

EQUIPMENT LEASE AGREEMENT

This EQUIPMENT LEASE AGREEMENT (this "Agreement") is entered into effective as of the ___ day of _____, 20___ (the "Effective Date") by and between the Board of Regents of the University of Nebraska, a public body corporate and governing body of the University of Nebraska-Lincoln (the "University") and _____, a _____ (the "Lessee"). The University and Lessee may each be individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, the University is the owner of certain Equipment described in Section 1 of this Agreement; and

WHEREAS, Lessee desires to lease the Equipment from the University and the University agrees to lease the Equipment to Lessee under the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Equipment. The University hereby leases to Lessee and Lessee hereby leases from the University that certain equipment (the "Equipment"), as fully described in Exhibit A, attached hereto and incorporated herein by reference.

2. Term. This Agreement shall be for a term of _____ (___) months, which shall commence on the Effective Date and shall, unless terminated earlier as provided in this Agreement, terminate on _____, 20___ (the "Term").

3. Rental Payment. As rent for the Equipment, Lessee shall pay to the University, the rental payments set forth per the payment schedule (the "Payment Schedule") set forth in Exhibit B, attached hereto and incorporated herein by reference. The first rental payment shall become due and payable as of the Effective Date. Rental payments shall be made to the University at the address set forth herein or such other address as the University requests in writing.

4. Security Deposit. To secure performance of Lessee's obligations under this Agreement, Lessee shall pay to the University the sum of _____ and no/100 Dollars (\$_____) as a security deposit (the "Security Deposit"). Upon the return of the Equipment to the University in good working order, without damage, the University shall refund the Security Deposit to the Lessee.

5. Taxes. Lessee shall pay all sales, use, excise, personal property or other taxes (excepting state and federal income taxes and other taxes upon the “net income” of the University) that may be imposed on either Party as a result of this transaction. Lessee shall indemnify, defend and hold the University, its regents, employees, and agents harmless from all liabilities, suits, judgments, obligations, fines, penalties, claims, costs, and expenses (including reasonable attorneys’ fees) arising out of the imposition of, or attempt to impose, any such tax on the University.

6. Maintenance. Throughout the Term, Lessee shall provide for the service, repair and maintenance of the Equipment, at Lessee’s sole expense, so as to keep the Equipment in as good condition, repair, appearance and working order as when delivered to Lessee hereunder, ordinary wear and tear excepted. Lessee shall, at Lessee’s sole expense, replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed, damaged beyond repair, or rendered unfit for use for any reason whatsoever. All such replacement parts, mechanisms, and devices shall be free and clear of liens, encumbrances, and rights of others and shall become the property of the University and shall be covered by this Agreement to the same extent as the Equipment originally covered by this Agreement.

7. Use of Equipment. Lessee shall exercise due care in its operation, use and maintenance of the Equipment. Lessee shall not use, and shall not permit others to use, the Equipment in any manner that would contravene applicable laws, rules, regulations and other governmental directives, would violate the terms of any manufacturer’s or like warranty, or would contravene the manufacturer’s reasonable operational standards for the Equipment. If the University notifies Lessee of any additional operational standards, Lessee shall adhere, and shall cause others using the Equipment under this Agreement to adhere, to such standards in the operation of the Equipment. Lessee shall not alter or modify the Equipment without the prior written consent of the University. Lessee agrees that only qualified employees of Licensee shall operate the Equipment.

8. Permits. Lessee shall obtain all permits and licenses necessary for the installation, operation, possession and use of the Equipment. Lessee shall comply with all laws, rules, regulations and other governmental directives applicable to the installation, use, and operation of the Equipment and, if compliance with such law, rule, regulation or other governmental directive requires changes or additions to be made to the Equipment, such changes or additions shall be made by Lessee at Lessee’s sole cost and expense upon the University’s written approval of the same.

9. Utility Charges. Lessee shall pay all charges for gas, water, steam, electricity, light, heat, power, telephone or other utility service to be used on or in connection with the

Equipment, including charges for installation of such services. There shall be no abatement or diminution of rent due to the interruption of any such services.

10. Default; Remedies. If (a) Lessee shall default in the payment of any rent or in making any other payment hereunder when due, or (b) Lessee shall default in the payment when due of any indebtedness of Lessee to the University arising independently of this Agreement, or (c) Lessee shall default in the performance of any other covenant herein and such default shall continue for five days after written notice to Lessee by the University, or (d) Lessee becomes insolvent or makes an assignment for the benefit of creditors, or (e) Lessee applies for or consents to the appointment of a receiver, trustee, or liquidator of Lessee or of all or a substantial part of the assets of Lessee under the Bankruptcy Act, or any amendment thereto or under any other insolvency law or law providing for the relief of debtors, then, if and to the extent permitted by law, the University shall have the right to exercise any one or more of the following remedies:

- (i) To declare the entire amount of rent hereunder immediately due and payable as to any or all items of the Equipment, without notice or demand to Lessee;
- (ii) To sue for and recover all rents, and other payments, then accrued or thereafter accruing, with respect to any or all items of the Equipment;
- (iii) To take possession of any or all items of the Equipment without demand, notice, or legal process, wherever they may be located. Lessee hereby waives any and all damages occasioned by such taking of possession. Any said taking of possession shall not constitute a termination of this Agreement as to any or all items of Equipment unless the University expressly so notifies Lessee in writing;
- (iv) To terminate this Agreement as to any or all items of Equipment; and
- (v) To pursue any other remedy at law or in equity.

All such remedies are cumulative and may be exercised concurrently or separately.

11. Termination. The University may terminate this Agreement at any time upon thirty (30) days' prior written notice to Lessee.

12. Return of Equipment. Upon termination of this Agreement, Lessee, at its sole cost and expense, shall promptly deliver the Equipment to the University at the University's address set forth below. Lessee shall be liable to the University for the fair market value of the Equipment, determined as of the date of this Agreement, unless Lessee shall return the Equipment to the University within five (5) business days after termination of this Agreement, in good working order, reasonable wear and tear excepted. Lessee shall be responsible for any damage to the Equipment in shipping the Equipment back to the University. In the event the

University provides shipping instructions to Lessee, Lessee shall comply with such shipping instructions.

13. Insurance. Lessee hereby acknowledges and agrees that its assumption of loss of the Equipment shall attach upon the earlier of (i) Lessee's receipt of the Equipment, or (ii) upon the University's delivery of the Equipment to a common carrier for transporting to Lessee (the "Equipment Acceptance Date"). Lessee shall, at its sole expense, obtain and maintain throughout the Term general commercial liability insurance against claims for bodily injury, death and property damage with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) general aggregate, to cover such liability caused by, or arising out of activities of the Lessee and/or Lessee's employees with respect to the Equipment. All such certificates evidencing such insurance shall name the Board of Regents of the University of Nebraska as an additional insured. Lessee represents that it has workers' compensation insurance to the extent required by law. Lessee agrees to furnish proof of all such insurance to the University upon request.

14. Damage. Lessee shall be responsible for any loss of or damage to the Equipment from any cause at all, whether or not insured, from the Equipment Acceptance Date. If the Equipment is lost, stolen or damaged, Lessee will promptly notify the University of such event. In no event shall such loss or damage relieve Lessee of its obligations under this Agreement. In the event of such loss or damage, Lessee, at its option, shall: (i) promptly repair the Equipment to return it to good working order; or (ii) replace the Equipment with like Equipment of the same or later model (upon the University's written approval), in good condition and working order, free and clear of all liens and encumbrances and grant the University the right to perfect its security interest in the replacement Equipment and such replacement shall be substituted in this Agreement by appropriate amendment; or (iii) pay the University the replacement value, per Exhibit A, less any rental payments previously paid.

15. Indemnification. Lessee shall indemnify, defend and hold the University and its regents, employees, students, agents and contractors harmless from all losses, liabilities, actions, suits, judgments, obligations, fines, penalties, claims, costs and expenses (including reasonable attorneys' fees and investigative fees) arising out of the rental of the Equipment and all acts and omissions related thereto.

16. Security Interests in the Equipment. In no event shall Lessee assert any ownership interest in or to the Equipment. Lessee shall not grant or permit any person or business entity to assert a security or other interest in the Equipment. At all times during the Term, Lessee shall ensure that the Equipment is identified as being owned by the University.

17. Limitations of Damages and Remedies. Even if advised of the possibility of such damages, in no event shall the University be liable for (i) personal injury or property damages, or (ii) lost profits, work stoppage, lost data, or any other special, indirect or consequential damages of any kind. In the event of the University's breach or failure to perform any obligation under this Agreement, the University's entire liability and the Lessee's exclusive remedy shall be, at the University's option, either (i) return of the monetary consideration paid to the University under this Agreement, or (ii) the University's performance of any obligation that failed to satisfy the terms of this Agreement, including the repair of any damaged or defective Equipment.

18. Disclaimer of Warranties. The University disclaims and excludes all warranties, express and implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose, concerning the Equipment leased under this Agreement. The Parties acknowledge and agree the Equipment shall be leased and accepted "AS IS" with all defects.

19. Personal Property. The Equipment is and shall at all times be and remain personal property, notwithstanding that the Equipment, or any part thereof, may now be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real property or any building thereon or attached in any manner to what is permanent by any means of cement, plaster, nails, bolts, screws or otherwise.

20. General Provisions.

20.1 Entire Agreement; Amendment. This Agreement (including all attached or referenced exhibits, addenda and schedules) is intended by the Parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements between the Parties, whether written or oral, relating to the subject matter of this Agreement. The terms and conditions of any purchase order or similar document submitted by Lessee in connection with this Agreement shall not be binding upon the University. This Agreement may be amended only in writing duly executed by all Parties.

20.2 Assignment. This Agreement may not be assigned by a Party without the prior written consent of the other Party. Any assignment attempted to be made in violation of this Agreement shall be void. In the event of any assignment, Lessee shall remain responsible for its performance and liable for assignee's performance.

- 20.3 Force Majeure. No Party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure, the Parties' duty to perform obligations shall be suspended.
- 20.4 Governing Law; Consent to Jurisdiction. The internal laws of the state of Nebraska shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Lancaster County, Nebraska.
- 20.5 Independent Contractor. In the performance of their obligations under this Agreement, the Parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, joint venturers, or employees. Neither Party shall have the right or power to bind the other Party and any attempt to enter into an agreement in violation of this section shall be void.
- 20.6 Notices. All notices, requests and other communication that a Party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requests, to the other Party at its address set forth below or to such other address as such Party may designate by notice given pursuant to this section.

If to the University: Board of Regents of the University of Nebraska
c/o University of Nebraska-Lincoln

With a copy to: University of Nebraska
Office of the General Counsel
3835 Holdrege Street
Lincoln, Nebraska 68583-0745
Facsimile No.: 402-472-2038

If to Lessee: _____

20.7 Severability. If one or more provisions of this Agreement, or the application of any provision to any Party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Agreement and the application of the provision to other Parties or circumstances shall remain valid and in full force and effect.

20.8 Non-Waiver of Defaults. Any failure of the University at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms and conditions of this Agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions or rights, and shall not affect or impair the same, or the right of the University to avail itself same.

20.9 Section Headings. All section headings are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

20.10 Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Agreement, effective as of the Effective Date set forth above.

BOARD OF REGENTS OF THE
UNIVERSITY OF NEBRASKA

[LESSEE]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
EQUIPMENT

[List all items of equipment and replacement value of each]

EXHIBIT B
PAYMENT SCHEDULE

[Insert payment schedule and total payment amount]