



THIS MASTER LEASE PURCHASE AGREEMENT (this "*Agreement*") is by and between The Regents of the University of California ("*Lessee*" or "*UC*"), and the undersigned lessor ("*Lessor*" or "*Supplier*"), effective as of the last signature date set forth below (the "*Effective Date*").

## 1. LEASE PURCHASE TRANSACTION.

**1.1 Lease of Property; Transaction Documents.** Subject to the terms and conditions of this Agreement, Lessor will finance Lessee's purchase and, if required, the installation and/or maintenance of, those items of tangible personal property identified in each schedule of property substantially in the form attached hereto as Attachment A (a "*Property Schedule*") that is executed and delivered pursuant to this Agreement (each such item, and collectively, the "*Property*"), in consideration for payment of rent and any delivery and installation costs payable in connection therewith in the amounts (each, a "*Lease Payment*"), and on the dates specified in the schedule of payment substantially in the form attached as Exhibit 1 to the Property Schedule (a "*Payment Schedule*"). With respect to each Property Schedule, as of each Commencement Date (as defined in Section 1.3 below), Lessor will be deemed to lease to Lessee, and Lessee will be deemed to lease from Lessor, the Property described in such Property Schedule in accordance with this Agreement and such Property Schedule, for the Lease Term (as defined in Section 1.3 below). On or before execution of this Agreement and the first Property Schedule hereunder, and of each Property Schedule thereafter, and as a condition of entering into each Property Schedule, Lessee will provide, in completed and executed form, (a) an opinion of Lessee's legal counsel, substantially in the form attached as Exhibit 2 to the Property Schedule (the "*Opinion of Counsel*"); and (b) a certificate of signing authority, substantially in the form attached as Exhibit 3 to the Property Schedule (the "*Certificate of Signing Authority*"). Upon delivery and installation of Property hereunder, subject to and in accordance with the terms and conditions of Section 1.4 below, Lessee will provide, in completed and executed form, a certificate of final acceptance substantially in the form attached hereto as Exhibit 4 to the Property Schedule (the "*Certificate of Final Acceptance*"). Subject to and in accordance with Section 11.1 below, the terms and conditions of the then-current University of California Terms and Conditions for Goods and Services, including the Federal Acquisition Regulations identified therein, attached hereto as Attachment C and as may be amended from time to time (the "*Terms and Conditions*"), are hereby incorporated herein.

**1.2 Separate Financings.** Each Property Schedule executed and delivered pursuant to this Agreement will be a separate financing. Without limiting the foregoing, upon the occurrence of an Event of Default (as defined in Section 7.1.1 below) or a Non-appropriation Event (as defined in Section 2.4 below) with respect to a Property Schedule, Lessor will have the rights and remedies specified herein with respect to the Property financed and the Lease Payments payable with respect thereto, but will not have any rights or remedies with respect to the Property financed or the Lease Payments payable with respect to any other Property Schedule unless an Event of Default or a Non-appropriation Event has also occurred under such other Property Schedule.

**1.3 Lease Term.** With respect to each Property Schedule, the lease term of the Property described in such Property Schedule (a "*Lease Term*") will be as follows:

**1.3.1** The Lease Term will commence on the date Lessee issues a Certificate of Final Acceptance pursuant to Section 1.4 below (the “*Commencement Date*”).

**1.3.2** The Lease Term will terminate, unless otherwise earlier terminated in accordance with this Agreement, upon Lessee’s exercise of a purchase option in accordance with Section 4 below with respect to the applicable Property. A Lease Term cannot be canceled or terminated by Lessee except as expressly provided herein.

**1.4 Delivery, Installation and Acceptance of Property.** With respect to each Property Schedule, Lessee will order the Property and will cause the Property to be delivered and installed at the location(s) specified in such Property Schedule. Upon delivery and installation of the Property, Lessee will conduct such inspection and testing as Lessee deems appropriate during the acceptance period specified in the Property Schedule (the “*Acceptance Period*”). If Lessee determines the Property is complete and conforms to Lessee’s specifications, on or before the last day of the Acceptance Period, Lessee will issue a Certificate of Final Acceptance. If Lessee determines the Property or any portion thereof is non-conforming, deficient, or incomplete, upon notice to Lessor during the Acceptance Period, Lessee may require any deficiency or non-conformity to be corrected by or on behalf of Lessor without charge within thirty (30) calendar days, or during such longer period as Lessee and Lessor mutually agree is reasonable, before issuing the Certificate of Final Acceptance. If Lessor does not correct the deficiency within the allotted time, Lessee may reject such Property and pursue its remedies pursuant to Section 7.2.2 below. If Property maintenance is financed pursuant to a Property Schedule, such prepaid Property maintenance will be governed by the maintenance agreement between the Property maintenance provider and Lessee and will not be affected by this Agreement.

**1.5 Location.** The Property will be located initially at the address specified in the applicable Property Schedule. Before relocating the Property, Lessee will provide written notice thereof to Lessor identifying the applicable Property Schedule number.

## **2. PAYMENTS.**

**2.1 Payment of Lease Payments; Interest Component.** Lessee will pay Lease Payments under each Payment Schedule in U.S. dollars at Lessor’s address set forth as the “remit to” address in Lessor’s invoice, unless Lessor instructs Lessee otherwise in writing. A portion of each Lease Payment due under each Payment Schedule is paid as, and represents payment of, interest, and each Payment Schedule hereunder will set forth the interest component of each Lease Payment thereunder during the Lease Term.

**2.2 Lease Payments a Current Expense.** Lessor and Lessee intend that the obligation of Lessee to pay Lease Payments hereunder will constitute a current expense of Lessee and will not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee. Upon the appropriation of Lease Payments for a fiscal year of Lessee, only such Lease Payments for such fiscal year will be a binding obligation of Lessee. Nothing contained herein constitutes a pledge of the revenues, funds, or monies of Lessee.

**2.3 Late Charges.** Should Lessee fail to pay any part of any Lease Payment or other sum to be paid to Lessor under any Payment Schedule or this Agreement within twenty (20) business days of the date on which such amount is due, then Lessee will pay late charges on

such delinquent payment from the due date until paid at the lesser of a rate of six percent (6%) per annum or the maximum rate permitted by applicable law.

**2.4 Non-Appropriation.** If, during the applicable Lease Term, sufficient funds are not appropriated to make Lease Payments with respect to a Property Schedule beyond the then-current fiscal year of Lessee (each, a “*Non-appropriation Event*”), such Property Schedule will terminate as of the end of the then-current fiscal year of Lessee, and Lessee will not be obligated to make Lease Payments with respect to such Property Schedule on or after the first day of the succeeding fiscal year of Lessee. Upon a Non-appropriation Event, Lessee will, no later than the last day of the fiscal year for which Lease Payments have been appropriated (the “*Non-appropriation Termination Date*”), deliver possession of the Property to Lessor. If Lessee fails to deliver possession of the Property to Lessor on or before the Non-appropriation Termination Date, the termination will nevertheless be effective but Lessee will pay damages to Lessor in an amount equal to the portion of Lease Payments that is attributable to the number of days after the Non-appropriation Termination Date during which Lessee fails to deliver possession. Lessee will notify Lessor in writing within seven (7) days of the occurrence of a Non-appropriation Event, but failure to provide such notice will not operate to extend the Lease Term or result in any liability to Lessee.

### **3. RIGHTS AND OBLIGATIONS WITH RESPECT TO THE PROPERTY.**

**3.1 Title; Quiet Enjoyment.** With respect to each Property Schedule executed pursuant hereto, on the Commencement Date, and so long as there does not exist an Event of Default (as defined in Section 7.1.1 below), title to the Property will vest in the name of Lessee, subject to Lessor's security interest described in Section 3.3 below. During each Lease Term, provided there does not exist a Non-appropriation Event or an Event of Default (as defined in Section 7.1.1 below), and except as expressly set forth elsewhere in this Agreement, Lessee will peaceably and quietly have, hold and enjoy the Property subject thereto, without suit, trouble or hindrance from Lessor. Ownership of the software that Lessee acquires from the manufacturer, vendor or provider of the Property (collectively, “*Licensors*”), whether or not financed by Lessor, will be governed by the license agreement between Licensors and Lessee, and is not affected by this Agreement.

**3.2 Personal Property.** The Property is and will remain personal property, notwithstanding that the Property or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon.

**3.3 Lessor's Security Interest.** With respect to each Property Schedule executed pursuant hereto, Lessee grants to Lessor, for the benefit of Lessor and its permitted successors and assigns, a security interest in the Property, including substitutions, repairs, replacements and renewals, and the proceeds thereof, which is a first lien on Lessee's interest in such Property. Lessee hereby authorizes Lessor to file all financing statements which Lessor deems necessary or appropriate to establish, maintain and perfect such security interest. If Lessee performs all of Lessee's obligations under this Agreement, subject to the right of Lessor to waive any such obligation by written notice thereof delivered to Lessee, then, upon Lessee's exercise of a purchase option under Section 4 below with respect to any item of Property, Lessor's interest in the Property automatically terminates.

**3.4 Maintenance; Modifications.** At all times during each Lease Term, with respect to each Property Schedule executed pursuant hereto, Lessee will, at Lessee's own cost and expense, maintain, preserve, and keep the Property in good working order and condition, and

will make or cause to be made all necessary and proper repairs, replacements, and renewals to the Property, which will become part of the Property. Lessee will have the right, at its own expense, to make alterations, additions, modifications or improvements to the Property. All such alterations, additions, modifications or improvements will thereafter comprise part of the Property and will be subject to the terms and conditions of this Agreement. During each Lease Term, Lessee will, at its own expense, make such alterations, additions, modifications and improvements to the applicable Property as may be required from time to time by applicable law or by any governmental authority.

**3.5 Insurance.** Lessor retains risk of loss to the Property until it is delivered to Lessee. All risk of loss to the Property will be borne by Lessee once the Property is within Lessee's control. At all times during the Lease Term, at Lessee's own cost and expense, Lessee will maintain a self-insurance program for general liability and all risk of physical loss or damage with respect to the Property, sufficient to protect the full replacement value of the Property and to protect from liability in all events for which insurance is customarily available. Upon request by Lessor, Lessee will furnish to Lessor a certificate of self-insurance coverage evidencing such program through the end of the Lease Term. Any insurance policy (or self-insurance program) to be carried and maintained pursuant to this Agreement, with respect to physical loss or damage to the Property, will be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. Lessee's self-insurance program, with respect to general liability, will name Lessor as an additional insured. Lessee will give Lessor written notice at least thirty (30) days in advance of any cancellation or modification of the insurance coverage described in this Section 3.5.

#### **4. OPTION TO PURCHASE.**

**4.1 During Lease Term.** At any time during a Lease Term, with respect to each Property Schedule executed pursuant hereto, Lessee has the option, in its sole discretion, to purchase the Property by delivering payment to Lessor of the amount shown in the table in the applicable Payment Schedule under the title "Prepayment Balance" for the month during which Lessee desires to purchase the Property on the next succeeding payment date specified in the Payment Schedule.

**4.2 End of Lease Term.** At the end of the Lease Term, with respect to each Property Schedule executed pursuant hereto, if Lessee has made all Lease Payments and the Property Schedule has not been terminated, then Lessee has the option, in its sole discretion, to purchase the Property by delivering payment to Lessor of the final Lease Payment on the final regular payment date specified in the Payment Schedule.

**4.3 Termination of Lessor's Interest upon Purchase.** Upon payment in accordance with Section 4.1 or 4.2 above, and performance by Lessee of all other applicable terms, conditions and provisions hereof, any and all restrictions on the relevant Property, in particular any security interest granted pursuant to Section 3.3, are terminated effective as of the payment date, and Lessee will own such Property outright. Lessor will deliver to Lessee all such documents and instruments as Lessee may reasonably require to evidence the transfer, without warranty by or recourse to Lessor, of all of Lessor's right and interest in and to such Property, whereupon Lessor's interest in such Property will terminate.

#### **5. REPRESENTATIONS AND WARRANTIES.**

**5.1 By Lessee.** Lessee hereby represents and warrants to Lessor that: (a) Lessee is a public corporation and will do or cause to be done all things necessary to preserve and keep such organization and existence in full force and effect; (b) Lessee has been authorized to enter into this Agreement pursuant to a duly adopted resolution of Lessee's governing body or by other appropriate official action; (c) all legal requirements have been met, and procedures have been followed, by Lessee, including any applicable public bidding, in order to ensure the enforceability of this Agreement; (d) if the financing of Property pursuant to a Property Schedule hereunder is deemed tax-exempt, such Property will be used by Lessee only for essential governmental functions consistent with the scope of Lessee's authority and will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use, and Lessee's need for the Property is not expected to diminish during the term of the Agreement; (e) Lessee has funds available to pay Lease Payments until the end of its current appropriation period, and it intends to request funds to make Lease Payments in each appropriation period, from now until the end of Lease Term; (f) Lessee will comply at all times with all applicable requirements of the Internal Revenue Code of 1986, as amended (the "Code"), including but not limited to, if the financing of Property pursuant to a Property Schedule hereunder is deemed tax-exempt, the registration and reporting requirements of Section 149 of the Code to maintain the federal tax-exempt status of such transaction; and (g) Lessee will maintain a system with respect to this Agreement, which tracks the name, and ownership interest of each assignee who has both the responsibility for administration of, and ownership interest in this Agreement.

**5.2 By Lessor.** Lessor hereby represents and warrants to Lessee that: (a) Lessor is a duly organized, validly existing entity and will do or cause to be done all things necessary to preserve and keep such organization and existence in full force and effect; (b) Lessor has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder; (c) the execution of this Agreement by Lessor's representative whose signature is set forth below has been duly authorized by all necessary corporate action; (d) assuming due authorization, execution and delivery by Lessee, this Agreement constitutes the legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws and equitable principles related to or affecting creditors' rights generally or the effect of general principles of equity; (e) title to the Property, when delivered to Lessee, is free from all liens and encumbrances; (f) the Property is fit for the purposes intended and fulfills its design functions, and is free of all patent and latent defects in design, materials, and workmanship; (g) the Property does not and will not infringe or violate the patent, copyright, trade secret, or other intellectual property rights of any third party; and (h) Lessor has or will have, prior to the performance of its obligations under this Agreement, all appropriate licenses, agreements, or ownership rights pertaining to all patent, copyright, trade secret, or other intellectual property or proprietary rights needed for the performance of its obligations under this Agreement. It is understood and agreed that by acceptance of this warranty and by acceptance of the Property, Lessee does not waive any warranty, either expressed or implied in Sections 2312-2317, inclusive, of the California Commercial Code, or any products liability of Lessor as determined by any applicable decision of a court of the State of California or of the United States.

**6. TERM.** This Agreement will become effective on the Effective Date and will expire seven (7) years thereafter unless earlier terminated in accordance with this Agreement, provided that this Agreement may be renewed for additional one (1) year periods by mutual agreement in writing by the parties. If this Agreement would otherwise expire without renewal during the pendency of a Property Schedule, then all the terms and conditions of this Agreement will continue to apply for so long as the particular Payment Schedule for that Property Schedule is in

effect, at which point this Agreement will automatically expire. This Agreement is not an "evergreen" contract or of indefinite duration.

## **7. DEFAULT.**

### **7.1 Lessee's Events of Default; Lessor's Remedies.**

**7.1.1 Default By Lessee.** Lessee will be in default under a Property Schedule upon the occurrence of any of the following events or conditions (each, an "*Event of Default*"), unless Lessor has waived such Event of Default in writing: (a) failure by Lessee to make any Lease Payment or any other payment owed by Lessee to Lessor under a Payment Schedule at the time specified in such Payment Schedule, and the continuance of such failure for thirty (30) consecutive days after written notice by Lessor to Lessee; (b) any warranty or representation made by Lessee in or pursuant to the Property Schedule proves to have been false in any material respect when made or furnished, or (c) Lessee's actual or attempted sale, lease, or encumbrance of the Property or any portion thereof. For the avoidance of doubt, the parties agree that a Non-appropriation Event will not constitute an Event of Default.

**7.1.2 Remedies of Lessor.** Upon the occurrence of any Event of Default by Lessee and at any time thereafter, Lessor may, without any further notice, exercise one or more of the following remedies in its sole discretion:

terminate the Property Schedule and all of Lessee's rights as to any or all of the Property financed pursuant thereto;

proceed by appropriate court action to personally, or by its agents, take possession from Lessee of any or all of the Property financed pursuant to the Property Schedule wherever found and Lessor may thereafter dispose of such Property; provided, however, that any proceeds from the disposition of such Property in excess of the sum of the following amounts will be paid to Lessee: (a) all costs, including attorneys' fees, incurred in securing possession of such Property; (b) all expenses incurred in completing the disposition of such Property; and (c) the balance of any remaining Lease Payments due in Lessee's current fiscal year for such Property;

proceed by appropriate court action or actions to enforce performance by Lessee of its obligations hereunder or to recover damages for Lessee's breach or pursue any other remedy available to Lessor at law or in equity or otherwise;

declare all unpaid Lease Payments and other sums payable under the Property Schedule during the portion of the Lease Term that occurs during Lessee's current fiscal year to be immediately due and payable without any presentment, demand or protest and/or take any and all actions to which Lessor is entitled under applicable law.

### **7.2 Lessor's Default; Lessee's Remedies.**

**7.2.1 Default by Lessor.** Lessor will be in default under a Property Schedule if, (a) any Lessor warranty or representation proves to have been false in any material respect

when made or furnished; or (b) Lessee rejects any delivered Property pursuant to Section 1.4 above.

**7.2.2 Remedies of Lessee.** Upon the occurrence of either of the events specified in Section 7.2.1 above and at any time thereafter, Lessee may terminate the applicable Property Schedule in whole or in part upon written notice to Lessor. Lessor bears all risk as to any rejected Property and may become liable to Lessee for its actual damages, including but not limited to its procurement costs. However, with regard to the warranty set forth in Section 5.2(g) and (h), if the Property, or any portion thereof is held, or in Lessee's reasonable opinion, is likely to be held, to constitute infringement, Lessor may, at its option, either: (i) secure for Lessee the right to continue the use of the Property, or at Lessee's discretion, a portion thereof, or (ii) replace, at Lessor's sole expense, the Property, or at Lessee's discretion, a portion thereof, with substantially equivalent non-infringing Property, or (iii) modify the infringing Property, or at Lessee's discretion, a portion thereof, so that it becomes non-infringing. The options set forth in the foregoing sentence must be selected in consultation with Lessee and with Lessee's consent, which will not be unreasonably withheld. In the event Lessor is, in Lessor's reasonable discretion, unable to either procure the right to continued use of the allegedly infringing Property or portion thereof (as the case may be) or replace or modify the allegedly infringing Property or portion thereof (as the case may be) as provided in clauses (i), (ii) and (iii) above, Lessee will return the allegedly infringing Property or portion thereof (as the case may be) to Lessor and Lessor will refund to Lessee all amounts paid to Lessor for such Property or portion thereof (as the case may be). Lessee may thereupon terminate the Property Schedule for default.

**7.3 No Remedy Exclusive; Attorneys' Fees.** No right or remedy conferred upon or reserved to a party hereunder is exclusive of any right or remedy under this Agreement, or at law or in equity or otherwise provided or permitted, but each is cumulative of every other right or remedy now or existing in the future at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time. If either party institutes any action to enforce this Agreement, the prevailing party will be entitled to payment for, in addition to all other amounts due under this Agreement, all of such prevailing party's costs of collection under this Section 7, including reasonable attorney fees, whether or not suit or action is filed thereon.

**7.4 Force Majeure.** Notwithstanding the foregoing provisions of this Section 7, Lessee will not be liable or responsible to Lessor, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Lessee including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or telecommunication breakdown or power outage. This Section 7.4 will supersede Article 26 of the Terms and Conditions in its entirety.

## **8. INDEMNIFICATION.**

**8.1 Lessee Indemnification of Lessor.** To the extent permitted by law, Lessee will indemnify and hold Lessor, its successors or assigns, or any of their respective directors, officers, agents, contractors, servants, or employees (the "*Lessor Parties*") harmless from and against all claims, suits, losses, costs, expenses, liability, and damages of any kind whatsoever,

including, without limitation, attorneys' fees (collectively, "*Damages*") that may be based on any injury or death to persons or property, but only to the extent such Damages arise from the negligence or willful misconduct of Lessee, its successors or assigns, or any of their respective directors, officers, agents, contractors, servants, or employees (the "*Lessee Parties*").

**8.2 Lessor Indemnification of Lessee.** In addition to the provisions of Article 12 of the Terms and Conditions, and to the fullest extent permitted by law, Lessor will indemnify and hold the Lessee Parties harmless from and against all Damages arising out of, resulting from, relating to, or claimed to have arisen out of, resulted from, or related to any allegation that Lessee's use of the Property as contemplated under this Agreement directly or indirectly infringes or violates a third party's patent, copyright, trademark or service mark rights, trade secrets, know-how, or other intellectual property or proprietary rights, regardless of whether any such rights have been recorded, perfected or have been recognized in registrations or issued patents.

**8.3 Indemnification Procedure.** To receive indemnification under Section 8.1 or 8.2, the indemnified party must (a) give the indemnifying party prompt written notice of any claim, provided that failure to give such prompt written notice will only preclude the indemnified party from receiving indemnification hereunder to the extent the indemnifying party is actually and materially prejudiced thereby; (b) promptly tender to the indemnifying party full authority to defend or settle the claim (at the indemnifying party's expense), provided that no settlement requiring any admission by the indemnified party or that imposes any obligation on the indemnified party will be made without the indemnified party's consent; and (c) cooperate with the indemnifying party and provide reasonable assistance in defending any such claim. The indemnified party has the right to participate in such defense at its expense. The indemnifying party has no obligation to indemnify the indemnified party in connection with any settlement made without the indemnifying party's written consent.

## **9. TAX MATTERS.**

**9.1 Tax Exempt Treatment.** If the financing of Property pursuant to a Property Schedule hereunder is deemed tax-exempt, with respect to an applicable Property Schedule, the parties contemplate that interest payable pursuant to the corresponding Payment Schedule will be excluded from gross income for federal income tax purposes under Section 103(a) of the Code. The tax-exempt status of financing under an applicable Property Schedule provides the inducement for Lessor to offer financing at the interest rate set forth in the corresponding Payment Schedule. Should financing under an applicable Property Schedule be deemed by any taxing authority not to be exempt from taxation, and upon a final determination that the interest payments are not excludable from gross income under Section 103(a) of the Code, the interest rate will be adjusted, as of the date of loss of tax exemption, to an interest rate calculated to provide Lessor or its assignee an after-tax yield equivalent to the tax-exempt rate and Lessor will notify Lessee of the taxable rate. The foregoing obligation will not apply if such final determination is based upon the individual actions or tax circumstances of Lessor, or a finding that the party seeking to exclude such payments from gross income is not the owner and holder of the obligation under the Code. Lessor acknowledges that Lessee must complete and file with the IRS Form 8038-G (issue price \$100,000 or more) or 8038-GC (issue price less than \$100,000) when equipment is leased or purchased utilizing a special tax-exempt interest rate. Lessor will provide Lessee with all financial and other information necessary for completion of Form 8038-G/GC Lessee might require within ten (10) days of Lessee's request.



**9.2 Taxable Treatment.** If the financing of Property pursuant to a Property Schedule hereunder is deemed taxable, the parties acknowledge that interest payable under the corresponding Payment Schedule will be included in gross income for federal income tax purposes, and Lessor has offered the financing at the interest rate set forth in the applicable Payment Schedule without respect to the availability of any tax-exempt rate.

**10. ASSIGNMENT.** Neither party may, by operation of law or otherwise, assign, transfer, pledge, or otherwise dispose of the Property, this Agreement or any interest therein without the prior written consent of the other party hereto. If permitted, such assignees may include trust agents for the benefit of holders of certificates of participation. Any purported assignment in violation of this Section 10 is null and void.

## **11. MISCELLANEOUS.**

**11.1 Integration.** The following documents are incorporated into this Agreement by this reference, and, in the event of any conflict between this Agreement and the documents incorporated into this Agreement, the following order of precedence will apply: (a) this Agreement; (b) the Terms and Conditions; (c) the completed and executed Property Schedule(s); and (d) the completed and executed Payment Schedule(s).

**11.2 Survival.** Sections 5, 6, 7, 8 and 11 of this Agreement will survive expiration or earlier termination of this Agreement.

**11.3 Construction; Headings.** This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. The existence or absence of any terms or conditions of this Agreement will not be used in the construction or interpretation of any other agreement between the parties. The existence or absence of any term or condition of any other agreement between the parties will not be used in the construction or interpretation of this Agreement. The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

**11.4 Notices.** In addition to the provisions of Article 30 of the Terms and Conditions, all notices and other communications provided for in this Agreement may be given by electronic transmission to the addresses set forth within the signature block. All notices, and other communications provided for in this Agreement will be deemed given when received by certified mail, postage prepaid, return receipt requested, or one (1) day after sending, if sent by overnight delivery or electronic transmission.

**11.5 Governing Law; Jurisdiction; Waiver of Venue.** In accordance with the provisions of Article 34 of the Terms and Conditions, each party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever, whether in law or equity, or whether in contract or tort or otherwise, against the other party in any way relating to this Agreement or the transactions contemplated hereby, in any forum other than the state court with competent jurisdiction in the county in California in which Lessee's college campus is located or, if this Agreement covers Property for use at more than one campus, Alameda County, California. Each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding

arising out of or relating to this Agreement in any such court referred to above. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

**11.6 Severability.** If any provision of this Agreement is deemed invalid or unenforceable, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

**11.7 Waiver; Remedies.** In addition to the provisions of Article 32 of the Terms and Conditions, any waiver of a party's rights hereunder must be set forth in a writing executed by a duly authorized representative of such party. All rights and remedies enumerated in this Agreement will be cumulative and none will exclude any other right or remedy permitted herein or by law or in equity.

**11.8 Counterparts.** This Agreement, including all attachments and other documents incorporated in this Agreement or made applicable by reference, and any amendments, waivers, consents or supplements hereto or thereto may be executed in counterparts (and by different parties hereto in different counterparts), each of which will constitute an original, but all taken together will constitute a single document binding on the parties. This Agreement and any amendments, waivers, consents or supplements hereto may be executed and delivered by facsimile signature, PDF or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (e.g., [www.docusign.com](http://www.docusign.com)).

**11.9 Entire Agreement; Amendments.** This Agreement, including all attachments and other documents incorporated in this Agreement or made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Agreement between Lessee and Lessor and supersedes all prior representations, understandings, and communications (oral or written) between the parties concerning the subject matter hereof. This Agreement may be modified or amended only in accordance with Article 33 of the Terms and Conditions.

**11.10 Independent Relationship.** In addition to the provisions of Article 9 of the Terms and Conditions, the parties acknowledge that the relationship of Lessor and Lessee is only that of a lessor and lessee. Nothing contained in this Agreement will create any agency, employment, partnership, joint venture or similar relationship between Lessor and Lessee for any purpose. No party will have any right whatsoever to incur any liabilities or obligations or to make any warranties on behalf of or binding upon any other party.

*(Signature page follows; Remainder of page left blank intentionally)*

IN WITNESS WHEREOF, the duly authorized representatives of the undersigned Parties have executed this Agreement as of the Effective Date.

**LESSEE:**

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

**LESSOR:**

\_\_\_\_\_  
(Name of Entity)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Print Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

Notice Information:

Notice Information:

Address:

Address:

\_\_\_\_\_  
Email: \_\_\_\_\_

\_\_\_\_\_  
Email: \_\_\_\_\_

Attachments:

Attachment A: Form of Property Schedule

Attachment A – Exhibit 1: Form of Payment Schedule

Attachment A – Exhibit 2: Form of Opinion of Counsel

Attachment A – Exhibit 3: Form of Certificate of Signing Authority

Attachment A – Exhibit 4: Form of Certificate of Final Acceptance

Attachment B: Form of Amendment

Attachment C: University of California Terms and Conditions of Purchase [BUYER: Attach most recent version]