

# Municipal Lease And Option Agreement

**DATED:** May 1, 2017

**LESSOR:** NEC FINANCIAL SERVICES, LLC  
250 PEHLE AVENUE, SUITE 704  
SADDLE BROOK, NJ 07663-5806

**LESSEE:**

Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, the Equipment hereinafter described ("Equipment") in accordance with the following terms and conditions of this Municipal Lease and Option Agreement ("Agreement") which shall be governed by and construed in accordance with the laws of the state of the Equipment Location described below ("State").

## DESCRIPTION OF EQUIPMENT

\_\_\_\_\_, together with all accessories, additions and attachments thereto, replacements and substitutions therefore and all proceeds thereof, now owned or hereinafter acquired.

## LOCATION OF EQUIPMENT

## RENTAL PAYMENTS

Rental Payment Periods shall be monthly. Rental Payments shall be made in accordance with Section 6.02 and the Schedule of Rental Payments attached hereto as Exhibit A. The maximum Lease Term of this Agreement is \_\_\_\_ months. The first payment will be due on \_\_\_\_\_.

## ESSENTIAL USE CERTIFICATE

1. The Equipment will be used by the Lessee for the following governmental purpose of \_\_\_\_\_.
2. The Equipment is essential for the functioning of the Lessee and is immediately needed by the Lessee. Such need is neither temporary nor expected to diminish during the Lease Term. The Equipment is expected to be used by the Lessee for a period in excess of the Lease Term.

## TERMS AND CONDITIONS

THE TERMS AND CONDITIONS OF THIS AGREEMENT SET FORTH ON THESE 6 PAGES SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HERE.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date written above.

(LESSOR)

(LESSEE)

**NEC Financial Services, LLC**

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

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

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

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

(SEAL if applicable)

ATTEST: \_\_\_\_\_

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

## CERTIFICATE OF CLERK OR SECRETARY OF LESSEE

I, the undersigned, do hereby certify (i) that the officer of Lessee who executed the foregoing Agreement and all related documents on behalf of Lessee and whose genuine signature appears thereon, is the duly qualified and acting officer of Lessee as stated beneath his or her signature and has been authorized to execute the foregoing Agreement and all related documents on behalf of Lessee, and (ii) that the budget year of Lessee is from \_\_\_\_\_ to \_\_\_\_\_.

Dated: \_\_\_\_\_

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

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

### OPINION OF COUNSEL

With respect to that certain Municipal Lease and Option Agreement (the "Agreement") dated May 1, 2017 by and between Lessor and the Lessee, I am of the opinion that: (i) the Lessee is, within the meaning of Section 103 of the Internal Revenue Code of 1986, a State or fully constituted political subdivision or agency of the State of the Equipment Location described above; (ii) the execution, delivery and performance by the Lessee of the Agreement have been duly authorized by all necessary action on the part of the Lessee; and, (iii) the Agreement constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms.

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

Dated: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

### ARTICLE I COVENANTS OF LESSEE

Section 1.01. **Covenants of Lessee.** Lessee represents covenants and warrants, for the benefit of Lessor and its assignees, as follows:

- (a) Lessee is a public body, corporate and politic, duly organized and existing under the Constitution of the laws of the State.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.
- (c) Lessee is authorized under the Constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.
- (d) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.
- (e) During the term of this Agreement, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority and will not be used in a trade or business of any person or entity other than Lessee.
- (f) During the period this Agreement is in force, Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor or its assignee.
- (g) The Equipment will have a useful life in the hands of Lessee that is substantially in excess of the Lease Term.
- (h) The Equipment is, and during the period this Agreement is in force will remain, personal property and, when subjected to use by Lessee under this Agreement, will not be or become fixtures.
- (i) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation. Lessee will submit to the Secretary of the Treasury an information reporting statement, Form 8038G or 8038GC as applicable, at the time and in the form required by the Code and Regulations. In the event that Lessee should fail to perform its obligations under this Section (i) and the interest component of any Lease Payment received by Lessor should be determinable to be includable in gross income of Lessor for federal income tax purposes, then Lessee shall pay to Lessor as additional rent hereunder such amount as is necessary to return to Lessor an after-tax yield equal to Lessor's tax-exempt yield with respect to such Rental Payment and to reimburse Lessor for all penalties, interest, costs, fees and administrative and other expenses (including reasonable legal fees) incurred with respect thereto.
- (j) */Initial if applicable* \_\_\_\_\_ / Lessee hereby designates the Agreement as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. The aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and all subordinate entities thereof during the Issuance Year is not reasonably expected to exceed \$10,000,000. Lessee and all subordinate entities thereof will not issue in excess of \$10,000,000 of qualified tax-exempt obligations (including the Agreement but excluding private activity bonds other than qualified 501 (c)(3) bonds) during the Issuance Year without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt municipal obligations acceptable to Lessor that the designation of the Agreement as a "qualified tax-exempt obligation" will not be adversely affected.
- (k) Upon request Lessee will, with reasonable promptness, provide Lessor with copies of Lessee's current year-end and quarterly financial statements (prepared in accordance with generally accepted accounting principles, consistently applied) in form and content satisfactory to Lessor.

## ARTICLE II DEFINITIONS

Section 2.01. **Definitions.** Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement shall have the respective meanings specified below.

"**Agreement**" means this Municipal Lease and Option Agreement with its Exhibits.

"**Code**" means the Internal Revenue Code of 1986, as amended, and to the extent applicable, the regulations and rulings issued thereunder.

"**Commencement Date**" is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which date shall be the date first above written.

"**Equipment**" means the property described and which is the subject of this Agreement.

"**Lease Term**" means the period beginning with the Commencement Date and continuing until terminated as outlined in Section 4.01.

"**Purchase Price**" means the amount set forth and so titled which Lessee may pay to Lessor to purchase the Equipment as provided under Section 10.01.

"**Rental Payments**" means the basic rental payments payable by Lessee pursuant to this Agreement.

"**Vendor**" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer.

## ARTICLE III LEASE OF EQUIPMENT

Section 3.01. **Lease of Equipment.** Lessor hereby demises leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

## ARTICLE IV LEASE TERM

Section 4.01. **Lease Term.** This Agreement shall be in effect and shall commence as of the Commencement Date and will remain in effect throughout the Lease Term. The Lease Term will terminate upon the first to occur of: (a) the exercise by Lessee of the option to purchase the Equipment under Articles X or VI; (b) Lessor's election to terminate this Agreement upon a default under Article XII; (c) the payment by Lessee of all sums required to be paid by Lessee hereunder; or (d) the occurrence of an Event of Nonappropriation in accordance with Article VI, Section 6.05.

## ARTICLE V ENJOYMENT OF EQUIPMENT

Section 5.01. **Quiet Enjoyment.** Lessor hereby agrees not to interfere with Lessee's quiet use and enjoyment of the Equipment so long as Lessee is not in default hereunder.

Section 5.02. **Use of the Equipment.** Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement.

Section 5.03. **Right of Inspection.** During the Lease Term, the Lessor and its officers, employees and agents shall have the right at all reasonable times during business hours to enter into and upon the property of the Lessee for the purpose of inspecting the Equipment.

Section 5.04. **Disclaimer of Warranties.** Lessee's warranties are contained in the agreement between the manufacturer and LESSOR AND/OR LESSOR'S ASSIGNEE (S) MAKES NO WARRANTY NOR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR ANY OTHER WARRANTY WITH RESPECT THERETO AND, AS TO THE LESSOR AND/OR LESSOR'S ASSIGNEE (S), THE LESSEE LEASES THE EQUIPMENT "AS IS". In no event shall the Lessor and/or Lessor's Assignee(s) be liable for any loss or damage, including incidental, indirect, special or consequential damage, in connection with or arising out of this Agreement or the existence, furnishing, functioning or the Lessee's use of any items or products or services provided for in this Agreement.

Section 5.05. **Vendors Warranties.** Lessee may assert claims and rights that the Lessor may have against any Vendor of any portion of the Equipment.

## ARTICLE VI RENTAL PAYMENTS

Section 6.01. **Rental Payments to Constitute a Current Expense of Lessee.** The obligation of the Lessee to pay Rental Payments to Lessor due and owing during the current fiscal year of the Lessee under this Agreement is a current expense of the Lessee and not a debt of the Lessee in contravention of any applicable limitations or requirements. Obligations becoming due and owing in subsequent fiscal years of the Lessee for the fiscal year during which they are incurred, but shall not be current expenses of the Lessee during the current fiscal year in which this Agreement is executed. Nothing contained herein shall constitute a pledge of the general tax revenues, funds or moneys of the Lessee.

Section 6.02. **Rental Payments.** Lessee shall pay Rental Payments from legally available funds, in lawful money of the United States of America to Lessor, in the amounts and on the payment dates set forth on the Payment Schedule attached hereto as Exhibit A. If we do not receive any Rental Payment or any other amount due from you when due, you agree to pay us a late charge equal to Twenty Five Dollars (\$25.00) or ten percent (10%) of the amount not paid on time for each month payment is not received by us, whichever amount is higher. If we are not legally permitted to charge this amount, you agree to pay us the maximum amount permitted by law.

Section 6.03. **Rental Payments to be Unconditional.** The obligations of Lessee to make Rental Payments, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional in all events, including the discontinuance of any grant moneys expected by Lessee, except as expressly provided under this Agreement, notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person. Lessee shall not assert any right of set-off or counterclaim against its obligation to make payments under this Agreement.

Section 6.04. **Continuation of Lease Term by Lessee.** Lessee intends to do all things lawfully within its power to obtain and maintain funds from which the Rental Payments may be made.

Section 6.05. **Nonappropriation.** If (a) sufficient funds are not appropriated for Rental Payments due in any fiscal year and (b) the Lessee shall have at such time no funds duly authorized for the Rental Payments or other amounts payable hereunder from other sources, an Event of Nonappropriation shall be deemed to have occurred. The Lessee shall promptly deliver notice thereof to the Lessor. Upon the occurrence of an Event of Nonappropriation, the Lessee agrees that the Lessor may reclaim possession of the Equipment. Lessee agrees peaceably to deliver the Equipment and title thereto to Lessor at a reasonable location specified by Lessor, all at Lessee's expense.

Section 6.06. **Nonsubstitution.** If an Event of Nonappropriation occurs, the Lessee hereby agrees, to the extent permitted by law and subject to applicable public policy, not to purchase, lease, or rent equipment performing functions similar to those performed by the Equipment for the remainder of the then current fiscal year of the Lessee.

## **ARTICLE VII TITLE TO EQUIPMENT; SECURITY INTEREST**

Section 7.01. **Title to the Equipment.** During the term of this Agreement, title to the Equipment shall vest in Lessee, subject to Lessor's rights upon an Event of Default or an Event of Nonappropriation.

Section 7.02. **Security Interest.** As security for its obligations hereunder Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions and substitutions thereto, and on any proceeds therefrom. Lessee will cooperate fully with Lessor (or any assignee of Lessor pursuant to Section 11.01) for the purpose of carrying out the intent and purposes hereof and to protect the interests of Lessor in the Equipment, this Lease and the sums due and to become due under and in connection with this Lease, including, without limitation, the execution of all Uniform Commercial Code financing statements requested by Lessor. Lessor is hereby authorized, to the extent permitted by applicable law, to file one or more Uniform Commercial Code financing statements, whether precautionary or otherwise, as appropriate, disclosing Lessor's interest in the Equipment, this Lease, the sums due under and/or in connection with this Lease and in any and all other collateral which secures Lessee's obligations to Lessor, without the signature of Lessee or signed by Lessor as Attorney-in Fact for Lessee. Lessee hereby irrevocably appoints Lessor (and any of Lessor's officers, employees or agents designated by Lessor) as Lessee's agent and Attorney-in-Fact, coupled with an interest, to do all things necessary to carry out the intent of this paragraph, including, without limitation, the execution and filing of all Uniform Commercial Code financing statements.

Section 7.03. **Liens and Encumbrances to Title.** Lessee shall promptly discharge any liens placed on the Equipment other than those created by Lessor.

## **ARTICLE VIII MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES**

Section 8.01. **Maintenance of Equipment by Lessee.** Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition.

Section 8.02. **Taxes, Other Governmental Charges and Utility Charges.** In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), government charges or utility charges and expenses, Lessee will pay all such taxes and charges as they come due. Lessee agrees to pay Lessor a documentation fee of \$150.00 to cover Lessor's expense in processing this Lease and credit application.

Section 8.03. **Provisions Regarding Insurance.** At its own expense, Lessee shall maintain (a) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Equipment, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self-insure against the risks described in clauses (a) and (b). All insurance proceeds from casualty losses shall be payable as hereinafter provided. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. All such casualty and liability insurance shall be with insurers that are acceptable to Lessor, shall name Lessee and Lessor as insureds and shall contain a provision to the effect that such insurance shall not be canceled or modified materially without first giving written notice thereof to Lessor at least thirty days in advance of such cancellation or modification. All such casualty insurance shall contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 8.04. **Advances.** In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation) to purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by Lessor shall be repaid to Lessor, together with interest thereon at the rate specified hereafter.

Section 8.05. **Modifications.** Without the prior written consent of the Lessor, the Lessee shall not make any material alterations, modifications or attachments to the Equipment.

## **ARTICLE IX DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS**

Section 9.01. **Damage, Destruction and Condemnation.** If (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of the Equipment or any part thereof is taken under the exercise of the power of eminent domain, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied either to the prompt repair, restoration, modification or replacement of the Equipment or, at Lessee's option, to the payment in full of the Purchase Price. Any balance of the Net Proceeds remaining after such work or purchase has been completed shall be paid to Lessee.

For purposes of Article VIII, Section 8.03, and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.

Section 9.02. **Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, Lessee, in their sole opinion, shall either (a) complete the work and pay any cost in excess of the amount of Net Proceeds, or (b) Lessee shall pay to Lessor the Purchase Price. The amount of the Net Proceeds in excess of the then applicable Purchase Price, if any, may be retained by Lessee.

## ARTICLE X OPTION TO PURCHASE

Section 10.01. **Purchase Rights.** Lessee shall be entitled to purchase the Equipment:

- (a) Upon payment in full of all Rental Payments due hereunder and all other amounts due hereunder; or
- (b) Provided there is no Event of Default hereunder and upon written notice delivered at least 30 days in advance, Lessee may purchase the Equipment on any rental payment date by paying to Lessor the Rental Payment then due, together with the applicable Purchase Price along with all other amounts then due hereunder.

## ARTICLE XI ASSIGNMENT, SUBLEASING, INDEMNIFICATION, MORTGAGING AND SELLING

Section 11.01. **Assignment or Sale by Lessor.**

(a) This Agreement, and the obligations of Lessee to make payments hereunder, may be sold, assigned or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees or subassignees by Lessor. Upon any sale, disposition, assignment or reassignment, Lessee shall be provided with a notice of said assignment. During the term of this Agreement, Lessee shall each keep a complete and accurate register of all such assignments in form necessary to comply with Section 149(a) of the Code.

(b) Lessee agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, setoff or counterclaim whatsoever (except arising from Lessor's breach of this Agreement) that Lessee may from time to time have against Lessor or Vendor. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by Lessor or assignee to protect its interests in the Equipment and in this Agreement.

(c) Lessee hereby agrees that Lessor may sell or offer to sell this Agreement (i) through a certificate of participation program, whereby two or more interests are created in the Agreement, the Equipment or the Rental Payments; or (ii) with other similar instruments, agreements and obligations through a pool, trust, limited partnership, or other entity.

Section 11.02. **No Sale, Assignment or Subleasing by Lessee.** This Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor.

Section 11.03. **Release and Indemnification Covenants.** To the extent permitted by the laws and Constitution of the State, as they exist on the date of the execution of this Agreement, Lessee shall protect, hold harmless and indemnify Lessor from and against any and all liability, obligations, losses, claims, and damages whatsoever, caused by or resulting from the acts or omissions of the Lessee, its agents, employees and representatives pursuant to this Agreement. Lessor shall protect, hold harmless and indemnify Lessee from and against any and all liability, obligations, losses, claims and damages whatsoever, caused by or resulting from the acts or omissions of the Lessor, its agents, employees and representatives pursuant to this Agreement. The indemnification arising under this paragraph shall survive the termination of this Agreement.

## ARTICLE XII EVENTS OF DEFAULT AND REMEDIES

Section 12.01. **Events of Default.** The following constitute "Events of Default" under this Agreement:

- (a) Failure by the Lessee to pay any Rental Payment or other payment required to be paid hereunder when due; or
- (b) Failure by the Lessee to maintain insurance on the Equipment in accordance with Article VIII Section 8.03 hereof; or
- (c) Failure by the Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of 30 days after written notice is given to the Lessee by the Lessor, specifying such failure and requesting that it be remedied; provided, however, that if the failure stated in such notice cannot be corrected within such 30-day period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected; or
- (d) Initiation by the Lessee of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning its indebtedness.

The foregoing provisions of this Section are subject to the provisions of Article VI, Section 6.05, hereof.

Section 12.02. **Remedies On Default.** Whenever any Event of Default shall have occurred and be continuing, the Lessor shall have the right, at its sole option without any further demand or notice, to take any one or any combination of the following remedial steps:

(a) Terminate this Agreement and retake possession of the Equipment wherever situated, and sell or lease, sublease or make other disposition of the Equipment for use over a term in a commercially reasonable manner, all for the account of Lessor; provided that Lessee shall remain directly liable for the amount actually appropriated for the purchase or rental of the Equipment and unpaid by Lessee during the current fiscal year.

Lessor shall apply the sale proceeds in the following manner:

FIRSTLY, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage and sale of the Equipment, including reasonable attorneys' fees and expenses;

SECONDLY, to pay the Lessor (i) the amount of all unpaid Rental Payments, if any, which are then due and owing, together with interest and late charges thereon, (ii) the then applicable Purchase Price (taking into account the payment of past due Rental Payments as aforesaid), plus a pro rata allocation of interest, at the rate utilized to establish the interest component for the Rental Payment next due, from the next preceding due date of a Rental Payment until the date of payment by the buyer, and (iii) any other amounts due hereunder;

THIRDLY, to pay the remainder of the sale proceeds purchase moneys or other amounts paid by a buyer of the Equipment, to the Lessee.

(b) Proceed by appropriate court action to enforce performance by the Lessee of the applicable covenants of this Agreement or to recover for the breach thereof; or

(c) Use or retake such portion of the Equipment as the Lessor, in its sole discretion, may decide.

All of the Lessee's right, title and interest in any Equipment the possession of which is retaken by the Lessor upon the occurrence of an Event of Default or Event of Nonappropriation shall terminate immediately upon such repossession.

Section 12.03. **Return of Equipment.** Upon an Event of Default, Lessee agrees to allow Lessor to recover the Equipment at Lessee's sole cost and expense, in accordance with Article VI, Section 6.05.

Section 12.04. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity.

Section 12.05. **Force Majeure.** If by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI and Article VIII Section 8.03 hereof, Lessee shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; act of public enemies, orders or restraints of any kind of the government of the United States of America or the State or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

### ARTICLE XIII MISCELLANEOUS

Section 13.01. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses set forth on the first page hereof.

Section 13.02. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. **Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.04. **Amendments.** All amendments hereto must be in writing.

Section 13.05. **Execution in Counterparts.** This Agreement may be executed in several counterparts.

Section 13.06. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 13.07. **Captions.** The captions or heading in the Agreement are for convenience only and no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 13.08. **Entire Agreement.** This Agreement constitutes the entire agreement between Lessor and Lessee. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein regarding this Agreement or the Equipment leased hereunder. Any terms and conditions of any purchase order or other document (with the exception of Supplements) submitted by Lessee in connection with this Agreement which are in addition to or inconsistent with the terms and conditions of this Agreement will not be binding on Lessor and will not apply to this Agreement. Lessee by the signature on Page 1 of its authorized representative acknowledges that it has read this Agreement understands it and agrees to be bound by its terms and conditions.



## Certificate Of Acceptance

**Lease Number:**  
**Schedule Number:**

We hereby acknowledge receipt of the Equipment described in the above-referenced Lease (the "Equipment") and after full inspection of the Equipment have found it to be fully installed and in good working condition and satisfactory for all purposes of the applicable Lease Agreement or Lease Schedule we both signed. We hereby irrevocably authorize you to pay for and purchase the Equipment.

TO THE EXTENT THAT THE COST OF THE EQUIPMENT INCLUDES ANY MAINTENANCE/WARRANTY CONTRACT, WE CLEARLY UNDERSTAND AND AGREE THAT YOU HAVE NO RESPONSIBILITY TO US OR ANYONE ELSE IN CONJUNCTION WITH THE RESPONSIBILITIES AND OBLIGATIONS OF THE SUPPLIER WITH RESPECT TO THE MAINTENANCE/WARRANTY CONTRACT AND THAT YOU DO NOT AND WILL NOT ACCEPT ANY OBLIGATION OF ANY TYPE TO PERFORM ANY SERVICE, REPAIR, REPLACEMENT OR MAINTENANCE OF THE EQUIPMENT, AND THAT YOU ARE NOT A PARTY TO THE MAINTENANCE/WARRANTY CONTRACT. IN ALL CIRCUMSTANCES, WE UNDERSTAND AND AGREE THAT WE WILL ONLY SEEK TO HAVE THE SUPPLIER PERFORM UNDER THE MAINTENANCE/WARRANTY CONTRACT AND REGARDLESS OF ANY DISPUTE OR DISSATISFACTION WE MAY HAVE WITH THE SUPPLIER OR THEIR SERVICES, WE AGREE TO CONTINUE TO PAY YOU ALL THE RENTALS DUE UNDER THE AGREEMENT AND THE PAYMENT DUE UNDER THIS LEASE SCHEDULE.

We understand that based on representations made by us herein and elsewhere, that you are about to purchase the Equipment and pay the Supplier.

**Lessee:**

**By:** \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name and Title

**Date Signed:** \_\_\_\_\_