



FINANCIAL SERVICES

State and Local Government  
Master Lease Purchase Agreement**LESSEE:** City of Hampton, Virginia

Street Address

22 Lincoln Street

City / State / Zip

Hampton, VA 23669

**LESSOR:** CIT Communications Finance Corporation

1 CIT Drive, Livingston, New Jersey, 07039

Lease Number

X289060

**1. AGREEMENT.** Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the equipment (Equipment) described in any equipment schedule (Equipment Schedule) that incorporates this State and Local Government Master Lease Purchase Agreement (Agreement) by reference. An Equipment Schedule shall incorporate this Agreement by reference by listing the above-referenced Lease Number thereon. Such lease of equipment shall be governed by the terms and conditions of this Agreement, as well as by the terms and conditions set forth in the applicable Equipment Schedule and the payment schedule (Payment Schedule) that incorporates this Agreement and the applicable Equipment Schedule by reference. A Payment Schedule shall incorporate this Agreement and the applicable Equipment Schedule by listing the above-referenced Lease Number and the Schedule Number of the applicable Equipment Schedule thereon. Lessee understands and agrees that CIT Communications Finance Corporation or any parent, affiliate or subsidiary thereof may, as lessor, enter into a lease under this Agreement by executing an Equipment Schedule and a Payment Schedule (collectively, Schedules) under this Agreement, in which event the terms and conditions of the applicable Schedules and this Agreement as it relates to the lessor under such Schedules shall be binding upon and shall inure to the benefit of such entity executing such Schedule as lessor, as well as any successors or assignees of such entity.

**2. ASSIGNMENT OF PURCHASE DOCUMENTS.** Lessee hereby assigns to Lessor all of Lessee's rights and interests in and to: (a) the Equipment described in a specific Equipment Schedule (Equipment); and (b) any purchase order, contract or other documents (collectively, Purchase Documents) relating thereto that Lessee has entered into with Seller (as specified in the applicable Equipment Schedule). If Seller is not an affiliate of Lessor, Lessee shall obtain any consent required for such assignment. Except for the obligation to pay Seller for the Equipment if (and only if) the Equipment is accepted by Lessee pursuant to Sections 3 and 4, such assignment shall not include any of Lessee's obligations under such Purchase Documents, and Lessee shall at all times remain liable to Seller to perform all of the duties and obligations of the purchaser under such Purchase Documents to the same extent as if an assignment had not occurred. Provided that no Event of Default (as defined in Section 20) exists, and no event has occurred and is continuing that with notice or the lapse of time or both would constitute an Event of Default, Lessor hereby assigns to Lessee for the Term (as defined in Section 5) of the applicable Equipment Schedule the right to enforce, in Lessee's name, any representations, warranties and agreements made by Seller under the Purchase Documents, and Lessee may retain any recovery resulting from any such enforcement efforts. If Seller is not an affiliate of Lessor, Lessee shall obtain Seller's written agreement that upon any return of the Equipment to Lessor, at no additional fee or charge Seller will either: (y) grant Lessor any applicable license relating to the use of any software, technical information, confidential business information and other documentation (collectively, Software License) and permit Lessor to assign such Software License to any subsequent end-user of the Equipment; or (z) grant to any subsequent end-user of the Equipment an applicable Software License, subject to Seller's then-current licensing provisions. Lessee shall at all times remain liable to Seller as the licensee under the Software License, and Lessor shall not have any obligation thereunder unless and until such Software License is provided to Lessor in accordance with the provisions of this Agreement.

**3. DELIVERY; ACCEPTANCE.** Lessee shall cause the Equipment to be delivered to Lessee at the Equipment Location (as specified in the applicable Equipment Schedule) and Lessee shall accept the Equipment as soon as it has met the acceptance criteria specified in the applicable Purchase Documents. Lessee shall irrevocably accept the Equipment under lease and shall evidence the commencement of the lease with respect thereto by executing and delivering to Lessor a commencement certificate (Commencement Certificate) in a form acceptable to Lessor.

**4. PURCHASE OF EQUIPMENT.** Provided that no Event of Default exists, and no event has occurred and is continuing that with notice or the lapse of time or both would constitute an Event of Default, Lessor shall be obligated to purchase the Equipment from Seller and to lease the Equipment to Lessee if (and only if) Lessor receives on or before the Latest Commencement Date (as specified in the applicable Equipment Schedule) the related Commencement Certificate, Equipment Schedule and Payment Schedule (all executed by Lessee), and such other documents or assurances as Lessor may reasonably request.

**5. TERM.** The term of each Equipment Schedule (Term) shall begin on the date which Lessee executes the Commencement Certificate with respect to such Equipment Schedule (Commencement Date) and shall continue, unless earlier terminated as expressly provided for in this Agreement, for the period specified in such Equipment Schedule.

**6. LEASE PAYMENTS.** (a) **Payment.** Lessee shall pay to Lessor the Lease Payments, including both the principal and interest portions, equal to the amounts specified in each Payment Schedule. The Lease Payments specified in each Payment Schedule shall be payable without notice or demand at such address as Lessor may designate in writing, and shall commence on the first Lease Payment date as set forth in such Payment Schedule and thereafter as set forth in such Payment Schedule. Lessee shall pay Lessor interest at the rate of 1 1/2% per month (or such lesser rate as is the maximum rate allowable under applicable law) on any Lease Payment (or other amount due hereunder) that is not paid within 10 days of its due date. Also, in the event that more than one lease is entered into hereunder, the parties will use their best efforts to implement a common billing date for all such leases.

(b) **Funding Intent.** Lessee reasonably believes that funds can be obtained to make all Lease Payments during the Term and hereby covenants that Lessee's chief executive or administrative officer or the administrative office of Lessee charged with preparing the budget submitted to Lessee's governing body, as applicable, will provide for funding for such payments in each annual budget submitted to Lessee's governing body; provided that nothing in this Agreement shall be construed to create a deficiency debt or commitment of revenues other than the current revenues of Lessee, and provided further that if Lessee's governing body elects not to appropriate funds for such payments, it shall evidence such nonappropriation by omitting funds for such payments due during the applicable fiscal period from the budget it adopts. It is Lessee's intent to make Lease Payments for the full Term if funds are legally available therefor. Lessee represents, warrants and covenants to Lessor that the use of the Equipment is essential to its proper, efficient and economic operation. Lessee will provide Lessor with an essential use letter in form satisfactory to Lessor with each Equipment Schedule, whereby Lessee represents, warrants and covenants to Lessor that, among other things, Lessee shall use the Equipment only for its governmental purposes.

(c) **Lease Payments to Constitute a Current Expense.** Lessor and Lessee understand and intend that the obligation of Lessee to pay Lease Payments hereunder shall constitute a current expense of Lessee and shall not in any way be construed to be a debt of Lessee in contravention of any applicable statutory or constitutional limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

(d) **Lease Payments to be Unconditional.** Except as specifically provided in Section 7, the obligation to make Lease Payments is absolute and unconditional and shall not be subject to set-off, defense, counterclaim or recoupment for any reason whatsoever.

**7. NONAPPROPRIATION OF FUNDS.** In the event sufficient funds are not appropriated and budgeted by Lessee's governing body or are not otherwise available in any fiscal period for Lease Payments (or any other amount due hereunder), and provided that Lessee shall have exhausted all funds legally available for payment of the Lease Payments, then the Lessee shall immediately notify Lessor of such occurrence and this Agreement shall terminate with respect to the applicable Equipment Schedule, and each other Equipment Schedule (if any) selected by Lessor, on the last day of the fiscal period for which funds for Lease Payments under the applicable Equipment Schedule are available, without penalty or expense to Lessee of any kind whatsoever, except as to the portions of Lease Payments and those expenses associated with Lessee's surrender of the Equipment pursuant to Section 19 for which funds shall have been appropriated and budgeted or are otherwise available. Upon such termination, title to the Equipment described in such Equipment Schedule(s) shall vest in Lessor. Notwithstanding the foregoing, Lessee agrees that (a) it will not terminate any Equipment Schedule under this Agreement under the provisions of this Section 7 if any funds are appropriated to it, or by it, for the acquisition, retention or operation of other equipment or services performing functions similar to the Equipment for the fiscal period in which such termination would occur; (b) it will not during the Term give priority in the application of funds to any other functionally similar equipment or services; and (c) to the extent permitted by law, it will not expend or commit any funds for the purchase, acquisition or use of other equipment or services performing functions similar to the Equipment until the fiscal period following the fiscal period for which funds were first not available for the Equipment. This Section 7 will not be construed so as to permit Lessee to terminate any Equipment Schedule in order to acquire any other equipment or services or to allocate funds directly or indirectly to perform essentially the same application for which the Equipment is intended.

**8. GOVERNMENT USE.** LESSEE REPRESENTS, WARRANTS AND COVENANTS AS FOLLOWS: (A) IT SHALL COMPLY WITH THE INFORMATION REPORTING REQUIREMENTS OF §149(e) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (CODE), INCLUDING BUT NOT LIMITED TO, THE EXECUTION (AND DELIVERY TO LESSOR) OF INFORMATION STATEMENTS REQUESTED BY LESSOR; (B) IT SHALL NOT DO, CAUSE TO BE DONE OR FAIL TO DO ANY ACT IF SUCH ACT OR FAILURE TO ACT WILL CAUSE THIS AGREEMENT, OR ANY TRANSACTION HEREUNDER, TO BE AN ARBITRAGE BOND WITHIN THE MEANING OF §148 OF THE CODE; (C) IT SHALL NOT DO, CAUSE TO BE DONE OR FAIL TO DO ANY ACT IF SUCH ACT OR FAILURE TO ACT WILL CAUSE THIS AGREEMENT, OR ANY TRANSACTION HEREUNDER, TO BE A PRIVATE ACTIVITY BOND WITHIN THE MEANING OF §141 OF THE CODE; (D) IT SHALL NOT DO, CAUSE TO BE DONE OR FAIL TO DO ANY ACT IF SUCH ACT OR FAILURE TO ACT WILL CAUSE THE INTEREST PORTION OF THE LEASE PAYMENTS TO BE OR BECOME SUBJECT TO FEDERAL INCOME TAXATION UNDER THE CODE, EXCEPT AS SUCH INTEREST PORTION MAY BE TAKEN INTO ACCOUNT AS AN ADJUSTMENT IN DETERMINING THE ALTERNATIVE MINIMUM TAX AND ENVIRONMENTAL TAX IMPOSED ON CORPORATIONS; AND (E) IT SHALL BE THE ONLY ENTITY TO OWN, USE OR OPERATE THE EQUIPMENT DURING THE TERM. LESSEE SHALL BE DEEMED TO HAVE REAFFIRMED THE REPRESENTATIONS, WARRANTIES AND COVENANTS SET FORTH IN THIS SECTION 8 EACH TIME IT EXECUTES ANY FUNDAMENTAL AGREEMENT (AS DEFINED IN SECTION 17).

**9. TITLE; SECURITY INTEREST.** If Title Option A has been selected on the applicable Equipment Schedule, title to the Equipment shall vest in Lessee on the Commencement Date. If Title Option B has been selected on the applicable Equipment Schedule, title to the Equipment shall be held in the name of Lessor during the Term and, provided that the applicable Equipment Schedule has not been terminated pursuant to Section 7 hereof, no Event of Default exists, and no event has occurred and is continuing that with notice or lapse of time, or both, would constitute an Event of Default, upon Lessee's payment to Lessor of all Lease Payments (and other amounts due hereunder with respect to the Equipment), Lessee shall be entitled to Lessor's interest in the Equipment "AS IS, WHERE IS," and without any warranty, express or implied from Lessor, other than the absence of any liens by, through, or under Lessor. To secure payment of all amounts due to Lessor, to the extent permitted by law, Lessee grants Lessor and its assigns, and Lessor and its assigns retain, a purchase money security interest in the Equipment and all attachments, accessories, additions, substitutions, products, replacements, rentals and proceeds (including insurance proceeds) therefrom (collectively, Collateral). Lessee shall execute and timely deliver to Lessor financing statements or any other documents Lessor deems necessary to perfect or protect Lessor's security interest in the Collateral. Lessor or Lessor's agent may file as a financing statement any lease document (or copy thereof, where permitted by law) Lessor deems necessary to perfect or protect Lessor's security interest in the Collateral.

**10. INSURANCE.** At its own expense, Lessee shall provide and maintain the following insurance: (a) insurance against the loss or theft of or damage to the Equipment for the full replacement value thereof, naming Lessor as a loss payee; and (b) public liability and third party property damage insurance, naming Lessor as an additional insured. If Lessee so requests and if Lessor gives its prior written consent, in lieu of maintaining the insurance described in the preceding sentence, Lessee may self insure against such risks, provided that Lessor's interests are protected to the same extent as if the insurance required in clauses (a) and (b) had been obtained from third party insurance carriers and further provided that such self insurance program is not inconsistent with prudent business practices with respect to insuring such risks. All insurance provided pursuant to this Section 10 shall be in a form and amount reasonably satisfactory to Lessor. With respect to insurance obtained from a third party insurance carrier, such insurance shall be with a company or companies reasonably satisfactory to Lessor, shall contain the insurer's agreement to give Lessor at least 30 days' prior written notice before cancellation or material change thereof, and shall be payable to Lessor regardless of any act, omission or breach by Lessee. On or before the Commencement Date of the applicable

LESSOR AND LESSEE HAVE ENTERED INTO THIS AGREEMENT INTENDING TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH ON THE FRONT AND BACK OF THIS AGREEMENT AND ON ALL SCHEDULES WHICH INCORPORATE THIS AGREEMENT BY REFERENCE.

City of Hampton, Virginia

Lessee

By: **X**  
Lessee Authorized Signature

Print Name &amp; Title

Date

By: CIT COMMUNICATIONS FINANCE CORPORATION

By:  
Lessor Authorized Signature

Print Name &amp; Title

Date

Equipment Schedule and at such other times as Lessor may reasonably request, Lessee shall deliver to Lessor (i) insurance policies or copies thereof or certificates of insurance obtained from third party insurance carriers, or (ii) evidence of self insurance reasonably satisfactory to Lessor.

**11. REPAIRS; USE; LOCATION; LABELS.** Lessee shall: (a) at its own expense, keep the Equipment in good repair, condition and working order; (b) use the Equipment lawfully and exclusively in connection with its own public purposes and for the purpose for which the Equipment was designed and intended; and (c) without Lessor's prior written consent, not move the Equipment from the Equipment Location (as specified in the applicable Equipment Schedule). If Lessor supplies Lessee with labels stating Lessor's interest in the Equipment, Lessee shall affix such labels to the Equipment pursuant to Lessor's instructions.

**12. MAINTENANCE; INSPECTIONS; ALTERATIONS.** At its own expense, Lessee shall: (a) enter into and maintain a maintenance agreement for the Equipment that is acceptable to Lessor; (b) maintain the Equipment in the same condition as when delivered, subject only to ordinary wear and tear, and in good operating order and appearance; (c) make all alterations or additions to the Equipment that may be required by the manufacturer or legally necessary; and (d) make no other alterations or additions to the Equipment (except for alterations or additions that will not impair the value or performance of the Equipment and that are readily removable without damage to the Equipment). If Title Option B has been selected on the applicable Equipment Schedule, all parts that Lessee replaces and any alterations or additions that Lessee makes to the Equipment (except as permitted by Section 12(d)) shall become Lessor's property. Upon request, Lessor, or any party designated by Lessor, shall have the right to inspect the Equipment and Lessee's applicable maintenance agreement and records at any reasonable time.

**13. PERSONAL PROPERTY; LIENS AND ENCUMBRANCES.** The Equipment shall at all times remain personal property, notwithstanding that the Equipment, or any part thereof, may be (or becomes) affixed or attached to real property or any improvements thereon. Except for the interests of Lessor, Lessee shall keep the Equipment free and clear of all liens, liens and encumbrances of any nature whatsoever. If requested by Lessor, Lessee, at Lessee's expense, shall deliver to Lessor a landlord or mortgagee lien waiver in form acceptable to Lessor.

**14. TAXES.** Lessee shall pay, when due, all charges and taxes (local, state and federal) that are now or may hereafter be imposed upon the ownership, lease, rental, sale, purchase, possession or use of the Equipment, excluding, however, all taxes on or measured by Lessor's income. If Lessee fails to pay said charges and taxes when due, Lessor shall have the right, but shall not be obligated, to pay said charges and taxes. If Lessor pays any charges or taxes for which Lessee is responsible or liable under this Agreement, Lessee shall promptly reimburse Lessor therefor.

**15. RISK OF LOSS.** Lessee shall bear the entire risk of loss, theft, destruction or damage to the Equipment from any cause whatsoever or requisition of the Equipment by any governmental entity, or the taking of the Equipment by eminent domain or otherwise (collectively, Loss). Lessee shall advise Lessor in writing within 10 days of any such Loss. Except as provided below, no such Loss shall relieve Lessee of the obligation to pay Lease Payments and all other amounts owed Lessor hereunder. In the event of any such Loss, Lessor, at its option, may: (a) if the Loss has not materially impaired the Equipment (in Lessor's reasonable judgment), require Lessee, upon Lessor's demand, to place the Equipment in good condition and repair reasonably satisfactory to Lessor; or (b) if the Loss has materially impaired the Equipment (in Lessor's reasonable judgment), require Lessee, upon Lessor's demand, to pay Lessor the following amounts on the next Lease Payment date: (i) all amounts then owed Lessor by Lessee under the applicable Payment Schedule, including the Lease Payment due on such date, and (ii) an amount equal to the applicable Concluding Balance set forth in such Payment Schedule for such date. In the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will advise Lessee of the Concluding Balance to be paid by Lessee with respect to such Equipment that has suffered the Loss, which Lessee shall promptly pay Lessor, and Lessor shall recompute the remaining Lease Payments and Concluding Balances and advise Lessee of such amounts. Lessor will make the proceeds of any property insurance maintained by Lessee pursuant to Section 10(a) available to Lessee for the purposes of this Section 15 if no Event of Default exists, and no event has occurred and is continuing that with notice or the lapse of time, or both, would constitute an Event of Default.

**16. DISCLAIMERS.** IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT (A) LESSOR SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR PROMISE MADE BY SELLER, AND LESSOR SHALL NOT BE BOUND BY, OR LIABLE FOR, ANY REPRESENTATION, WARRANTY OR PROMISE MADE BY SELLER (EVEN IF LESSOR IS AFFILIATED WITH SELLER); (B) LESSOR SHALL NOT BE LIABLE FOR ANY FAILURE OF ANY EQUIPMENT OR ANY DELAY IN ITS DELIVERY OR INSTALLATION; (C) LESSOR SHALL NOT BE LIABLE FOR ANY BREACH OF ANY WARRANTY THAT SELLER MAY HAVE MADE; (D) LESSEE HAS SELECTED ALL EQUIPMENT WITHOUT LESSOR'S ASSISTANCE; (E) LESSOR IS NOT A MANUFACTURER OF ANY EQUIPMENT; AND (F) LESSOR HAS NOT MADE AND DOES NOT NOW MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION, OR CONDITION OF ANY EQUIPMENT (OR ANY PART THEREOF), THE MERCHANTABILITY OR FITNESS OF EQUIPMENT FOR A PARTICULAR PURPOSE, OR ISSUES REGARDING PATENT INFRINGEMENT, TITLE AND THE LIKE. IT IS FURTHER AGREED THAT LESSOR SHALL HAVE NO LIABILITY TO LESSEE, LESSEE'S CUSTOMERS, OR ANY THIRD PARTIES FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR ANY SCHEDULE OR CONCERNING ANY EQUIPMENT, OR FOR ANY DAMAGES BASED ON STRICT OR ABSOLUTE TORT LIABILITY OR LESSOR'S NEGLIGENCE; PROVIDED, HOWEVER, THAT NOTHING IN THIS AGREEMENT SHALL DEPRIVE LESSEE OF ANY RIGHTS IT MAY HAVE AGAINST ANY PERSON OTHER THAN LESSOR, ITS AGENTS AND ASSIGNS.

**17. AUTHORITY AND AUTHORIZATION.** Lessee represents, warrants and covenants to Lessor that: (a) Lessee is a State or political subdivision thereof, as those terms are used in §103 of the Code; (b) Lessee has the power and authority to enter into this Agreement, all Equipment Schedules and Payment Schedules, and all other related instruments and documents hereunder (collectively, Fundamental Agreements); (c) the Fundamental Agreements have been duly authorized, executed and delivered by Lessee and constitute valid, legal and binding agreements enforceable against Lessee in accordance with their terms; (d) no further approval, consent or withholding of objections is required from any governmental authority with respect to any of the Fundamental Agreements; (e) the entering into and performance of each of the Fundamental Agreements will not violate any judgment, order, law or regulation applicable to Lessee or result in the creation of any lien, charge, security interest or other encumbrance upon the Equipment or the assets of Lessee; (f) there are no actions, suits or proceedings pending or threatened against or affecting Lessee in any court or before any governmental commission, board or authority, that, if adversely determined, would have a material adverse effect on the ability of Lessee to perform its obligations under this Agreement; (g) the Equipment is tangible personal property and shall not become a fixture or real property under Lessee's use thereof; (h) Lessee has complied with all bidding requirements and, where necessary, by due notification has presented the Fundamental Agreements for approval and adoption as a valid obligation on its part; (i) it will do or cause to be done all things necessary to preserve and keep the Fundamental Agreements in full force and effect; and (j) it has sufficient appropriations or other funds available to pay all amounts due under the applicable Payment Schedule for the then current fiscal period. Lessee shall be deemed to have reaffirmed the representations and warranties set forth in this Section 17 each time it executes any Fundamental Agreement. Contemporaneously with its execution of this Agreement and each Equipment Schedule, Lessee will complete, execute and provide Lessor an incumbency certificate (in form satisfactory to Lessor) and an opinion of counsel (in form satisfactory to Lessor) as to the matters set forth in clauses (a) through (h) of this Section 17.

**18. GENERAL INDEMNITY.** With respect to any claims, actions or suits that are made against Lessor as a result of Lessee's actions, inactions, negligence or willful misconduct (Claims), to the extent permitted by law, Lessee shall indemnify, hold harmless, and, if so requested by Lessor, defend Lessor against all such Claims. Lessee's indemnification for Claims shall include all losses, liabilities, damages, penalties and expenses (including legal fees and costs) that Lessor may incur.

**19. SURRENDER.** In the event of termination of an Equipment Schedule pursuant to Section 7 or upon Lessor's demand pursuant to Section 21, Lessee shall, at its expense, deinstall, inspect, test and properly pack the Equipment, and return the Equipment, free of all liens and rights of others, by delivering it on board such common carrier as Lessor may specify with freight prepaid to any destination within the United States of America specified by Lessor. If Lessor so requests, Lessor and its agents shall have the right to enter any premises where Equipment may be located to perform any of Lessee's tasks noted above in this Section 19, and Lessee shall reimburse Lessor for all costs and expenses Lessor incurs in fulfilling such tasks. Lessee agrees that the Equipment, when returned to Lessor, shall be in the same condition as when delivered to Lessee,

reasonable wear and tear excepted, and in a condition that will permit the Equipment to be eligible for the Seller's or the manufacturer's generally available maintenance contract at then prevailing rates, without Lessor incurring any expense to repair or rehabilitate such Equipment (Lessee shall be liable for reasonable and necessary expenses to place the Equipment in such condition). If requested by Lessor, Lessee, at its expense, shall store the Equipment on its premises for a reasonable period beyond the Term, during which period the Equipment shall be subject to all of the terms and conditions hereof, except for the obligation to make Lease Payments. If any Equipment is returned to Lessor, all of Lessee's right, title and interest thereto shall vest in Lessor.

**20. EVENTS OF DEFAULT.** Any of the following shall constitute an Event of Default under this Agreement and all Equipment Schedules: (a) Lessee fails to pay any Lease Payment or any other amount within 10 days after its due date; or (b) Lessee fails to perform or observe any other representation, warranty, covenant, condition or agreement to be performed or observed by it hereunder or in any other agreement with Lessor or any of Lessor's affiliates, and Lessee fails to cure any such breach within 20 days after notice thereof; or (c) any representation or warranty made by Lessee hereunder or in any other instrument provided to Lessor by Lessee proves to be incorrect in any material respect when made; or (d) a proceeding under any bankruptcy, reorganization, arrangement of debts, insolvency or receivership law is filed by or against Lessee or Lessee takes any action to authorize any of the foregoing matters; or (e) Lessee becomes insolvent or fails generally to pay its debts as they become due.

**21. REMEDIES.** If an Event of Default occurs, Lessor may, in its sole discretion, exercise one or more of the following remedies: (a) subject to the provisions of Section 7, declare an amount equal to all amounts then due under this Agreement, and the Concluding Balance under each Payment Schedule as of the due date of the last Lease Payment paid when due, to be immediately due and payable, whereupon the same shall be immediately due and payable; (b) terminate this Agreement or any and all Equipment Schedules, and sell any Equipment subject thereto at public or private sale; or (c) take possession of any Equipment wherever the Equipment may be located, without demand or notice, without any court order or other process of law and without liability to Lessee for any damages occasioned by such taking of possession, and no such taking of possession shall constitute a termination of any Equipment Schedule; or (d) require Lessee to deliver the Equipment to a location designated by Lessor; or (e) proceed by court action to enforce performance by Lessee of any terms of this Agreement and/or to recover all damages and expenses incurred by Lessor by reason of any Event of Default; or (f) exercise any other right or remedy available to Lessor at law or in equity. Also, Lessee shall pay Lessor all costs and expenses (including legal fees and costs) incurred by Lessor in enforcing any of the terms, conditions or provisions of this Agreement. Upon repossession or surrender of any Equipment, Lessor shall lease, sell or otherwise dispose of the Equipment in a commercially reasonable manner, with or without notice and at public or private sale, and apply the net proceeds thereof (after deducting all expenses (including legal fees and costs) incurred in connection therewith) to the amounts owed to Lessor hereunder; provided, however, that subject to the provisions of Section 7, Lessee shall remain liable to Lessor for any deficiency that remains after any sale or lease of such Equipment. These remedies are cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

**22. PREPAYMENT OPTION.** Upon 30 days prior written notice from Lessee to Lessor, and provided that no Event of Default exists, and no event has occurred and is continuing that with notice or the lapse of time, or both, would constitute an Event of Default, Lessee will have the right to terminate any Equipment Schedule on any Lease Payment date set forth in the applicable Payment Schedule by paying Lessor, on such date, the Lease Payment then due under such Payment Schedule, the Concluding Balance amount set forth opposite such date, and any other amount then due Lessor under this Agreement with respect to the Equipment. Upon satisfaction by Lessee of such conditions, Lessee shall be entitled to Lessor's interest in the Equipment "AS IS, WHERE IS," without any warranty, express or implied from Lessor, other than the absence of any liens by, through, or under Lessor.

**23. ASSIGNMENT BY LESSOR.** Lessor shall have the unequal right to assign, pledge, transfer mortgage or otherwise convey any of its interests hereunder with notice to, but without the consent of, Lessee. In the event any lease is assigned, Lessee shall: (a) pay all amounts due under the applicable lease to the assignee (Assignee) specified by Lessor, notwithstanding any defense, setoff or counterclaim whatsoever that Lessee may have against Lessor or Assignee; (b) not permit the applicable lease to be amended or the terms thereof waived without the prior written consent of the Assignee; and (c) not require the Assignee to perform any obligations of Lessor. It is further agreed that: (y) any Assignee may reassign its rights and interests under the applicable lease with the same force and effect as the assignment described herein; and (z) any payments received by the Assignee from Lessee with regard to the assigned Schedule shall, to the extent thereof, discharge the obligations of Lessee to Lessor with respect to the assigned lease. Lessee shall acknowledge each such assignment in writing if so requested and keep a complete and accurate record of all such assignments in a manner that complies with § 149(a) of the Code, and the regulations promulgated thereunder.

**24. ASSIGNMENT OR SUBLEASE BY LESSEE.** LESSEE SHALL NOT ASSIGN THIS AGREEMENT OR ANY LEASE OR ASSIGN ITS RIGHTS IN OR SUBLET THE EQUIPMENT OR ANY INTEREST THEREIN WITHOUT LESSOR'S PRIOR WRITTEN CONSENT.

**25. SURVIVAL; QUIET ENJOYMENT.** All representations, warranties and covenants made by Lessee hereunder shall survive the termination of this Agreement and shall remain in full force and effect. All of Lessor's rights, privileges, and indemnities, to the extent they are fairly attributable to events or conditions occurring or existing on or prior to the termination of this Agreement, shall survive such termination and be enforceable by Lessor and any successors and assigns. So long as no Event of Default exists, and no event has occurred and is continuing that with notice or the lapse of time or both would constitute an Event of Default, neither Lessor nor any Assignee will interfere with Lessee's quiet enjoyment of the Equipment.

**26. FILING FEES; FURTHER ASSURANCES; NOTICES.** Upon demand, Lessee will promptly reimburse Lessor for any filing or recordation fees or expenses (including legal fees and costs) incurred by Lessor in perfecting or protecting its interests in the Equipment and under this Agreement. Lessee shall promptly execute and deliver to Lessor such documents (including, but not limited to, financing statements) and take such further action as Lessor may from time to time reasonably request to carry out the intent and purpose of this Agreement and to protect the rights and remedies of Lessor created or intended to be created hereunder. Service of all notices under this Agreement shall be sufficient if mailed to the respective party at its address set forth on the front page of this Agreement or at such other address as the parties may provide to each other in writing from time to time. Any such notice mailed to said address shall be effective when deposited in the United States mail, duly addressed with first class postage prepaid.

**27. CHOICE OF LAW; SUCCESSORS.** This Agreement and each lease shall be governed by the internal laws (as opposed to conflicts of law provisions) of the State where the Equipment Location, as specified in the applicable Equipment Schedule, is located. If any provision of this Agreement or any Equipment or Payment Schedule shall be prohibited by or invalid under that 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 Agreement or any Equipment or Payment Schedule. This Agreement and all Schedules inure to the benefit of and are binding upon the permitted successors or assigns of Lessor and Lessee.

**28. NO WAIVER; LESSOR APPROVAL.** 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 of any other provision hereof. Neither this Agreement nor any other Fundamental Agreement shall be binding upon Lessor unless and until executed by Lessor at its home office.

**29. CAPTIONS; COUNTERPARTS; ENTIRE AGREEMENT.** The captions contained in this Agreement are for convenience only and will not affect the interpretation of this Agreement. Only one counterpart of the Equipment Schedule shall be marked "Original" (Original) and all other counterparts thereof shall be marked as, and shall be, duplicates. To the extent that any Equipment Schedule constitutes chattel paper (as such term is defined in the Uniform Commercial Code in effect in any applicable jurisdiction), no security interest in such Equipment Schedule may be created through the transfer or possession of any counterpart other than the Original. This Agreement and all other Fundamental Agreements 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.