE'S END-OF-LEASE-TERM OPTIONS. Lessor shall provide to Lessee notification of the expiration date of each Schedule at least 60 days before expiration. This notification must include "end-of-lease" options, including return of Equipment, purchase, extension, or month-to-month lease renewal, and associated pricing. Lessee shall provide to Lessor a notification of intended action 30 days before expiration of the Term of the Schedule. If Lessee has not purchased, renewed, or returned the Equipment by end of Term, the Lease shall be automatically extended per section 6 c). Lessee shall have the following options concerning each Lease at the end of the Initial Term:

- a) Purchase Option. Lessee may elect, by delivering to Lessor an End-of-Term Notice at least 30 days before expiration of the Term, to purchase any or all Units of Equipment then subject to such Lease for an amount equal to the Fair Market Value ("FMV") of such Units of Equipment at the end of the then applicable Term, or the pre-stated purchase price stated in the Schedule. Lessee's right to purchase the Equipment is contingent upon all of the following:
 - (i) No Lessee Default shall have occurred and be continuing;
 - (ii) Lessor shall have received Lessee's notice of intent to purchase at least 30 days before the expiration of the Term; and
 - (iii) Lessee shall remit such Fair Market Value amount or the pre-stated Schedule purchase price for Equipment to Lessor in immediately available funds on or before the last day of the then applicable Term. The Lease with respect to such Units of Equipment shall terminate, and Lessor shall transfer all of its interest in such Equipment to Lessee "As is, Where is," without any warranty, express or implied, from Lessor.
- b) Return. Lessee may elect, by delivering to Lessor an End-of-Term Notice at least 30 days before expiration of the Initial Term, to return any or all of the Units of Equipment then subject to such Lease. Lessee shall be responsible to pack the Equipment to be returned to Lessor and deliver such Equipment to Lessor, as described in Section 9 below. Lessee shall bear all dismantling, packaging, transportation, in-transit insurance and shipping charges. All Equipment shall be returned to Lessor in good repair and in the same condition and working order as when delivered to Lessee, normal wear and tear excepted.
- c) Extension. At the end of a Lease Term, if the Lessee does not elect to purchase, renew or return the equipment, the Lease will be extended with respect to those Units of Equipment that have not yet been returned to and received by Lessor within fourteen (14) days after the expiration of the Term. The extension will be under the same terms and conditions then in effect, including current Rent and will continue on a day-to-day basis until the earlier of termination by either party upon one (1) month prior written notice. Any extension may not extend beyond five (5) years from the date of installation of the Equipment.
- d) Renewal. Lessee may elect to renew the Lease with respect to a line item of Equipment with a fair market value purchase option. The renewal Rent shall be the projected fair market rental value of the Equipment as of the commencement of the renewal Term. Any renewal term may not extend beyond five (5) years from the date of installation of the Equipment.

Upon expiration of the Lease or in the event of a Casualty Loss for Equipment that is either a laptop, desktop personal computer, attached monitor, desktop printer or networking equipment with an original purchase price at Lease inception of less than or equal to \$10,000.00, Lessee may by providing two (2) months prior written notice to Lessor, instead of returning the Equipment originally leased ("Retained Equipment"), Lessee may return Lessee owned assets ("Substitute Equipment"). The Substitute Equipment must be of the same manufacturer, type/model as the Retained Equipment. Lessee shall provide Lessor with 30 days advance written notice of the serial numbers that are being replaced and the replacement serial numbers. Substitute Equipment must be in good condition and working order, reasonable wear and tear excepted. Lessee represents and warrants that it has good title, free and clear of all liens and encumbrances, to all replacement serial numbers returned to Lessor.

7. FINANCING AND PREPAYMENT.

Lessee's obligation to pay Rent for a Financed Item shall not be affected by any discontinuance, return or destruction of any Financed Item on or after the date Lessor makes funds available. If Lessee discontinues any of the Financed Items in accordance with the terms of the applicable agreement with Lessee's Supplier prior to the date Lessor makes funds available, then the Financing Transaction with respect to the affected one-time charge shall be cancelled.

Financing Prepayment (Does Not Apply For Units of Equipment). Lessee may terminate a Financing transaction (but not a Lease with respect to a Unit of Equipment) by prepaying the remaining Rent due for such Financed Item. Lessee shall provide Lessor with at least one (1) month prior written notice of the intended prepayment date. Lessor may, at its sole discretion and depending on market conditions at the time, reduce the remaining Rent to reflect such prepayment and shall advise the Lessee of the balance to be paid. If prior to Lease expiration, Lessee purchases Equipment on a Lease or if a Lease is terminated, Lessee shall at the same time prepay any related Financed Items.

8. NON-APPROPRIATION.

- a) Despite anything contained in this Master Agreement to the contrary, if sufficient funds are not appropriated and budgeted by Lessee's governing body or are not otherwise available from other legally available sources in any fiscal period for the payment of Rent and other amounts due under any Lease and/or Financing Transaction, the Lease and/or Financing Transaction shall terminate on the last day of the fiscal period for which appropriations were received or other amounts are available to pay amounts due under the Lease and/or Financing Transaction. Except as to the portions of Rent payments or other amounts herein agreed upon for which funds shall have been appropriated or are otherwise available, Lessor is entitled to no other payments or damages, including but not limited to lost profits.
- b) Lessee shall immediately notify the Lessor or its Assignee of such occurrence. In the event of such termination, Lessee shall immediately cease all use of the Equipment. Lessee shall, at its expense, arrange to pack, crate, insure, and return the Equipment subject to such Lease to Lessor (all in accordance with Section 9 of this Master Agreement). Such Equipment must be in the same condition as when received by Lessee (reasonable wear, tear and depreciation resulting from normal and proper use excepted), be in good operating order and maintenance as required by this Lease, and be free and clear of any liens (except Lessor's lien). At the conclusion of such period of time, Lessee shall return to Lessor the Equipment and/or Financed Items and Lessor will retain all sums paid as partial payment for their use and depreciation.
- c) Lessor will have all legal and equitable rights to take possession of the Equipment. At Lessor's request, Lessee shall promptly provide available supplemental documentation as to such non-appropriation reasonably satisfactory to Lessor. Lessee's exercise of its rights pursuant to this Section 8 shall not affect the survival of any indemnity and other provisions (other than the obligation to lease the Equipment and pay amounts due under the Lease) which survive the termination of the Lease.
- d) Lessee shall use its best efforts to obtain appropriation of the funds to avoid termination of a Schedule. Best efforts means that the Lessee shall make a budget request for the necessary funds to fulfill its obligations under the Schedule. However, the Lessor understands that either the Governor's office or the Legislature, or other applicable authorities if a non-state entity, may decline and eliminate the request, in which case Lessee has no further obligation to meet its best efforts obligation.
- e) Notwithstanding the foregoing, and to the extent permitted by law, Lessee agrees that it will not cancel a Schedule under the provisions of this Section if any funds are appropriated to it, or by it, for the intended use of the Equipment for the period in which such termination occurs or the next succeeding fiscal period thereafter.

9. EQUIPMENT RETURN REQUIREMENTS. At any time Lessee is required to return Equipment to Lessor under the terms of this Master Agreement or any Schedule, Lessee shall be responsible to pack the Equipment to be returned to Lessor in accordance with the manufacturer's guidelines and deliver such Equipment to Lessor. Lessee will return the Equipment to the nearest consolidation and refurbishment center designated by Lessor for that type of Equipment located in the contiguous United States.

In the case of any item of Software or License Agreement subject to a Schedule, at the time of the occurrence of a Non-Appropriation or a Lessee Default, Lessee shall be automatically deemed to have terminated any License Agreement. Lessee shall immediately de-install and deliver to Lessor all Software, together with the end user license agreement, any computer diskettes or other media relating to such Software and any other materials originally delivered to Lessee with such Software. Lessee shall bear all packaging, transportation, in-transit insurance and shipping charges.

All Equipment must be returned to Lessor in the same condition and working order as when delivered to Lessee, reasonable wear and tear excepted, and, except in the case of PC Equipment and Software, shall qualify for maintenance service by the Supplier at its then standard rates for Equipment of that age, if available. Lessee shall be responsible for, and shall reimburse Lessor promptly on demand for, the cost of returning the Equipment to good working condition or, in the case of Equipment other than PC Equipment and Software, qualifying the Equipment for the Supplier's maintenance service, if available.

For a PC that reaches the end of Term on an operating lease, the Lessee will either return the PC in good working order to the Lessor, or purchase the PC at FMV. If a PC is returned to the Lessor, and the Lessor judges the PC is not in good working order, the Lessor will promptly notify the Lessee of the problem, Lessor's estimated repair cost and Lessor's disposal cost. The Lessor shall then decide on one of the following options:

- a) Lessor shall repair the PC and bill the Lessee.
- b) Lessor shall ship the PC, at Lessee's expense, back to the Lessee. Lessee will then either purchase the PC at FMV or repair the PC and return it to Lessor.
- c) Lessee shall purchase the PC at FMV and Lessor will dispose of the PC. Lessee will pay all disposal costs.

10. EQUIPMENT USE AND MAINTENANCE. (THIS PROVISION SHALL NOT APPLY TO SOFTWARE MAINTENANCE WHICH SHALL BE ADDRESSED SEPARATELY IN A LICENSE AGREEMENT). Lessee is solely responsible for the selection, installation, operation and maintenance of the Equipment and all costs related thereto, including shipping, if applicable. Lessee shall at all times operate and maintain the Equipment in good working order, repair and condition and appearance, and in accordance with the manufacturer's specifications and recommendations.

On reasonable prior notice to Lessee, Lessor and Lessor's agents may, during Lessee's normal working hours, enter the premises where the Equipment is located for the purpose of inspecting the Equipment and observing its use. If Lessor shall have provided to Lessee any tags or identifying labels, Lessee shall, at its expense, affix and maintain in a prominent position on each item of Equipment such tags or labels to indicate Lessor's ownership of the Equipment. Lessee shall, at its expense, enter into and maintain and enforce at all times during the Term of each Lease a maintenance agreement to service and maintain the related Equipment, upon terms and with a provider approved by Lessor.

11. ALTERATIONS AND MODIFICATIONS TO EQUIPMENT. Lessee shall make no Alterations or Modifications to Equipment, except those that a) will not void any warranty made by the Manufacturer/Supplier, not result in the creation of any security interest, lien or encumbrance on the Equipment, not impair the value of use of the Equipment either at the time made or at the end of the Term of the applicable Lease, and are readily removable without damage to the Equipment; or b) are required by any applicable law, regulation or order. Any Lessor-owned parts that Lessee removes shall remain Lessor's property and Lessee shall not make such Parts available for sale, transfer, exchange or other disposition without Lessor's prior written consent. Before returning the Equipment to Lessor, Lessee agrees to remove any Alteration and may remove any Modification not owned by Lessor. If removed, Lessee agrees to, at its expense, restore the Equipment its original condition using the removed Parts, normal wear and tear excepted. If Lessor had previously consented to the disposition of removed Parts, the restoration must be with Parts Lessor owns or supplies, or those supplied by a source approved by Lessor. If not removed, such Modifications shall become the property of Lessor, without charge, free of any liens or encumbrances.

12. EQUIPMENT OWNERSHIP; LIENS; LOCATION. As between Lessor and Lessee, Lessor is the sole owner of the Equipment and has sole title thereto. Lessee shall not make any representation to any third party

inconsistent with Lessor's sole ownership of the Equipment. Lessee covenants with respect to each Schedule that: a) it will not pledge or encumber the Equipment or Lessor's interest in the Equipment in any manner whatsoever nor create or permit to exist any levy, lien or encumbrance thereof or thereon except those created by or through Lessor; b) the Equipment shall remain personal property whether or not affixed to realty and shall not become a fixture or be made to become a part of any real property on which it is placed without Lessor's prior written consent, and c) Lessee shall maintain the Equipment so that it may be removed from any building in which it is placed without damage to the building or the Equipment. Lessee may relocate any Equipment from the Equipment Location specified in the applicable Schedule to another of its location upon prior written notice to Lessor specifying the new Equipment Location, provided Lessee remains in possession and control of the Equipment. Licensed programs that Lessee acquires and finances with Lessor remain the property of their licensor. Ownership of licensed programs is governed by the license agreement between the licensor and Lessee, and is not affected by this Master Agreement.

13. RISK OF LOSS AND INSURANCE.

- a) Lessee's Risk of Loss. Commencing upon acceptance and continuing throughout the Initial Term, Lessee shall bear the entire risk of loss with respect to any Equipment damage, destruction, loss, or theft whether partial or complete. No event of loss shall relieve Lessee of its obligation to pay Rent under any Schedule. If any Unit of Equipment is damaged, Lessee shall promptly notify Lessor and, at Lessee's expense, within fifteen (15) days of such damage, cause to be made such repairs as are necessary to return such Unit to its previous condition. If any Casualty Loss shall occur and Lessor determines the Equipment is not economically repairable, on the next Rent payment date Lessee shall pay Lessor the Stipulated Loss Value of the Equipment suffering the Casualty Loss. If Lessee pays the Stipulated Loss Value of the Equipment suffering a Casualty Loss, upon Lessor's receipt in full of such payment the applicable Schedule shall terminate as to the Equipment suffering the Casualty Loss. The Stipulated Loss Value will be set forth in each Schedule. After receipt of such Stipulated Loss Value by Lessor or its assigns, the Equipment for which Stipulated Loss Value was received shall be conveyed to Lessee AS IS, WHERE IS and free and clear of all liens and encumbrances created by or arising through Lessor, but otherwise, WITHOUT FURTHER WARRANTY (EXPRESS OR IMPLIED) WHATSOEVER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE OR USE.
- b) Lessee Insurance Requirements. Lessee shall, at its own expense, carry property damage and personal injury liability insurance during the term of this Lease in amounts and against risks customarily insured against by Lessee on equipment owned by it, and any amounts received by Lessor as a result of an insurance claim with respect to such insurance shall be credited against Lessee's obligations hereunder. Lessee shall furnish to Lessor upon request, evidence that such insurance coverage is in effect.
- c) Lessor Insurance Requirements. The Lessor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Lessor or its officers, agents, representatives, assigns or subcontractors.

14. INDEMNIFICATION.

Lessor shall hold the State of Montana, participating entities and its agencies and employees harmless and shall indemnify the State of Montana, participating entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs, including attorney costs, for personal injury or damage of property arising from the sole negligence or wrongful acts or omissions of the Lessor, its agents, officers, employees or subcontractors. Lessor shall not be liable for damages that are the result of the negligence, act, or omission by Lessee's Supplier, the State of Montana, the participating governmental entities, or its employees.

All Leases and Financing Transactions under this Master Agreement shall be net leases. Consequently, unless specifically provided otherwise in this Master Agreement or a Lease or Financing Transaction hereunder, claims costs and expenses of any description arising out of this Master Agreement shall be for the sole account of Lessee.

15. TAX REPRESENTATIONS AND COVENANTS AND TAX PAYMENTS (for Tax Exempt Leases and Financing Transactions Only).

- a) Lessee represents, covenants and warrants that:
- (i) Lessee is a political subdivision or agency or department of the State in which it is located;
 - (ii) a portion of the Rent is interest based on the total Equipment cost as shown on a Schedule and such interest portion of the Rent shall be excluded from Lessor's gross income pursuant to Section 103 of the Code;
 - (iii) Lessee will comply with the information reporting requirements of Section 149(e) of the Code, and such compliance shall include but not be limited to the execution of information statements requested by Lessor;
 - (iv) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the Lease to be an arbitrage bond within the meaning of Section 148(a) of the Code;
 - (v) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, this Lease to be a private activity bond within the meaning of Section 141(a) of the Code;
 - (vi) Lessee will not do or cause to be done any act which will cause, or by omission of any act allow, the interest portion of the Rent payments to be or become includable in gross income for federal income taxation purposes under the Code;
 - (vii) Lessee will be the only entity to own, use and operate the Equipment during the Lease Term.
- b) This Master Agreement has been entered into on the basis that Lessor or any Assignee of Lessor shall claim that the interest paid hereunder is exempt from federal income tax under Section 103(a) of the Code. Upon a breach by Lessee of any of its representations, warranties and covenants in Section 152)18(a) above and as a result thereof, the United States Government disallows, eliminates, reduces, recaptures, or disqualifies, in whole or in part, any benefits of such exemption, Lessee shall then pay to Lessor, at Lessor's election, either:
- (i) supplemental payment(s) to Lessor during the remaining period of the Term(s) in an amount necessary to permit Lessor to receive (on an after tax basis over the full term of the Master Agreement) the same rate of return that Lessor would have realized had there not been a loss or disallowance of such benefits, together with the amount of any interest or penalty which may be assessed by the governmental authority with respect to such loss or disallowance; or,
 - (ii) a lump sum payable upon demand to Lessor which shall be equal to the amount necessary to permit Lessor to receive (on an after tax basis over the full term of the Master Agreement) the same rate of return that Lessor would have realized had there not been a loss or disallowance of such benefits together with the amount of any interest or penalty which may be assessed by the governmental authority with respect to such loss or disallowance.
- c) All taxes on or measured by the net income of Lessor, any taxes arising under the Purchase Document, and any property taxes shall be for the account of Lessor. All other taxes of any description attendant to transactions under a Lease or Financing Transaction shall be for the account of Lessee, either by reimbursement of Lessor, or, at Lessor's request, directly paid by lessee to the taxing authority.

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16. COVENANT OF QUIET ENJOYMENT. So long as no Lessee Default exists, and no event shall have occurred and be continuing which, with the giving of notice or the passage of time or both, would constitute a Lessee Default, neither Lessor nor any party acting or claiming through Lessor, by assignment or otherwise, will disturb Lessee's quiet enjoyment of the Equipment during the Term of the related Lease, any extensions of the Lease, and when Lessee is negotiating in good faith to purchase or extend items of equipment on the Lease schedule.

17. USED EQUIPMENT LEASE. For used Equipment supplied by Lessor, the following provisions apply: The Equipment is subject to prior disposition at any time prior to Lessor's acceptance of a signed Schedule. The Equipment is provided "as is", without any warranty whatsoever by Lessor, in accordance with Section 18. However, provided that the Equipment is unmodified since the date of delivery; has been manufactured and assembled by or for International Business Machines Corporation ("IBM"); and has been installed and maintained by IBM, Lessor guarantees Lessee's satisfaction with the quality of the Equipment for three (3) months following the "Release Date" indicated on the face of the Schedule. If Lessee is dissatisfied with the Equipment for any reason, Lessee may notify Lessor within three (3) months of the Release Date and, at Lessor's option, the Equipment will either be (a) replaced with equivalent Equipment or (b) returned to Lessor

and the Lease terminated and any Rent payments made to Lessor refunded to Lessee. If Lessee cancels its commitment to Lease the Equipment after Lessor signs the applicable Schedule but before the Equipment is delivered and accepted by Lessee, then Lessee shall be liable to Lessor for three (3) months Rent as liquidated damages. Lessor shall bear the risk of loss or damage to the Equipment during transit from the pickup location to Lessee's location, provided the Equipment is transported by a carrier designated by Lessor.

18. ASSIGNMENT OF MANUFACTURER/SUPPLIER WARRANTIES. To the extent permitted, Lessor hereby assigns to Lessee, for the total Term of any Lease, all Equipment warranties provided by any manufacturer/supplier in the applicable Purchase Documents or License. Lessee shall have the right to take any action appropriate to enforce such warranties provided such enforcement is pursued in Lessee's name and at its expense. If Lessee is precluded from enforcing any such warranty in its name, Lessor, as owner of the Equipment, shall, upon Lessee's request, take reasonable steps to enforce such warranties at costs to be borne by Lessor.

WARRANTIES. Lessor passes through to Lessee, to the extent permitted, all applicable warranties made available by Lessee's Supplier and/or by the Equipment manufacturer in the Purchase Document. Lessor represents and warrants that neither Lessor, nor anyone acting or claiming through Lessor, by assignment or otherwise, will interfere with Lessee's quiet enjoyment of the Equipment so long as no event of default by Lessee or anyone acting or claiming through Lessee shall have occurred and be continuing. During the Term of the Lease, Lessor assigns to Lessee all the rights that Lessor may have to be defended by Lessee's Supplier and/or by the Equipment manufacturer under any patent and copyright provisions in the Purchase Document. **EXCEPT AS EXPRESSLY PROVIDED ABOVE, LESSOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. AS TO LESSOR, LESSEE LEASES THE EQUIPMENT AND TAKES ANY FINANCED ITEM "AS IS". IN NO EVENT SHALL LESSOR HAVE ANY LIABILITY FOR, NOR SHALL LESSEE HAVE ANY REMEDY AGAINST LESSOR FOR, CONSEQUENTIAL DAMAGES, ANY LOSS OF PROFITS OR SAVINGS, LOSS OF USE, OR ANY OTHER COMMERCIAL LOSS.**

This shall in no way affect Lessee's rights and remedies against Lessee's Supplier and/or the Equipment manufacturer.

19. LESSOR OBLIGATIONS

Lessor has the following obligations:

- a) Ensuring that Lessee's quiet enjoyment of the Equipment is free from disturbance by Lessor or any agent of Lessor, so long as no Lessee Event of Default has occurred and is continuing;
- b) Observing and performing any other term, representation, covenant or condition of this Master Agreement; and
- c) Keeping the title to the Equipment free of all liens and other encumbrances that adversely affects the Lessee's quiet enjoyment.

20. DEFAULT.

Lessee Default. The occurrence of any of the following shall constitute a Lessee Default under a Schedule or the Master Agreement:

- a) Lessee's nonpayment of Rent or any other sum payable by its due date and the failure continues for 10 days after Lessor's written notification;
- b) Lessee's failure to perform or observe any other term, covenant or condition of this Master Agreement, any Schedule, which is not cured within (20) days after notice thereof from Lessor;
- c) Any Lessee representation or warranty in this Master Agreement, any Schedule or in any document furnished by Lessee to Lessor in connection therewith or with the acquisition or use of the Equipment is materially untrue;
- d) Lessee assigns or attempts to assign this Master Agreement or any Schedule, or encumbers or sublets or attempts to do so with respect to any Unit in a manner that this Master Agreement prohibits;
- e) An appropriate court issues a decree or order(i) ordering relief under the United States federal bankruptcy laws, or any other decree or order adjudging the Lessee a bankrupt or insolvent, (ii) approving a petition seeking reorganization, arrangement or the like under applicable federal or state

- law; (iii) entering an order appointing a receiver, liquidator, assignee, trustee, custodian, or other similar official of any substantial part of its property; or (iv) ordering the winding up or liquidation of its affairs, and such decree or order remains unstayed and in effect for 60 consecutive days; or
- f) Lessee's: (i) commencement of a voluntary case under the United States federal bankruptcy laws, (ii) consent to the institution of bankruptcy or insolvency proceedings against it, (iii) consent seeking reorganization, an arrangement with creditors or an order for relief under applicable federal or state law, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, custodian or other similar official or of any substantial part of its property, (v) assignment for the benefit of creditors, or (vi) admission in writing of its inability to pay its debts as they become due.

Lessor Default. Any of the following shall constitute default by Lessor under a Schedule or this Master Agreement:

- a) Lessor wrongfully breaches its covenant of quiet enjoyment and fails or is unable to cure such breach within fifteen (15) days after written notice thereof from Lessee;
- b) Failure by Lessor to perform or observe any other term, representation, covenant or condition of this Master Agreement, any Schedule, which is not cured within twenty (20) days after notice thereof from Lessee; or
- c) An appropriate court issues a decree or order (i) ordering relief under the United States federal bankruptcy laws, or any other decree or order adjudging the Lessor a bankrupt or insolvent, (ii) approving a petition seeking reorganization, arrangement or the like under applicable federal or state law; (iii) entering an order appointing a receiver, liquidator, assignee, trustee, custodian, or other similar official of any substantial part of its property; or (iv) ordering the winding up or liquidation of its affairs, and such decree or order remains unstayed and in effect for 60 consecutive days.
- d) Lessor's: (i) commencement of a voluntary case under the United States federal bankruptcy laws, (ii) consent to the institution of bankruptcy or insolvency proceedings against it, (iii) consent seeking reorganization, an arrangement with creditors or an order for relief under applicable federal or state law, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, custodian or other similar official or of any substantial part of its property, (v) assignment for the benefit of creditors, or (vi) admission in writing of its inability to pay its debts as they become due.

21. REMEDIES.

- a) If a Lessee Default occurs, Lessor may do one or more of the following, as applicable law allows;
 - i) subject to Section 8 hereof, require Lessee to immediately pay Lessor all monies due and to become due during the Term of the applicable Schedule, discounted to the date of payment at the rate of 4% per annum, or one-half of the then-prevailing prime interest rate charged by principal New York banks, whichever is less, as liquidated damages, and not as a penalty;
 - ii) require Lessee to deliver, at its expense, the Equipment to Lessor in accordance with Section 6(b) and Section 9 of this Master Agreement and, except where Lessor has received from Lessee all remaining payments, for each day that Lessee shall fail to return any item of Equipment, Lessor may demand an amount equal to the current Rent, prorated on the basis of a 30-day month. Upon repossession or return of any item of Equipment, Lessor shall sell, lease or otherwise dispose of such item in a commercially reasonable manner, with or without notice and on public or private bid and apply the net proceeds thereof towards the amounts due under the Lease but only after deducting: (i) in the case of sale, the estimated fair market sales value of such item as of the scheduled expiration of the Lease; or (ii) in the case of any replacement lease, the rent due for any period beyond the scheduled expiration of the Lease for such item; and (iii) in either case, all reasonable and necessary expenses, including reasonable legal fees, incurred in connection therewith. Any excess net proceeds are to be retained by Lessor;
 - iii) may peacefully repossess the Equipment without court order;
 - iv) may exercise any other right or remedy available at law or in equity; or
 - v) if combined amount of (x) the aggregate Rent due under the Schedules in Default as of the date of default of this Master Agreement and (y) the aggregate monthly payments due as of the date of default of this Master Agreement under any and all other agreements Lessee may have with Lessor which are in default exceeds \$300,000, the remedies (a)(i) through a(iv) in this Section 21 herein, shall be applicable to all Leases and Financing Transactions under all Schedules under this Master Agreement and all amounts due and to become due under all Lease and Financing Transactions under this Master Agreement shall be immediately due and payable, without further notice from Lessor.
- b) If Lessor Default occurs and Lessor fails to meet the Lessor Obligations set forth in Section 19 above, and is unable to remedy the situation within 20 days of receiving written notice, Lessee's exclusive and sole remedy shall be: (i) to terminate the applicable Lease or Financing Transaction and return the applicable items of Equipment to Lessor; and (ii) to recover damages arising out of such default from Lessor, and all reasonable and necessary expenses, including reasonable legal fees, incurred in connection therewith.

22. PERFORMANCE OF LESSEE'S OBLIGATIONS. If Lessee fails to perform any of its obligations hereunder, Lessor may perform any act or make any payment that Lessor deems reasonably necessary for the maintenance and preservation of the Equipment and Lessor's interests therein; provided, however, that the performance of any act or payment by Lessor shall not be deemed a waiver of, or release Lessee from, the obligation at issue. All sums so paid by Lessor, shall be reimbursed by Lessee immediately upon demand by Lessor.

23. ASSIGNMENT.

Assignment by Lessor: Lessor may assign as security its interest in the Rent payments to a security assignee (Secured Party). Lessor shall not sell, assign, pledge, transfer, mortgage or otherwise convey its interest in any Equipment, in whole or in part, to any assignee (Assignee), without Lessee's prior notice and consent, which shall not be unreasonably withheld. Each such Secured Party or Assignee will be entitled to all of Lessor's rights; however, unless Lessor, Secured Party or Assignee otherwise agree, Secured Party or Assignee shall not be obligated to perform such obligations of Lessor under this Master Agreement. Lessee and Lessor further acknowledge that any assignment or transfer by Lessor shall not materially change Lessor's or Lessee's obligations under the assigned Lease. Lessee further covenants and agrees that:

- a) Lessee shall pay directly to the Secured Party or Assignee all Rent and all other sums due upon receipt of notice of any assignment and of instructions to do so;
- b) After an assignment to a Secured Party or Assignee, Lessee's obligations hereunder including its obligation to pay the Rent and any and all other amounts payable under the Schedule by Lessee shall be absolute and unconditional and shall not be subject to any abatement, reduction, recoupment, defense, setoff, or counterclaim available to Lessee against Lessor for any reason whatsoever.

Assignment by Lessee: Without Lessor's prior written consent, Lessee shall not i) assign, transfer, pledge, hypothecate, or otherwise dispose of its rights or obligations under this Master Agreement or the Equipment, ii) sublet the Equipment, or iii) permit the Equipment to be used for any purpose not permitted by this Master Agreement. **ANY ASSIGNMENT OR SUBLEASE SHALL BE MADE EXPRESSLY SUBJECT AND SUBORDINATE TO THE TERMS OF THE RELEVANT SCHEDULE AND THIS MASTER AGREEMENT.** If an assignment or sublease occurs, Lessee and its assignee or its sublessee shall cooperate with Lessor in taking all reasonable measures to protect Lessor's or Assignee's title and the interest of any Secured Party to and in the Equipment. No assignment or sublease relieves Lessee of its primary obligations under the relevant Schedule and this Master Agreement.

24. FURTHER ASSURANCES. Lessee agrees to promptly execute and deliver to Lessor such further documents and take such further action as Lessor may require in order to more effectively carry out the intent and purpose of this Master Agreement and any Schedule. Without limiting the generality of the foregoing, Lessee agrees to furnish to Lessor from time to time or as Lessor may request, its appropriate government financial statements, opinions of counsel (for lease transactions with a lease or financing value of \$500,000 or more per Lease Schedule, or at Lessor's request) and such other information and documents as Lessor may reasonably request. It is also agreed that Lessor or Lessor's agent may file as a financing statement, any lease document (or copy thereof, where permitted by law) or other financing statement that Lessor deems appropriate to perfect or protect Lessor's security interest in the Equipment or to evidence Lessor's interest in the Equipment. Lessee represents and warrants that Lessee's name as set forth in the signature block below is Lessee's full and accurate legal name and that the information set forth on the first page hereof regarding its organization number, tax identification number and location is true and correct as of the date hereof. Lessee further agrees to provide Lessor advance written notice of any change in the foregoing.

25. TERM OF MASTER AGREEMENT; SURVIVAL. This Master Agreement shall commence and be effective upon the execution hereof by both parties and shall continue in effect until terminated by either party by 30 days' prior written notice to the other, provided that the effective date of the termination is after all obligations of Lessee and Lessor arising hereunder and pursuant to any Schedule have been fully satisfied. Notwithstanding the foregoing, all representations, warranties and covenants made by each party hereunder shall survive the termination of this Master Agreement and shall remain in full force and effect. Each party's rights, privileges and indemnities under this Master Agreement or any Schedule, to the extent they are fairly attributable to

events or conditions occurring or existing on or prior to the expiration or termination of such Schedule, shall survive such expiration or termination and be enforceable by each party and their successors and assigns.

26. NOTICES. All notices, requests, demands, waivers and other communications required or permitted to be given under this Master Agreement or any other Fundamental Agreement shall be in writing and shall be deemed to have been received upon receipt if delivered personally or by a nationally recognized overnight courier service, or by confirmed facsimile transmission, or 3 days after deposit in the United States mail, certified, postage prepaid with return receipt requested, addressed as defined in the Schedule (or such other address or fax number as either party shall so notify the other):

If to Lessor:

IBM Credit LLC
4111 Northside Parkway
Atlanta, GA 30327
Attn: Credit Manager
("Authorized Lessor Representative")
Fax:

If to Lessee:

State of Montana
Department of Administration
P O Box 200113, Helena, MT 59620
Attn: Information Technology Svcs. Division
("Authorized Lessee Representative")
Fax:

27. MISCELLANEOUS

- a) **Governing Law/Venue:** This agreement is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)
- b) **Credit Review.** Lessee consents to a reasonable credit review by Lessor for each Lease.
- c) **Captions and References.** The captions contained in this Master Agreement and any Schedule are for convenience only and shall not affect the interpretation of this Master Agreement or any Lease. All references in this Master Agreement to Sections and Exhibits refer to Sections hereof and Exhibits hereto unless otherwise indicated.
- d) **Entire Agreement; Amendments.** This Master Agreement and all other Fundamental Agreements executed by both Lessor and Lessee constitute the entire agreement between Lessor and Lessee relating to the leasing of the Equipment, and supersede all prior agreements relating thereto, whether written or oral, and may not be amended or modified except in a writing signed by the parties hereto.
- e) **No Waiver.** Any failure of Lessor to require strict performance by Lessee, or any written waiver by Lessor of any provision hereof, shall not constitute consent or waiver of any other breach of the same or any other provision hereof.
- f) **Lessor Affiliates.** Lessee understands and agrees that Lessor may execute Schedules under this Master Agreement, in which event the terms and conditions of the applicable Schedule and this Master Agreement as it relates to the Lessor under such Schedule shall be binding upon and shall inure to the benefit of such entity executing such Schedule as Lessor, as well as any successors or assigns of such entity.
- g) **Invalidity.** If any provision of this Master Agreement or any Schedule shall be prohibited by or invalid under law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Master Agreement or such Schedule.
- h) **Counterparts.** This Master Agreement may be executed in counterparts, which collectively shall constitute one document.
- i) **Reliance.** Each party may act in reliance upon any instruction, instrument or signature reasonably believed by either party in good faith to be genuine.
- j) **Cooperative Purchasing.**
 - (i). Under Montana law, certain Montana public entities and Montana tribal governments (specifically identified at this web link: <http://gsd.mt.gov/local/cooperativepurchasing.mcp>) may procure supplies and services in cooperation with and under agreements negotiated by the State. If such a public entity or tribal government wishes to lease equipment from Lessor under a master agreement, Lessor and the public entity or tribal government shall use commercially reasonable efforts to enter into a mutually

agreeable master agreement with terms and conditions substantially similar to those of this Master Agreement.

(ii). Lessor acknowledges that Lessee is not responsible in any way for the acts or omissions of a Montana public entity or Montana tribal government identified above arising from its master agreement with Lessor. In no circumstances is such a public entity's or tribal government's default or breach under a master agreement with Lessor a breach or default of Lessee under this Master Agreement.

- k) **Compliance with Workers' Compensation Act.** Lessors shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State under sections 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor exemption, or documentation of corporate officer status. Neither the Lessor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term. A renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135, upon expiration.
- l) **Document Copies.** Delivery of an executed copy of any of these documents by facsimile or any other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. Lessee acknowledges that electronic form or any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original.

28. DEFINITIONS. All capitalized terms used in this Master Agreement have the meanings set forth below or in the Sections of this Master Agreement referred to below:

"Acceptance Certificate" means an Acceptance Certificate in substantially the form of Exhibit B, executed by Lessee and delivered to Lessor in accordance with Section 3.

"Acceptance Date" means, as to any Lease, the date Lessee shall have accepted the Equipment subject to such Lease in accordance with Section 3.

"Alterations" are any changes to the Equipment which are not Modifications.

"Assignee" means any assignee of all or any portion of Lessor's interest in this Master Agreement, any Schedule or any Equipment, whether such assignee received the assignment of such interest from Lessor or a previous assignee of such interest.

"Casualty Loss" means, with respect to any Equipment, the condemnation, taking, loss, destruction, theft or damage beyond repair of such Equipment.

"Casualty Value" means, as to any Equipment, an amount determined as of the date of the Casualty Loss or Lessee Default in question pursuant to a "Table of Casualty Values" attached to the applicable Schedule.

"Concluding Payments" means the list of concluding payments on the attachment to the applicable Schedule.

"Daily Rent" means, as to any Lease, an amount equal to the per diem Rent payable under the applicable Schedule (calculated on the basis of a 360 day year and 30 day months).

"Equipment" has the meaning specified in Section 1.

"Equipment Location" means, as to any Equipment, the address at which such Equipment is located from time to time, as originally specified in the applicable Schedule.

"Fair Market Value" means the total price that would be paid for any specified Equipment in an arm's length transaction between an informed and willing buyer (other than a used equipment dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell. Such total price shall not be reduced by the costs of removing such Equipment from its current location or moving it to a new location.

"Financing" means any one-time charge (indicated on the Schedule as the "Amount Financed") for a Financed Item will be paid by Lessor to Lessee's supplier or directly to Lessee. Any other charges which may be owed or due to Lessee's Supplier shall be paid directly to Lessee's supplier by Lessee.

"Fiscal Period" means the fiscal year of Lessee, as it may be more particularly described in a Schedule.

"Fundamental Agreements" means, collectively, this Master Agreement, each Schedule and Acceptance Certificate and all other related instruments and documents.

"Hardware" means items of tangible equipment and other property.

"Initial Term" of the Lease or Financing Transaction shall begin on the Acceptance Date and shall expire at the end of the number of months specified as Term in the Schedule.

"Lease" has the meaning specified in Section 2(a).

"Lessee" means the entity specified in the preamble hereof.

"Lessee Default" has the meaning specified in Section 20.

"Lessor" means the entity specified in the preamble hereof, and its successors and assigns.

"License Agreement" means any license agreement or other document granting the purchaser the right to use Software or any technical information, confidential business information or other documentation relating to Hardware or Software, as amended, modified or supplemented by any other agreement between the licensor and Lessor.

"Master Agreement" means the agreement specified in the preamble hereof.

"Mid-Lease" means any time during the Lease, not necessarily at the midpoint (i.e. at the 18-month point of a 36-month lease). Lease must run a minimum of 12 months before any Mid-Lease activity may occur.

"Modifications" means upgrades, additional features, and changes to the Equipment which have been offered for sale by the original Equipment manufacturer and which contains no Part which has been changes or altered since its original manufacture.

"Non-Appropriation" has the meaning specified in Section 8.

"PC Equipment" means, collectively, personal computers (e.g., workstations, desktops and notebooks) ("PC") and related items of peripheral equipment (e.g., monitors, printers and docking stations).

"Part" is any component or element of the Equipment.

"Present Value" means current worth of a future stream of payments given a rate of 4% per annum, or one-half of the then prevailing prime interest rate charged by principal New York banks, whichever is less.

"Purchase Documents" means, as to any Equipment, any purchase order, contract, bill of sale, License Agreement, invoice and/or other documents that Lessee has, at any time, approved, agreed to be bound by or entered into with any Supplier of such Equipment relating to the purchase, ownership, use or warranty of such Equipment.

"Rent" has the meaning specified in Section 4.

"Schedule" means, unless the context shall otherwise require a Schedule executed by Lessor and Lessee pursuant to Section 2(a).

"Seller" means, as to any Equipment, the seller of such Equipment as specified in the applicable Schedule.

"Software" means copies of computer software programs owned or licensed by Lessor, and any disks, CDs, or other media on which such programs are stored or written.

"State" means any of the states of the United States, its territories and possessions.

"Stipulated Loss Value" means, as to any Equipment, an amount equal to the sum of (a) all Rent (including the Daily Rent from the Rent payment date immediately preceding the date of the Casualty Loss or Lessee Default to the date of the Casualty Loss or Lessee Default) and other amounts due and owing with respect to such Equipment as of the date of payment of such amount, plus (b) the Casualty Value of such Equipment.

"Substitute Equipment" means, as to any item of Hardware subject to a Lease, a substantially equivalent or better item of Hardware having equal or greater capabilities and equal or greater Fair Market Value manufactured or licensed by the same manufacturer or licensor as such item of Hardware subject to a Lease. The determination of whether any item of Equipment is substantially equivalent or better than an item of Equipment subject to a Lease shall be in Lessor's sole, but reasonable opinion based on all relevant facts and circumstances, but shall minimally require, in the case of a computer, that each of processor, hard-drive, random access memory and CD ROM drive, if applicable, be equivalent or better.

"Supplier" means as to any Equipment, the Seller and the manufacturer or licensor of such Equipment collectively, or where the context requires, any of them.

"System Software" means an item of Software that is pre-loaded on an item of Hardware purchased by Lessor for lease hereunder for which the relevant Purchase Documents specify no purchase price separate from the aggregate purchase price specified for such items of Hardware and Software.

"Taxes" means all license and registration fees and all taxes (local, state and federal), fees, levies, imposts, duties, assessments, charges and withholding of any nature whatsoever, however designated (including, without limitation, any value added, transfer, sales, use, gross receipts, business, occupation, excise, personal property, real property, stamp or other taxes) other than taxes measured by Lessor's income.

"Term" means the term thereof as specified in the related Schedule.

"Total Cost" means as to any Lease, the total acquisition cost to Lessor of the Equipment subject to such Lease as set forth in the applicable Purchase Documents, including related delivery, installation, taxes and other charges which Lessor has agreed to pay and treat as a portion of such acquisition cost, if any.

"Unit of Equipment" means, as to the Equipment leased pursuant to any Schedule (a) each individual item of PC Equipment leased pursuant to such Schedule, and (b) all Equipment taken as a whole leased pursuant to such Schedule other than PC Equipment taken as a whole.

"Wear and Tear". The following is considered normal or reasonable wear and tear:

- Any marks that can be removed by cleaning
- Minor dents, scratches or fading on casing, covers or bases
- Faded keyboard lettering or worn logos
- Minor scratches on the monitor screen or liquid crystal display (LCD) panel
- Pixels on LCD panels
- Removable labels and stickers

Items that are not considered normal wear and tear include cracked frames or cases; broken hinges; latches that will not close; equipment not functionally operational; a system that does not power on; missing or damaged slot covers, control panel doors or knobs; and missing or nonfunctional peripherals. Charges will be assessed depending on the damage. In any event, the charge should not exceed the cost of a used replacement machine.

29. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
INFORMATION TECHNOLOGY SERVICES
DIVISION
PO BOX 200113
HELENA MT 59620-0113

IBM Credit LLC
4111 Northside Parkway
Atlanta, GA 30327

FEDERAL ID # 13-0871985

BY: *Rob Clark*
Rob Clark, Chief Information Officer

BY: *Ronald E. Witt / Business Unit Executive*
(Name/Title)

Rob Clark
(Signature)

Ronald E. Witt
(Signature)

DATE: *3-2-10*

DATE: *2/26/10*

Approved as to Legal Content:
Mike Yanna *3-1-2010*
Legal Counsel (Date)

Approved as to Form:
[Signature] *3-1-10*
Procurement Officer (Date)
State Procurement Bureau

Chief Information Officer Approval:

The Contractor is notified that pursuant to Section 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

Customer No: 0444609
Agreement No: CBMA225

EXHIBIT A TERM LEASE SCHEDULE

Date Prepared: _____
 Customer No.: _____
 Customer Address: _____
 Installed at Location: _____
 Location Address: _____
 Customer Reference: _____

Schedule No.:

Term Lease Master Agreement No.:

Line No.	Location/ Lessor Customer No.	Installed State	Type Model/Feature Description	Order No.	Serial No.	(*) Option	(*) Purchase Option	(*) Term	Unit Purchase Price/ Amount Financed	Rate	Rent	Estimated Commencement /Release Date	
Supplier Name		Supplier Customer No.						Total Amount Financed (this page)	(*) Interim Rent Applies	Total Rent (this page)	Payment Period <hr/> Payment Commencement Date		
										Total Amount Financed (all pages)		Total Rent (all pages)	

(*) See Additional Terms and Conditions page. (**) First of the month following the Date of Installation.

[] Convenient Pay Authorization is required.

RATE VALIDITY DATE::

THE MASTER LEASE AGREEMENT (THE "AGREEMENT") REFERENCED ABOVE, IS HEREBY INCORPORATED BY REFERENCE AND LESSEE HEREUNDER SHALL BE BOUND TO THE TERMS AND CONDITIONS OF THE AGREEMENT AS LESSEE. THE AGREEMENT, THIS SCHEDULE AND ANY APPLICABLE ATTACHMENTS OR ADDENDA ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREIN. THESE DOCUMENTS SUPERSEDE ANY PRIOR ORAL OR WRITTEN COMMUNICATIONS BETWEEN THE PARTIES. BY SIGNING BELOW, LESSEE REPRESENTS AND WARRANTS THAT LESSEE'S NAME AS SET FORTH IN THE SIGNATURE BLOCK BELOW IS LESSEE'S EXACT LEGAL NAME. BY SIGNING BELOW, BOTH PARTIES AGREE TO THE TERMS REPRESENTED BY THIS SCHEDULE AS IT MAY BE AMENDED OR MODIFIED. IF AGREED TO IN WRITING BY LESSEE, LESSEE AUTHORIZES LESSOR TO CHANGE THE AMOUNT FINANCED AND/OR THE RENT. FROM LESSEE DELIVERY OF AN EXECUTED COPY OF ANY OF THE DOCUMENTS REFERENCED ABOVE BY FACSIMILE OR OTHER RELIABLE MEANS SHALL BE DEEMED TO BE AS EFFECTIVE FOR ALL PURPOSES AS DELIVERY OF A MANUALLY EXECUTED COPY. LESSEE ACKNOWLEDGES THAT LESSOR MAY MAINTAIN A COPY OF THESE DOCUMENTS IN ELECTRONIC FORM AND AGREES THAT A COPY REPRODUCED FROM SUCH ELECTRONIC FORM OR BY ANY OTHER RELIABLE MEANS (FOR EXAMPLE, PHOTOCOPY, IMAGE OR FACSIMILE) SHALL IN ALL RESPECTS BE CONSIDERED EQUIVALENT TO AN ORIGINAL, UNLESS THERE IS EVIDENCE SUGGESTING THAT THE COPY HAS BEEN ALTERED. IF INDICATED HERE, THE FOLLOWING ATTACHMENTS SHALL APPLY TO AND BE INCORPORATED BY REFERENCE:

Accepted by:

For or as Lessor: _____

Lessee _____

By: _____

Authorized Signature

By: _____

Authorized Signature

OPTION CODES

- B Lease with fair market value end-of-lease options and Lessor is owner for tax purposes
- B+ Lease with fair market value end-of-lease options
- B' Lease with pre-stated end-of-lease options and Lessor assumes Lessee is owner for tax purposes
- BS Lease with \$1.00 end-of-lease purchase option and Lessor assumes Lessee is owner for tax purposes
- G Lease with fair market value end-of-lease options for tax exempt Lessees
- G' Lease with \$1.00 end-of-lease purchase option for tax exempt Lessees
- L Lease for used Equipment supplied by Lessor
- LG Lease for used Equipment supplied by Lessor for tax exempt Lessees
- S Loan for IBM Financed Items
- S' Loan for IBM Financed Items for tax exempt Lessees
- T Loan for non-IBM Financed Items
- T' Loan for non-IBM Financed Items for tax exempt Lessees

IBM Credit LLC makes no representation whatsoever regarding Lessee's accounting treatment related to any transaction under the Agreement or this Supplement

TERM

Number: Indicates number of months of the Lease Term
CO: Coterminal Lease. Term of this Equipment and associated item of Equipment expire simultaneously.

PURCHASE OPTIONS (END OF LEASE ONLY)

- FM Fair market sales value at end-of-Lease NA Not Applicable
 - CL Contact IBM Credit for purchase price \$1 Purchase price is one dollar (\$1.00)
- Number: Pre-stated purchase percent. Purchase price will be the Unit Purchase Price times this %.

INTEREST RATES. The Interest Rate, if stated, is the annual percentage rate ("APR") which shall not exceed the lesser of the APR set forth on the front of this Supplement or the highest rate from time to time permitted by applicable law.

RATE PROTECTION. The Rates stated on the Supplement are not subject to change if the Supplement is signed and returned to Lessor by the rate validity date indicated on the face of the Supplement and Equipment is either (i) supplied by IBM and installed by the last day of the month of the Estimated Commencement Date or (ii) not supplied by IBM and a certificate of acceptance ("COA") is signed by Lessee with a Rent Commencement Date on or prior to the last day of the month of the Estimated Commencement Date stated on the Supplement and such COA is accepted by Lessor.

RENT COMMENCEMENT DATE. Notwithstanding anything to the contrary in the Agreement, the Rent Commencement Date for (i) personal computing equipment, including personal computer-based servers, shall be the date supplied by Lessor on the COA or (ii) for Equipment supplied by Lessor, shall be the earlier of the date of installation or seven (7) days after the Release Date or as specified in the Supplement.

BASE EXTENSIONS. For Equipment and/or Financed Items described as "Base Extension", this Supplement amends and restates the terms of the Lease and/or Financing Transaction for such Equipment and/or Financed Items and incorporates the terms of the Agreement referenced on this Supplement.

SUPPLEMENT OPTIONS. When indicated on the face of the Supplement, the following terms and conditions shall apply to transactions indicated in this Supplement.

* **INTERIM RENT.** The Payment Commencement Date shall be the first day of the first full Payment Period following the date that would otherwise constitute the "Rent Commencement Date" under Paragraph 13 of the Agreement and Lessee will pay interim Rent from such date to the Payment Commencement Date. Such interim Rent shall be prorated based on the number of days in the Payment Period.

* **PAYMENT IN ADVANCE.** Rent will be due on the first day of each Payment Period and (except for the invoice for the first Payment Period) will be invoiced one month before its due date. The invoice for any initial partial Payment Period and the first full Payment Period will be issued on the first day of the first full Payment Period following the date of installation.

* **PAYMENT IN ARREARS.** Rent will be invoiced in advance as of the first day of each Payment Period and will be due on the day following the last day of the Payment Period.

* **SECURITY DEPOSIT.** As a condition to Lessee entering into the transactions indicated in the Supplement, Lessee has granted to Lessor a security interest in cash held by Lessor as a security deposit in the amount indicated on the face of this Supplement, to secure Lessee's payment obligations under the Agreement. Lessor may apply any portion of the security deposit against any payment default and shall hold the security deposit until Lessee's obligations under the Agreement are satisfied in full.

TAX EXEMPT REQUIREMENTS (For Options G', S' and T'). Lessee represents that Lessee qualifies as a State or political subdivision of a State for purposes of Section 103(a) of the Internal Revenue Code of 1986, as amended ("Code"). Any misrepresentation of Lessee's status under Section 103 (a) is an event of default under the Agreement. Lessee shall comply with all information reporting requirements of Code Section 149(e) and Treasury Regulations thereunder. Lessee shall file the appropriate Internal Revenue Service (IRS) Form 8038-G or 8038-GC. Lessee shall pay Lessor, on demand, a sum to be determined by Lessor, that will return to Lessor the economic results Lessor would otherwise have received if: (i) Lessee does not file the above IRS form on a timely basis; or (ii) IRS rules Lessee does not qualify under Section 103(a) of the Code.

AUTHORITY TO FILE FINANCING STATEMENTS. Lessee hereby authorizes Lessor to file Uniform Commercial Code (UCC) financing statements relating to the Collateral, as defined below. Lessee hereby grants to Lessor a first priority security interest in the Equipment together with all related software (embedded therein or otherwise), all Financed Items, and all additions, attachments, accessories, accessions and upgrades thereto and any and all substitutions, replacements or exchanges for any such item of Equipment or software and any and all proceeds of any of the foregoing, including, without limitations, payments under insurance or any indemnity or warranty relating to loss or damage to such Equipment and Financed Items ("Collateral").

TRANSFER OF OBLIGATIONS. Lessee agrees that any transaction initiated under this Agreement shall be binding upon Lessee's successor and permitted assigns.

ADDITIONAL DEFAULT AND REMEDIES. If Lessee is in default, Lessee agrees to surrender to Lessor for return to licensor or owner all licensed program materials financed hereunder and to destroy any and all copies thereof. If under applicable law, Lessor is required to comply with standards of commercial reasonableness applicable to secured financings in disposing of the Equipment, Lessee agrees that 10 days prior written notice shall constitute adequate notice of disposition, and any disposition of the Equipment will be conveyed on an "AS IS" basis and Lessor may disclaim any and all warranties.

FINANCIAL STATEMENTS. Upon request, if not publicly available, Lessee agrees to provide to Lessor audited financial statements or unaudited financial statements with Lessor's approval in such case in form satisfactory to Lessor. **ALTERATIONS; MODIFICATIONS; PARTS.** Lessee agrees to (i) allow installation of any changes, additions, and/or capacity monitoring hardware or software on Equipment, as required by manufacturer, or permit manufacturer to monitor Equipment capacity; and (ii) comply with any other terms between Lessee and Equipment manufacturer, including, but not limited to, those that relate to Equipment capacity.

RETURN OF EQUIPMENT. Unless otherwise agreed to in writing by the parties and prior to return to Lessor of each item of Equipment, Lessee is responsible for removing all information and data, including, but not limited to, programs not licensed to a specific item of Equipment. Lessor has no obligation to remove Lessee's or any other party's information from an item of Equipment.

LESSEE REPRESENTATIONS. Lessee represents that: (i) any information Lessee may provide to Lessor related to the acquisition price of Equipment and/or Financed Items is the true and accurate price charged by and to be paid to Lessee's Supplier for such Equipment and/or Financed Items; and (ii) Lessee will use any funds received from Lessor for acquisition of Equipment and/or Financed Items for the sole purpose of acquiring such Equipment and/or Financed Items.

LEASE AGREEMENT AMENDMENT. The following terms and conditions only apply to Term Lease Master Agreements signed prior to January 1997.

LESSEE. Any Parent, Subsidiary or Affiliate of Lessee may enter into a Lease and/or Financing Transaction (each as defined below) under this Agreement by signing a Term Lease Supplement ("Supplement") referencing this Agreement and so will be bound to the terms and conditions of this Agreement as Lessee. For the purposes of this Agreement, "Parent" shall mean a business entity that owns or controls a majority interest of Lessee; "Subsidiary" shall mean a business entity a majority interest of which is owned or controlled by Lessee; and "Affiliate" shall mean a business entity under common majority control with Lessee.

TERM. The initial Term of the Lease or Financing Transaction shall begin on the Rent Commencement Date and shall expire at the end of the number of months under "Term" in the Supplement.

OPTIONAL EXTENSION. For purposes of the Optional Extension paragraph, the Rent shall be calculated as the sum of the Lease payments over the initial Term divided by the initial Term of the Lease, but for Options B, B+ or L not less than fair market rental value.

FINANCED ITEMS. Software, program licenses, maintenance, services and other one-time charges Financed under this Supplement constitute "Financed Items" and the terms (i) of this Supplement, (ii) any applicable attachments, and (iii) the Agreement, each as may be amended by addenda, constitute the "Financing Transaction" for such Financed Items. The parties agree that all references to "Lease" in paragraphs 37 and 38 shall mean "Lease and/or Financing Transaction".

TERMS FOR USED EQUIPMENT. This Equipment is provided without any warranty by Lessor, in accordance with Paragraph 9. It is subject to prior disposition at any time prior to Lessor's signature on the Supplement. Rent Commencement Date will be the earlier of installation or 7 days after Release Date or as noted on the face of this Supplement. Lessee payment of 3 months Rent as liquidated damages is required if Lessee cancels its commitment to lease after Lessor's Supplement acceptance but before the Equipment is delivered and accepted by Lessee. Lease expiration notice shall be as soon as practicable if the Term is 3 months or less. If Equipment is unmodified, manufactured and assembled by or for IBM and IBM installs and maintains the Equipment, Lessee may exercise the Lessor's quality satisfaction guarantee within 90 days of the Release Date. At Lessor's option, the Equipment will either be replaced with equivalent Equipment or returned to Lessor and the Lease terminated with any payments made to Lessor refunded.

TERMS FOR NON-IBM EQUIPMENT AND FOR EQUIPMENT NOT SOURCED FROM IBM. Notwithstanding anything to the contrary in the Agreement, for purposes of this Supplement, "Lessee's Supplier" shall be the party with whom Lessee has contracted to purchase Equipment, license program materials or acquire services leased or financed herein. Except for paragraphs 41 and 43, all references in the Agreement to "IBM" shall mean "Lessee's Supplier". Any occurrences of "or Effective Date for Additional License" in the Agreement are deleted. Any reference to "Estimated Shipment Date" shall mean "Estimated Commencement Date". Except for personal computing equipment, including personal computer-based servers, the Rent Commencement Date shall be the date Lessee designates on a COA. Any terms and conditions applicable to Option B shall also apply to Options B+ and L. Lessee shall return the Equipment in good condition and working order, wear and tear excepted and qualified for the manufacturer's approved maintenance service. Should Lessee elect to alter or modify the Equipment, any Lessor-owned Parts that Lessee removes shall remain Lessor's property and Lessee is not permitted to make such Parts available for sale, transfer, exchange or other disposition without Lessor's prior written consent. If Lessor consents to a disposition of the removed Parts, the restoration must be with parts Lessor owns or supplies, or those supplied by a source approved by Lessor. For the purposes of the Agreement, a "Part" is any component or element of the Equipment.

**TERM LEASE SCHEDULE
Addendum A**

Item 1: Stipulated Loss Value Table

Lessee is responsible for any risk of loss, theft or damage to the Equipment ("Casualty Loss") from the date Equipment is delivered to Lessee location to the date it is received by Lessor at Lessor's return location. Lessee shall, at Lessee's expense, shall (a) keep in effect an all risk insurance policy covering the Equipment listed on the Schedule and Lessor shall be named as additional insured and loss payee on such policy or (b) self-insure such Equipment against Casualty Loss pursuant to a generally maintained program of self-insurance. Lessee shall provide Lessor, upon request, evidence of such policy or program of self-insurance. Lessee will promptly notify Lessor of any Casualty Loss. If Lessor determines the Equipment can be economically repaired, such repair costs not to exceed the Stipulated Loss Amounts defined below, Lessee will have it repaired and will continue to pay Rent to Lessor. If Lessor determines the Equipment is not economically repairable, on the next Rent due date the Lessee shall pay Lessor any accrued and unpaid Rent to the date of loss plus a Stipulated Loss Amount which shall be calculated by multiplying the Unit Purchase Price specified on the Schedule by the Stipulated Loss Percent specified in the table below:

Machine Model/Type -----	Rent Commencement Anniversary (Months) -----	Stipulated Loss Percent -----
VVV3	Rent Commencement Date VVV1	VVV2 VVV2
	VVV1 (End of Lease)	VVV2

If the Casualty Loss occurs between two anniversaries, the Stipulated Loss Amount shall be the prorated amount (in equal monthly steps corresponding to the date of loss) between the Stipulated Loss Amounts described above for such anniversaries. Lessor shall be reasonable in its determination that an item or items cannot be economically repaired. Upon receipt of all amounts due under this paragraph, Lessor shall transfer to Lessee, all of Lessor's right, title and interest in and to such Equipment in an 'As Is, Where Is' basis. Upon Lessor's receipt of payment the Lease for that item shall terminate. No provision of this clause allows Lessee to make any claim of title to the Equipment prior to Lessee exercising an option to purchase.

Exhibit B to Master Lease Agreement

Acceptance

Lessee (Customer):
Name and Address

Agreement Number:

Email:
Tel. No.:
Fax No.:
Attn:
Customer Reference:

Email:
Tel. No.:
Fax No.:
Attn:

Location Customer	Accepted Item Type Model	Contract Serial No. Description	Manufacturer's Serial No. (if applicable)
--------------------------	---------------------------------	--	--

Supplier Invoice Information (Invoices Are Attached)			Supplier
Invoice Number	Invoice Date	Invoice Amount	
1.			
2.			
3.			
4.			
5.			
		TOTAL	

The undersigned ("Lessee") is a customer under the agreement referenced above ("Agreement") with Lessor. Subject to Lessee's right of rejection described below, Lessee represents and certifies that Lessee has accepted the items listed above or itemized on an attachment ("Accepted Item(s)") to this Certificate of Acceptance ("COA") on the date indicated below. Without liability to Lessor, Lessee has 15 days following signing this COA to reject the equipment if the equipment is inoperable, malfunctions, or otherwise does not operate as represented. Once the 15 day period expires, Lessee authorizes Lessor to pay Lessee's supplier for the Accepted Item(s). Amounts due under the Agreement shall commence upon the date Lessee indicates below- which must not be less than the 15 days following signing this COA-unless Lessee have otherwise noted on the Schedule.

In order for this COA to be effective, we must be provided with the serial numbers if applicable for each Accepted Item. Lessee authorizes us to complete or update any item identification information on the referenced Agreement or Schedule to the Agreement for any accepted item without Lessee's further action or consent.

Delivery of an executed copy of this COA by facsimile, email or any other reliable means shall be deemed to be as effective for all purposes as delivery of a manually executed copy. Lessee understands that we may maintain a copy of this COA in electronic form and agrees that a copy produced from such electronic form or by any other reliable means (for example, photocopy, image or facsimile) shall in all respects be considered equivalent to an original, unless there is evidence to suggest that the copy has been altered. By signing below, Lessee represents and warrants

that Lessee's name as set forth in the signature block below is Lessee's exact legal name and the information identifying Lessee's state of organization is true, accurate and complete in all respects.

Accepted by: _____
Lessee

By: _____
Authorized Signature

Name (Type or Print)

Date Lessee accepts item(s) listed above. Must be filled in by Lessee.
Rent Commencement Date for Accepted item(s):

Date: _____(MM/DD/YYYY)