



# HAYWOOD COUNTY BOARD OF COMMISSIONERS

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## AGENDA REQUEST

*Must be presented to the County Manager's Office*  
**NO LATER THAN 5 P.M. FRIDAY 10 DAYS BEFORE THE MEETING**

DATE OF REQUEST: 05/06/16

FROM: Lori Tomlin, Director – Technology and Communications

MEETING DATE REQUESTED: **06/06/2016**

*Regular meetings: First (1<sup>st</sup>) Monday of the month at 9:00 am  
Third (3<sup>rd</sup>) Monday of the month at 5:30 pm*

SUBJECT: Winthrop Lease Renewal and Sirius Proposal

REQUEST: Request approval of equipment lease upgrade at end of current lease term. This is an operating lease for 42 months that doesn't require going out for formal bid, since the county will not own the equipment at the end of the lease. The equipment and the company were selected in order to maintain compatibility as well as to provide redundancy in the Emergency-911 function. Some of the current equipment will be turned in to the company and replaced with newer updated versions. The advantage of a lease vs. a purchase in this particular instance, is that the lease provides, in a cost effective way, for regular upgrades without owning outdated equipment.

### BACKGROUND:

In 2013, Haywood County entered into an agreement to completely overhaul our primary data center. This overhaul allowed the IT department to replace servers which were well beyond end of life with a new virtualized infrastructure. The timing of this project was critical in order for Haywood County to participate in a state mandated software replacement for Health and Human Services. This project was very successful, and we continue to utilize the equipment. This project was funded through an operating lease with Winthrop Leasing. We chose an operating lease so that rather than losing the value of the equipment once it was retired, we could replace the equipment once it was necessary.

The lifespan of the equipment purchased varied. The Cisco equipment has a life span of seven years, while the EMC disk drives used to store all of our data has a lifespan of three to five years with maintenance costs increasing substantially after year three as drive replacements are more necessary. The shorter lifespan is due in part to the fact that the technology in 2013 used mechanical "spinning" disks. We have now reached the three year mark on this storage. In addition to the nearing end of life of the disks, we also have found ourselves running out of space on the system as data growth has continued over the years. The original lease also expires in July. We are currently in the process of building a new 9-1-1 center which includes specific equipment to provide disaster recovery for public safety systems. Their data and servers will now

be replicated offsite and will be protected in the event of a failure at their primary site. This requires us to remain with our current vendor to maintain compatibility and allow for like systems to replicate data.

After reviewing the current lease and options for equipment replacement we have determined that the most economical solution is to enter into a new lease agreement with Winthrop Leasing which allows us to keep the existing Cisco equipment that is still functioning well and supported by the manufacturer while also replacing the EMC storage equipment with an upgraded model to carry us forward. The new technology that EMC offers no longer uses the "spinning" disks as they have been replaced by flash technology. This increases the lifespan of the equipment and reduces the maintenance costs. The new lease would allow for us to replace all equipment together when the end of life is reached allowing for us to not only save money, but to plan and budget more easily for equipment upgrades. Because of the extended life cycle of the equipment, we are able to maintain the value of equipment longer and the lease is available for 42 months as opposed to 36 months which slightly reduces our monthly payments.

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**IMPLEMENTATION PLAN:**

This will be implemented utilizing vendor professional services that have been budgeting in the scope of the project.

**FINANCIAL IMPACT STATEMENT:**

Funds have continued to be budgeted for the continuation of the lease for FY16-17.

**SUPPORTING ATTACHMENTS:** YES  NO  HOW MANY?   
LIST:

PowerPoint Presentation: YES  NO

**PERSON MAKING PRESENTATION AT MEETING:** Lori Tomlin

TITLE Director, Technology & Communications

PHONE NUMBER: 828.356.2731

E-MAIL: [ltomlin@haywoodnc.net](mailto:ltomlin@haywoodnc.net)

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THIS SECTION FOR OFFICE USE ONLY

Received (Date/Time): \_\_\_\_\_

County Manager / Clerk to the Board Comments: \_\_\_\_\_



# SOLUTION PROPOSAL

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Prepared for:  
Haywood County North Carolina  
215 N Main St  
Waynesville, nc 28786

Prepared By:  
Tom Sherry  
Client Executive  
Phone: (828) 989-0541  
Email: tom.sherry@siriuscom.com

Quote Date: 05/27/16  
Expires: 06/30/2016  
Option 1 10 TB Brick with 9 Host of PP/VE  
Proposal #: PR136553.2

Sirius Computer Solutions  
10100 Reunion Place, Suite 500  
San Antonio, TX 78216

All information provided in this proposal is the confidential and proprietary information of Sirius Computer Solutions and may not be disclosed, disseminated, or otherwise revealed, in whole or in part, to any party outside of Haywood County North Carolina.



**Haywood County North Carolina**  
**215 N Main St**  
**Waynesville, nc 28786**

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Quote Date: 05/27/16  
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Client Executive:  
 Tom Sherry  
 Phone: (828) 989-0541  
 Email:  
 tom.sherry@siriuscom.com

Part #	Description	Qty	Ext. Sale Price
<b>Hardware</b>			
PSINST-ESRS	ZERO DOLLAR ESRS INSTALL	1	\$0.00
X02-KITS-FD	XTREMIO SINGLE BRICK CONFIG KIT (FIELD)	1	\$0.00
X02-CTRL-400-T-F	XTREMIO - STORAGE CTRL 400GB ENC TAG FLD	1	\$0.00
X02-UPS-220FP	XTREMIO - UPS 220V - FLD - SECONDARY	2	\$3,306.36
X02-VRACK-FD	XTREMIO VIRTUAL RACK (FIELD)	1	\$0.00
X02-CTRL-400-F	XTREMIO - STORAGE CTRL ENC FLD	1	\$0.00
X02-MNGT-F	XTREMIO - MGMT SERVER W/ SOFTWARE - FLD	1	\$7,162.41
X02-D25-400-E-F	XTREMIO 25X400GB FLASH DRV ENC FLD OE SW	1	\$161,940.81
X02-D25-400-E-F	<b>XTREMIO 25X400GB FLASH DRV ENC FLD OE SW Subtotal</b>		<b>\$172,409.58</b>
<b>Support 42 Months</b>			
M-PREHWX-001	PREMIUM HARDWARE SUPPORT	1	\$56,895.30
M-PRESWX-001	PREMIUM SOFTWARE SUPPORT	1	\$0.00
M-PRESWX-001	PREMIUM SOFTWARE SUPPORT	1	\$0.00
M-PRESW-001	PREMIUM SOFTWARE SUPPORT	1	\$11,511.90
M-PRESW-001	<b>PREMIUM SOFTWARE SUPPORT Subtotal</b>		<b>\$68,407.20</b>
<b>Software</b>			
X02-MNGT-01-CF	XTREMIO-MGMT LICENSE QTY 1=IC	1	\$0.00
X02-RTU-CF	XTREMIO RIGHT TO USE- OE=IC	1	\$0.00
458-000-218	POWERPATH VIRTUAL EDITION	1	\$0.00
456-110-456	POWERPATH VE HOST LICENSES SRV/USRV=IA	9	\$0.00
456-108-191	POWERPATH/VE STD. X86 T2 (8+ CPUS)=ZC	18	\$16,683.48
456-108-191	<b>POWERPATH/VE STD. X86 T2 (8+ CPUS)=ZC Subtotal</b>		<b>\$16,683.48</b>
PS-BAS-VNXDE	EMC Data Erasure Certified for VNX	1	\$4,500.00
Professional Services	Single Brick XtremIO Quickstart Implementation	1	\$10,900.00
	Services SOW to Follow		
Discount	VNX 5300 Drive Upgrade Credit	1	\$-9,800.00
<b>Total</b>			<b>\$263,100.26</b>

**\*Est. Shipping and Handling \$717.17**

Unless otherwise noted, price does not include shipping, handling or applicable tax which may be added at the time of invoice. Any shipping and handling charges contained on this proposal are estimates, which may be adjusted at the time of invoice.

This proposal is valid if ordered on or before 06/30/2016.

Until Sirius receives and accepts a Purchase Order or this Purchase Authorization for the solution proposed, pricing provided in this Proposal is subject to change based on manufacturer's pricing schedule. The Products contained on this Order may be delivered to the Customer through multiple shipments based upon supplier availability, and Customer agrees to pay a partial payment of the total purchase price stated above for any such partial shipment of Products.

All of the information provided in this Proposal is considered confidential and proprietary between Sirius and Haywood County North Carolina. Information enclosed in this Proposal may not be disclosed, disseminated, or otherwise revealed to any party outside of Haywood County North Carolina or any party within Haywood County North Carolina who is not privileged to receive such information.

**PURCHASE TERMS AND CONDITIONS**

1. Purchase Price; Payment; Taxes. Customer agrees to pay the total purchase price as shown on the attached Sirius proposal (the 'Order'), plus any applicable sales/use tax. These Purchase Terms and Conditions (the 'Terms') are explicitly made a part of the Order and are hereby incorporated therein by reference. Payment is due within thirty (30) days from the date of the invoice, unless alternative terms have been agreed upon between Sirius and the client prior to the date of this proposal. Customer agrees that any payment not received by Sirius within thirty (30) days of the invoice date shall be subject to an annual interest charge of 12%, or the maximum allowed by law, whichever is less.

2. Payment by Third Party Leasing Company. If Customer enters into a lease agreement with a third party leasing company to finance the Order, Customer shall remain bound by these terms and conditions, except to the extent that the third party leasing company shall be obligated to pay the total purchase price of the Order. In the event the third party leasing company fails to make such payment, Customer shall make such payment, and Sirius shall convey title (where applicable) to Customer upon payment of the total purchase price of the Order.



3. Freight Costs; Delivery. Sirius will arrange for shipment and delivery of the Products listed in the applicable Order to the installation site. Unless specifically stated otherwise, Customer will be responsible for shipping and delivery charges. Risk of loss to the Products shall pass to Customer upon delivery at Customer's site.

4. Title; Security Interest. Title to each product (other than software) to be sold by Sirius hereunder shall pass to Customer upon delivery. Title to software is not being transferred and the right to use software included in the Order shall be governed by a separate license agreement between Customer and the software vendor.

5. Returns. No products (including Software) shall be returned to Sirius or software subscriptions cancelled by Customer without prior written approval from Sirius.

6. Limited Warranties. Sirius represents and warrants that, at the time each product is delivered, Sirius will be the lawful owner of such product (other than software products), free and clear from any liens and encumbrances, and will have full right, power and authority to transfer good and valid title to the same to Customer. Sirius, as the lawful/authorized reseller of the products being delivered to Customer, represents and warrants that such products will be accompanied by the applicable manufacturer's or software licensor's representations and warranties (either directly through the manufacturer/software licensor or as transferred by Sirius) in accordance with the manufacturer's/software licensor's policies. Customer agrees it is relying solely on the manufacturer's representations and warranties (except as expressly set forth above) and Sirius shall have no liability or obligations with respect to any manufacturers' representations and warranties, and any claims by Customer shall be made solely against the manufacturer.

Notwithstanding the foregoing, with respect to products that have been used and/or refurbished and therefore do not have any manufacturer's warranty, Sirius warrants that for a period of thirty (30) days immediately following the delivery of the products, such products will qualify for the manufacturer's maintenance agreement, if the products are both installed by the manufacturer and placed under the manufacturer's maintenance agreement prior to such installation within such thirty (30) day period; provided, that Customer's exclusive recourse for a breach of this warranty shall be either the repair or replacement of such refurbished equipment or a refund of the purchase price. After such thirty (30) day period, Customer assumes all liability for such products which are either defective or may be incomplete and Sirius will have no further liability or obligation with respect thereto.

As Sirius is not the manufacturer of the products listed on the Order, Customer waives any claim against Sirius based upon (i) any infringement or alleged infringement of any patent or other intellectual property rights with respect to any products sold hereunder or any software licensed by any third party or (ii) any indemnity claim or obligation made by another against Customer arising out of any such infringement or alleged infringement.

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, SIRIUS MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY REGARDING PRODUCTS, SOFTWARE AND/OR SERVICES OR OTHER ITEMS PROVIDED BY SIRIUS UNDER THE ORDER OR THE RESULTS TO BE DERIVED FROM THE USE THEREOF, AND SIRIUS EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE OR COURSE OF PERFORMANCE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Limitation of Liability. IN NO EVENT WILL SIRIUS BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR ANY OTHER NON-DIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF OR DAMAGE TO DATA, LOST PROFITS OR FUTURE REVENUES, COST OF CAPITAL, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY OR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY THIRD PARTY, HOWEVER CAUSED, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SIRIUS' LIABILITY ARISING FROM OR RELATED TO THE ORDER SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID OR PAYABLE TO SIRIUS HEREUNDER. THIS LIMITATION SHALL APPLY TO THE FULLEST EXTENT PROVIDED BY LAW, AND CUSTOMER AGREES TO RELEASE SIRIUS, ITS EMPLOYEES, AFFILIATES, AND AGENTS FROM AND AGAINST ANY AND ALL LIABILITY EXCEEDING THE LIMITS STATED IN THIS PROVISION, REGARDLESS OF THE REMEDY UNDER WHICH DAMAGES ARE SOUGHT AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

8. Applicable Law. The Order (including these Terms) and the rights and obligations of the parties hereto shall be construed under and governed by the laws of the State of Texas, without giving effect to principles of conflict of laws.

9. Arbitration. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY DISPUTE OF ANY NATURE WHATSOEVER THAT MAY ARISE BETWEEN THEM, INCLUDING, BUT NOT LIMITED TO, THOSE DISPUTES RELATING TO, OR INVOLVING IN ANY WAY, THE TRANSACTIONS BETWEEN THE PARTIES, THE CONSTRUCTION, PERFORMANCE OR BREACH OF THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES, THE PROVISIONS OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION OR ORDINANCE NOTWITHSTANDING. By execution of this Agreement, each of the parties hereto acknowledges and agrees that it has had an opportunity to consult with legal counsel and that he/she/it knowingly and voluntarily waives any right to a trial by jury of any dispute pertaining to or relating in any way to the transactions contemplated by this Agreement, the provisions of any federal, state or local law, regulation or ordinance notwithstanding.



10. General. The Order (including these Terms) represents the entire and integrated agreement and understanding between the parties with respect to the attached Sirius proposal and supersedes all prior or contemporaneous understandings and agreements, whether written or oral. Neither party will be liable or deemed to be in default for any delay or failure to perform its obligations hereunder if such failure results directly or indirectly from any cause beyond its reasonable control. The Order may be executed in any number of counterparts, each of which when executed and delivered (which deliveries may be made by email or facsimile) shall be deemed to be an original, and all of which counterparts taken together shall constitute but one and the same instrument. No modification of these Terms, nor waiver of any rights hereunder, shall be valid unless in writing and signed by the party against whom the modification or waiver is sought to be enforced. The waiver of any term hereof shall in no way be construed as a waiver of any other term or breach hereof. Neither the Order nor any of its rights or duties hereunder may be assigned or transferred by Customer, unless Sirius has consented to such assignment or transfer in writing. The Order does not and is not intended to confer any rights or remedies upon any person or entity other than the parties hereto. If any provision of these Terms are held by a court of competent jurisdiction to be contrary to law or otherwise invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect.

The provision of the maintenance services contained on this proposal will be controlled by the terms and conditions of the applicable manufacturer and/or maintenance provider (hereinafter the "Provider"), and may be subject to auto-renewal if so provided in the applicable terms and conditions. Sirius does not guarantee any rights of termination during the term of the maintenance services contained on this proposal or any renewal term, and all refund calculations are determined solely by the applicable Provider. In the event any or all of these maintenance services are terminated in accordance with the terms and conditions of the applicable Provider, Sirius will, at Customer's option, (1) pass through to Customer all applicable credits paid to Sirius by the applicable Provider, net any related costs, or (2) hold such applicable credits on account for future purchases by Customer. If the maintenance services contained on this proposal cover multiple hardware or software components, any discounts provided in this proposal may vary between such components, and all pricing information is confidential and proprietary information of the applicable Provider.

Pricing for these services will be set forth in a separate Statement of Work between Customer and Sirius.

This Proposal is subject to the terms and conditions of the above referenced Agreement(s). Acceptance of this Proposal by an authorized representative of Haywood County North Carolina will be deemed the equivalent of a Client Purchase Order, which will authorize Sirius to order the Products and Services listed in this Proposal.

Accepted by:  
Haywood County North Carolina

Approved by:  
Sirius Computer Solutions, Inc.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative

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

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

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Title of Authorized Representative

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

Ship to Address:

Bill to Address:

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# Haywood County North Carolina XtremIO Deployment

This Statement of Work ("SOW") is made by and between Sirius Computer Solutions, Inc., ("Sirius") and Haywood County North Carolina ("Customer") for the provision of certain professional services as more fully described herein, ("Services"). In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

## SCOPE OF SERVICES

### XtremIO Implementation

1. Meet with Customer to ensure that the environment and operational implementation requirements (hardware, software, and infrastructure) are met by Customer, and provide Customer with a list of required or beneficial updates
2. Install one (1) XtremIO brick into Customer-provided, square-holed rack  
*Note: The above equipment will require 208V power or 110V power in Customer-provided PDU with appropriate redundancy and battery backup. Generator backup is also beneficial but not required. Actual power cord specifications to be determined at a later date.*
3. Plan and estimate a schedule for the installation and configuration tasks for the Services
4. Design the XtremIO configuration
5. Install all required XtremIO drivers and firmware
6. Verify that the XtremIO array is seen by the necessary hosts
7. Install the VSI plugin on one (1) Virtual Center server, if applicable
8. Verify the installation and/or configuration results
9. Gather data and perform analysis on up to five (5) Customer hosts
10. Perform planning and design for additional hosts as part of the XtremIO array implementation
11. Implement up to five (5) additional attached, Customer-supplied Fibre Channel or iSCSI hosts with installed operating systems
12. Provision XtremIO storage volumes to each host
13. Validate Fibre connectivity to storage and IP connectivity to hosts
14. Verify the implementation and/or configuration results using the Test Plan
15. Review the EMC XtremIO array testing requirements with the Customer-assigned resource(s)
16. Provide Customer with the applicable documentation
17. Conduct a basic product Functional Overview to familiarize Customer with the EMC Implementation for Server Flash, demonstrating the normal operations, as installed in Customer's environment

### PowerPath VE Deployment

1. Run each host through the PowerPath Configuration Checker to verify the host meets E-Lab Interoperability standards
  - a. If host is not within the standards provided by the Interoperability Matrix, Customer will be responsible for upgrading firmware as necessary
2. Install PPVE on up to sixteen (16) hosts
  - a. Each host will require a reboot
  - b. Each host will be vacated and placed into maintenance mode prior to the reboot
  - c. After reboot, the host will be repopulated
3. Install PowerPath Viewer for monitoring PowerPath/VE

### Project Management

Sirius will provide project control and oversight for the project duration, keeping customer informed throughout the project with periodic project updates. The project management activities may include:

1. The PM along with customer will develop schedule for the engagement's installation and configuration tasks, discussing potential planned downtime windows and planning for proper change control procedures to be engaged.
2. Will manage scheduling and hold project meetings throughout project, including pre- and post-installation.
3. Will work with Customer to develop success criteria for the project

## Statement of Work

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### ACCEPTANCE CRITERIA

Sirius and Customer will work together to establish acceptance criteria before the start of the project.

### RESPONSIBILITIES

#### *Sirius Responsibilities*

1. Staff this effort with appropriately skilled individuals to perform the Services.
2. Promptly notify Customer of any unsafe condition about which Sirius has knowledge.
3. If applicable, document each task necessary to complete the Services and send a final report to Customer when such tasks are completed.

#### *Customer Responsibilities*

1. Customer agrees that the acceptance criteria for this project will be met when all deliverables have been completed and accepted.
2. Back-up all data, software, operating systems, software configurations and networking configurations in preparation for and during the performance of the Services. Sirius shall not be liable for any lost, damaged or corrupted data.
3. Have the appropriate software and hardware available at the beginning of the project and ensure that the necessary hardware environment (operating system, network, ports) is configured appropriately and is stable.
4. Customer will be responsible for data migration unless specified in the scope of services.
5. Prior to Sirius Consultant coming on-site for services, provide resource contact information; names, phone numbers, email addresses and location.
6. Provide Sirius with known scheduled outages, resource unavailability and project specific information for the development of a cohesive project schedule.
7. Provide Sirius with access to Customer's facilities and appropriate resources as reasonably necessary for Sirius to fulfill its obligations hereunder, including but not limited to: an adequate work area, network access (including Internet access), telephones, terminal, access to PC-based printer, remote access to systems (if applicable).
8. Promptly notify Sirius of any unsafe condition about which Customer has knowledge and to which Sirius resources could be exposed.
9. Promptly notify Sirius of any accidents or injuries involving Sirius employees or subcontractors assigned to Customer.
10. Promptly inspect and accept Services and/or Deliverables upon completion by Sirius.

### DELIVERABLES

This SOW will produce the following specific deliverables and/or objectives ("Deliverables"). Costs contained in this SOW were created based on these Deliverables and objectives only. Tasks, deliverables and responsibilities not explicitly addressed within this SOW are beyond its scope and can only be provided pursuant to the change process described herein or pursuant to a separate SOW as mutually agreed to by both parties. Except as explicitly set forth in this SOW, Sirius shall have no obligation to provide maintenance or support services for Deliverables or to modify or remediate Deliverables in any manner following Customer's acceptance thereof.

1. Functioning hardware and/or software as outlined in the "Scope of Services" section
2. Daily Work Logs
3. As Built Documentation

### ASSUMPTIONS

Sirius has created this SOW under the following assumptions. If one or more of these assumptions proves to be invalid, costs and other project factors may be impacted.

1. Where appropriate, knowledgeable resources will be made available for functional questions and making business decisions. It is also expected that Customer staff will participate throughout the implementation.
2. Unless otherwise agreed, Sirius reserves the right to subcontract any or all portions of the Services contemplated pre-approved by Customer.



## Statement of Work

3. Performance of the Services defined by this SOW are not subject to any provisions of the laws, acts, or regulations listed below and shall not require Sirius to create, receive, use, disclose, or in any way take control or possession of any information identified in such laws, acts or regulations:
  - a. Personal Information as defined by 201 Code of Massachusetts Regulation 17.00 (or any similarly defined information under an applicable state law);
  - b. Nonpublic Personal Information as defined by the Gramm-Leach-Bliley Act;
  - c. Personally Identifiable Information as defined by the Family Educational Rights and Privacy Act;
  - d. Cardholder Data as defined by Payment Card Industry (PCI) Data Security Standards; or
  - e. Protected Health Information, Electronic Protected Health Information, or Individually Identifiable Health Information as defined by the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health Act.
4. Sirius may deliver services at Customer location or a remote location.
5. If knowledge transfer is listed as a deliverable, it should be noted that such knowledge transfer is not a replacement for classroom training but is intended to help the Customer gain a working knowledge of implementation details specific to their environment. Customer should consider attending training provided by the manufacturer.
6. Sirius estimates the scope of services to consume a total of 40 hours.

### SCHEDULE

Sirius and Customer will determine a schedule for work to be performed once execution of this SOW occurs. This schedule will include expected response times for both Sirius and the Customer to review and complete tasks. Sirius will use commercially reasonable efforts to timely complete the Services in accordance with the agreed upon schedule. Sirius will not be liable for any delays in performance related to Customer's failure to perform its obligations under this SOW or Customer's failure to make any facilities or equipment necessary for performance available to Sirius. In the event any delays in performance result in additional charges under this SOW, said charges will be agreed upon in a Change Request using the process detailed below.

### FEE SCHEDULE

#### Services Costs

The Services will be provided for a fixed price of \$10,900. The Services included in this SOW shall be invoiced to Customer (and paid by Customer) under Customer's Lease thru Winthrop.

#### Travel Costs

Travel costs are included in the Services costs above provided that two weeks' notice is given to Sirius.

### SERVICES COORDINATION

Customer designates the following authorized representative assigned to serve as the primary point of contact for communication, issue escalation, contract administration, project scope change administration, and acceptance of Deliverables and/or Services as set forth herein.

Customer's Authorized Representative	Email Address
Lori Tomlin (828) 356-2731	ltomlin@haywoodnc.net

### SITE OF PERFORMANCE

Performance of the Services may be at the following Customer location(s) or may be performed from a remote location on the system located at the address listed below:

Services Location(s):	Bill To:
157 Paragon Parkway Suite 300 Clyde, NC 28721	215 N Main Street Waynesville, NC 28786

## ACCEPTANCE

Upon completion of the Services, Sirius will submit a Completion Document in a form set forth at Exhibit A. Customer will return the Completion Document in accordance with its instructions within five (5) business days from the date of receipt thereof. If Customer reasonably believes that Sirius failed to substantially complete the Services in accordance with this SOW, Customer will notify Sirius in writing of its reasons for rejection of the Services or any portion thereof within five (5) business days from Customer's receipt of the Completion Document. If Sirius does not receive the signed Completion Document or written notification of the reasons for rejection within five (5) business days of Customer's receipt thereof, the absence of Customer's response will constitute Customer's acceptance of the Services and a waiver of any right of rejection.

## CHANGE REQUESTS

From time to time Customer may request, or Sirius may propose, that Sirius implement a change to the Services reflected in this SOW including, without limitation, (a) a change to the scope of Services, or (b) a change in the prioritization or manner in which Sirius is performing the Services (each, a "Change"). In the event of the occurrence of a mutually agreed Change, Sirius shall prepare and provide to Customer a proposed change order. Sirius shall include in the proposed change order the effect, if any, the Change will have on Sirius' schedule of delivery of the Services, and if there will be any effect on the estimated cost or other Customer payments. Sirius shall not be responsible or liable for any delays, costs or damages resulting from Customer's rejection of, or delay in approving, a proposed change order relating to a Change. In the event the authorized representative of Customer requests that Sirius perform work without a mutually agreed upon change order, Customer shall compensate Sirius for the additional fees and expenses incurred by Sirius related thereto. In the event the Customer desires to retain Sirius for additional services outside the scope of the Services to be provided hereunder, Customer and Sirius agrees to execute and deliver such additional statements of work to evidence the additional services to be provided by Sirius.

## NO SOLICITATION

Upon Customer's signature of this SOW and for a period of one year following completion, expiration or termination of this SOW, neither party will, directly or indirectly, solicit to employ or employ any of the current employees or independent contractors of the other party (or subcontractors or independent contractors) who are involved in the performance of Services under this SOW, without obtaining the prior written consent of such party. Notwithstanding the foregoing, solicitation of a party's current employees, subcontractors or independent contractors who are not involved in the performance of Services under this SOW by means of a general media solicitation or trade publication or advertisement shall not constitute a breach of this provision. This provision will survive the completion, expiration, or termination of this SOW and/or the Agreement.

## INTELLECTUAL PROPERTY

Upon full payment of all amounts due Sirius under this SOW and the Agreement, Customer shall own all rights, title, and interest in and to the Deliverables and all changes, modification or improvements related thereto, developed by Sirius under this SOW. Sirius hereby grants, sells, assigns, and conveys to Customer all rights of Sirius in and to the Deliverables and the tangible and intangible property rights relating to or arising out of the Deliverables, including, without limitation, patent, copyright, trade secret, trademark, and other proprietary rights. Deliverables shall not include, and the transfer of any rights hereunder shall not apply to, Background Technology (as hereinafter defined) or any software, materials or other technology which is owned or controlled by a third party ("Third Party Technology").

"Background Technology" means all processes, tools, works of authorship, programs, data, utilities or other intellectual property, in whatever form, that Sirius prepared or had prepared outside the scope of the Services provided hereunder and are included in, or necessary to, the Deliverable. Sirius Background Technology, working papers, scripts, proprietary methodology and confidential information belong exclusively to Sirius, including to the extent included in the Deliverable. Customer is granted a nonexclusive license to use Sirius Background Technology or Third Party Technology for the limited purpose of implementing the Deliverable for Customer's internal purposes.

### PROPRIETARY AND CONFIDENTIAL

This SOW contains confidential and proprietary information of Sirius and its vendors. Information contained in this SOW may not be disclosed, disseminated, or otherwise revealed to any party outside of Customer or any party within Customer who is not privileged to receive such information without the express written permission of Sirius. There is no obligation to maintain the confidentiality of any information which was known to Customer prior to receipt of such information from Sirius, or becomes publicly known through no fault of Customer, or is received without obligation of confidentiality from a third party owing no obligation of confidentiality to Sirius.

### ADDITIONAL TERMS

- 1. Payment Terms.** Sirius shall send periodic invoices to Customer for Services rendered. Customer shall pay to Sirius at its Dallas offices at Accounts Receivable, PO Box 202289, Dallas, TX 75320-2289, or such other address as Sirius may designate, within thirty (30) days of the date of such invoice. Customer shall be liable for a monthly rate of interest equal to the lesser of one percent (1%) or the maximum allowed by federal or state law, on any unpaid amounts, which shall be in addition to such fees due and owing to Sirius. Any personal property taxes assessable on the Services on or after actual delivery are the responsibility of Customer.
- 2. Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR ANY OTHER NON-DIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR FUTURE REVENUES, COST OF CAPITAL, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY OR ANY CLAIM OR DEMAND AGAINST THE OTHER PARTY BY ANY THIRD PARTY, HOWEVER CAUSED, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SAID PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY'S LIABILITY UNDER THIS SOW OR OTHERWISE ARISING OUT OF THIS SOW REGARDLESS OF THE FORM OF ACTION, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER TO SIRIUS AS SHOWN ON THE THIS SOW, AS THE CASE MAY BE, WITH RESPECT TO WHICH SUCH CLAIM RELATES.
- 3. Warranties.** Sirius warrants that Sirius will perform the Services in a professional manner, and according to the description in the SOW. Customer acknowledges and agrees that with respect to the software that is the subject of the Services, if any, Customer is relying solely on the representations and warranties of the licensor of such software and Sirius makes no representations or warranties with respect thereto. Customer waives any and all claims against Sirius based upon (i) any infringement or alleged infringement of any patent or other intellectual property rights with respect to any third party software or (ii) any indemnity claim or obligation made by another against Customer arising out of any such infringement or alleged infringement. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, SIRIUS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY REGARDING ANY SERVICES, DELIVERABLES, RESOURCES, EQUIPMENT, SOFTWARE, OR OTHER ITEMS PROVIDED BY SIRIUS UNDER THIS SOW OR THE RESULTS TO BE DERIVED FROM THE USE THEREOF, AND SIRIUS EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OF TRADE, OR COURSE OF PERFORMANCE, AND THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR PARTICULAR PURPOSE.
- 4. Amendments and Waiver.** This SOW may only be amended, modified or waived by a written instrument executed by Customer and Sirius. With respect to Sirius, only the President and Vice Presidents of Sirius are authorized to execute, amend, modify or waive this SOW or any provision hereof and no other employees of Sirius have any authority (express or implied) to bind Sirius or make any representations or warranties on its behalf regarding the Services to be provided hereunder.
- 5. Termination.** Either party may at any time terminate this SOW upon thirty (30) days' prior written notice. Either party may immediately terminate this SOW in the event that (i) the other party defaults in a material obligation under this SOW and fails to cure such default after thirty (30) days written notice or (ii) the other party becomes insolvent, makes a general assignment for the benefit of creditors or becomes subject to any proceeding under any bankruptcy or insolvency laws. Customer shall pay for all Services rendered by Sirius up to the effective date of termination within thirty (30) days of such termination date.
- 6. Assignments; Parties in Interest; No Implied Rights.** This SOW shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This SOW shall not be assigned by Customer without the prior written consent of Sirius, which will not be unreasonably withheld. Except as

otherwise expressly provided herein, nothing herein expressed or implied is intended or shall be construed to create any third party beneficiary rights.

7. **Force Majeure.** Neither party shall be liable for any delay in performance or any failure in performance hereunder caused in whole or in part by reason of force majeure, which shall be deemed to include the occurrence of any event beyond the control of the party, including war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot and other acts of civil disobedience, action of a public enemy or other acts of terrorism, failure or delays in transportation, laws, regulations or acts of any national, state or local government (or any agency, subdivision or instrumentality thereof), judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel or raw materials or machinery or technical failures.
8. **Independent Contractor; Non-Exclusivity.** Under this SOW, Sirius shall be an independent contractor. This SOW shall not be construed as creating a partnership, joint venture, agency or employment relationship, or as granting a franchise under either federal or state law. This SOW shall not preclude Sirius from selling products and/or providing Services to others, which may result in, among other things, computer programming techniques, products and documentation that are competitive, whether or not such materials are similar to materials developed by Sirius pursuant to this SOW or otherwise.
9. **Governing Law; Limited Time for Action.** All matters arising under or relating to this SOW shall be governed by and construed in accordance with the laws of the State of Texas. No action, regardless of form, arising out of or relating to this SOW may be brought by either party more than two (2) years after the cause of action has accrued.
10. **Waiver of Jury Trial. EACH OF THE PARTIES TO THIS SOW WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY DISPUTE OF ANY NATURE WHATSOEVER THAT MAY ARISE BETWEEN THEM, INCLUDING, BUT NOT LIMITED TO, THOSE DISPUTES RELATING TO, OR INVOLVING IN ANY WAY, THE TRANSACTIONS BETWEEN THE PARTIES, THE CONSTRUCTION, PERFORMANCE OR BREACH OF THIS SOW OR ANY OTHER SOW BETWEEN THE PARTIES, THE PROVISIONS OF ANY FEDERAL, STATE OR LOCAL LAW, REGULATION OR ORDINANCE NOTWITHSTANDING.** By execution of this SOW, each of the parties hereto acknowledges and agrees that it has had an opportunity to consult with legal counsel and that he/she/it knowingly and voluntarily waives any right to a trial by jury of any dispute pertaining to or relating in any way to the transactions contemplated by this SOW, the provisions of any federal, state or local law, regulation or ordinance notwithstanding.
11. **Entire Agreement.** This SOW embodies the entire agreement and understanding between the parties hereto relating to the subject matter hereof, and supersedes any prior agreements and understandings relating to the subject matter hereof. Unless otherwise expressly agreed upon by the parties, in the event of any conflict between the terms set forth herein and any other document referenced herein, the terms set forth in this SOW shall control. CUSTOMER EXPRESSLY WARRANTS, REPRESENTS AND ACKNOWLEDGES THAT NO PROMISE, AGREEMENT, REPRESENTATION OR STATEMENT HAS BEEN MADE TO CUSTOMER OTHER THAN THOSE EXPRESSLY STATED IN WRITING IN THIS SOW, UPON WHICH CUSTOMER HAS RELIED IN ENTERING INTO THIS SOW, AND CUSTOMER EXPRESSLY WAIVES AND DISCLAIMS ANY CLAIMS AGAINST SIRIUS FOR FRAUD OR FRAUDULENT INDUCEMENT TO ENTER INTO THIS SOW IN RELIANCE UPON OR BASED UPON ANY SUCH PROMISES, AGREEMENTS, REPRESENTATIONS OR STATEMENTS OR OTHERWISE.

\*\*\* THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK, SIGNATURE TO PAGE TO FOLLOW \*\*\*



## Statement of Work

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### ACCEPTANCE & AUTHORIZATION

This SOW expires if not signed by Customer and returned to Sirius (as set forth below) within thirty (30) days of May 27, 2016. However, this SOW shall not be binding or effective until countersigned by Sirius. If performance of the Services does not commence within ninety (90) days of the date hereof, this SOW will automatically terminate in the absence of a written amendment rescheduling the Services. Please indicate your acceptance of this SOW by signing below and returning to:

Services Operations Team by email to [services@siriuscom.com](mailto:services@siriuscom.com) or fax 1-866-206-2816. Please note, all pages of SOW are required.

HAYWOOD COUNTY NORTH CAROLINA

SIRIUS COMPUTER SOLUTIONS, INC.

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

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

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

Name: Bonnie M. Cerrito

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

Title: Sr. VP – Contracts and Financial Services

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PO# (if applicable):

SOW Number: 66770

# Exhibit A

This is a **SAMPLE** version only, not to be signed

<b>Completion Document</b>	
<b>Customer Name</b>	<b>Date</b>
<b>Project Name</b>	<b>SOW #</b>
<b>Customer's Authorized Representative</b>	<b>Sirius Project Manager</b>
<b>Sirius Project Manager Phone #</b>	<b>Sirius Project Manager Email</b>

Activities/Tasks	Status
	Completed
	Completed
	Completed

Deliverables Provided	Status
	Completed
	Completed
	Completed

Customer will return this Completion Document in accordance with its instructions on the original SOW from the date of receipt hereof. If Customer reasonably believes that Sirius failed to substantially complete the services in accordance with the referenced SOW, Customer will notify Sirius in writing of its reasons for rejection of the services or any portion thereof within the time frame set forth in the SOW. If Sirius does not receive the signed Completion Document or written notification of the reasons for rejection within the time frame note on original SOW of Customer's receipt hereof, the absence of Customer's response will constitute Customer's acceptance of the services and a waiver of any right of rejection.

**Authorization:** Services described above have been rendered to Customer's satisfaction and will be charged against the referenced Statement of Work.

**CUSTOMER NAME**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

**RETURN INSTRUCTIONS:** Please return to the Sirius Services Operations Team via email at [services@siriuscom.com](mailto:services@siriuscom.com) or via fax to: (866) 206-2816. If you have any questions or concerns, please contact the Sirius Project Manager listed above.



Lease Agreement Number HA051116

## Lease Agreement

This Lease Agreement, dated May 11, 2016, by and between WINTHROP RESOURCES CORPORATION (the "Lessor") with an office located at 11100 Wayzata Boulevard, Suite 800, Minnetonka, Minnesota 55305 and HAYWOOD COUNTY, NORTH CAROLINA (the "Lessee") with an office located at 215 North Main Street, Room 416, Waynesville, North Carolina 28786.

Lessor hereby leases or grants to the Lessee the right to use and Lessee hereby rents and accepts the right to use the tangible property and equipment whether or not listed by serial number ("Hardware"), and software, general intangibles and related services ("Software") on the Lease Schedule(s) attached hereto or incorporated herein by reference from time to time (collectively, the Hardware, Software and all related services are the "Equipment"), subject to the terms and conditions hereof, as supplemented with respect to each item of Equipment by the terms and conditions set forth in the appropriate Lease Schedule. The term "Lease Agreement" shall include this Lease Agreement and the various Lease Schedule(s) identifying each item of Equipment or the appropriate Lease Schedule(s) identifying one or more particular items of Equipment.

### 1. Term

This Lease Agreement shall be effective from the latest date set forth on the signature page hereto (the "Effective Date") and shall terminate on the business day prior to the fifth anniversary of the Effective Date (the "Final Termination Date"), unless otherwise terminated prior to such date in accordance with the terms of this Lease Agreement. The applicability of this Lease Agreement, as to all Equipment designated on any particular Lease Schedule, shall commence on the Installation Date for all Equipment on such Lease Schedule and shall continue for an initial period ending that number of months from the Commencement Date as set forth in such Lease Schedule (the "Initial Term") and shall continue upon agreement of the parties thereafter until terminated; provided, however, that in no event shall the Initial Term or any extension thereof extend past the Final Termination Date; and provided further, that after giving effect to any extension agreed upon by the parties, the Lessee shall continue to properly treat the Lease Agreement and all Lease Schedules as an "operating lease" under accounting principles generally accepted in the United States of America and a "true lease" under applicable federal income tax law. The term of this Lease Agreement as to all Equipment designated on any particular Lease Schedule may be terminated without cause at the end of the Initial Term or at any time thereafter by either party mailing written notice of its termination to the other party not less than one-hundred twenty (120) days prior to such termination date.

### 2. Commencement Date

The Installation Date for each item of Equipment shall be the day said item of Equipment is installed at the Location of Installation, ready for use, and accepted in writing by the Lessee. The Commencement Date for any Lease Schedule is the first of the month following installation of all the Equipment on the Lease Schedule, unless the latest Installation Date for any Equipment on the Lease Schedule falls on the first day of the month, in which case such date shall be the Commencement Date. The Lessee is committed to lease Equipment associated with the Lease Schedule and agrees to complete, execute and deliver to Lessor one or more Certificate(s) of Acceptance listing the specific items of Equipment to be leased upon installation of such Equipment.

### 3. Lease Charge

The lease charges for the Equipment leased pursuant to this Lease Agreement shall be the aggregate "Monthly Lease Charge(s)" as set forth on each and every Lease Schedule

executed pursuant hereto (the aggregate "Monthly Lease Charge(s)" are the "Lease Charges"). Lessor and Lessee agree that the fair market value of the use of the Equipment leased on any Lease Schedule hereunder shall be the Monthly Lease Charge as set forth on such Lease Schedule. Lessee agrees to pay to Lessor the Lease Charges in accordance with the Lease Schedule(s), and the payments shall be made at Lessor's address indicated thereon. The Lease Charges shall be paid by Lessee monthly in advance with the first full month's payment due on the Commencement Date. The Lease Charge for the period from the Installation Date to the Commencement Date (the "Installation Period") shall be an amount equal to the "Monthly Lease Charge" divided by thirty (30) and multiplied by the number of days from and including the Installation Date to the Commencement Date and such amount shall be due and payable upon receipt of an invoice from Lessor. Charges for taxes made in accordance with Section 4 and charges made under any other provision of this Lease Agreement and payable by Lessee shall be paid to Lessor at Lessor's address specified on the Lease Schedule(s) on the date specified in invoices delivered to Lessee. If payment, as specified above, is not received by Lessor on the due date, Lessee agrees to and shall pay, to the extent permitted by law, on demand, as a late charge, an amount equal to one and one-half percent (1½%), or the maximum percentage allowed by law if less, of the amount past due ("Late Charges"). The parties agree that Late Charges will accrue until billed by Lessor.

### 4. Taxes

In addition to the Lease Charges set forth in Section 3, the Lessee shall reimburse Lessor for all license or registration fees, assessments, sales and use taxes, rental taxes, recycling, administrative or environmental fees, gross receipts taxes, personal property taxes and other taxes or fees now or hereafter imposed by any government, agency, province or otherwise upon the Equipment, the Lease Charges or upon the ownership, leasing, renting, purchase, possession, use, recycling or disposal of the Equipment, whether the same be assessed to Lessor or Lessee (the "Taxes"). Lessee's obligation to remit taxes and other non-rent related charges shall be due and payable upon invoice from Lessor in accordance with the terms of such invoice. Lessor shall file all property tax returns and pay all Taxes when due. Lessee, upon notice to Lessor, may, in Lessee's own name, contest or protest any Taxes, and Lessor shall honor any such notice except when in Lessor's sole opinion such contest is futile or will cause a levy or lien to arise on the Equipment or cloud Lessor's title

thereto. Lessee shall, in addition, be responsible to Lessor for the payment and discharge of any penalties or interest as a result of Lessee's actions or inactions. Nothing herein shall be construed to require Lessee to be responsible for any federal or state taxes or payments in lieu thereof, imposed upon or measured by the net income of Lessor, or state franchise taxes of Lessor, or except as provided hereinabove, any penalties or interest resulting from Lessor's failure to timely remit such tax payments.

#### **5. Delivery and Freight Costs**

Lessee shall inspect, test, and either accept or reject the Equipment before such time as the applicable vendor requires payment for such Equipment.

All transportation charges upon the Equipment for delivery to Lessee's designated Location of Installation are to be paid by Lessee. All rigging, drayage charges, structural alterations, rental of heavy equipment and/or other expense necessary to place the Equipment at the Location of Installation are to be promptly paid by Lessee.

#### **6. Installation**

Lessee agrees to pay for the actual installation of the Equipment at Lessee's site. Lessee shall make available and agrees to pay for all costs associated with providing a suitable place of installation and necessary electrical power, outlets and air conditioning required for operating the Equipment as defined in the Equipment manufacturer's installation manual or instructions. All supplies consumed or required by the Equipment shall be furnished and paid for by Lessee.

#### **7. Return to Lessor**

On the day following the last day of the lease term associated with a Lease Schedule (the "Return Date"), Lessee shall cause and pay for the Equipment listed on that Lease Schedule to be deinstalled, packed using the manufacturer's standard packing materials and shipped to a location designated in writing by Lessor (the "Return Location"). Irrespective of any other provision hereof, Lessee will bear the risk of damage from fire, the elements or otherwise until delivery of the Equipment to the Return Location. At such time as the Equipment is delivered to the Lessor at the Return Location, the Equipment will be at the risk of Lessor. If the Equipment listed on the applicable Lease Schedule is not at the Return Location within ten (10) days of the Return Date, then the Equipment shall be deemed to have been subject to a Loss pursuant to Section 12 and Lessee shall pay to Lessor the Casualty Loss Value in accordance with such Section 12.

#### **8. Maintenance**

Lessee, at its sole expense, shall maintain the Equipment in good working order and condition. Lessee shall enter into, pay for and maintain in force during the entire term of any Lease Schedule, a maintenance agreement with the manufacturer of the Equipment providing for continuous uninterrupted maintenance of the Equipment (the "Maintenance Agreement"). Upon Lessor's request, Lessee shall provide a copy of each such Maintenance Agreement to Lessor. Lessee will cause the manufacturer to keep the Equipment in good working order in accordance with the provisions of the Maintenance Agreement and make all necessary adjustments and repairs to the Equipment. The manufacturer is hereby authorized to accept the directions of Lessee with respect thereto. Lessee agrees to allow the manufacturer full and free access to the Equipment. All maintenance and service charges, whether under the Maintenance Agreement or otherwise, and all expenses, if any, of the manufacturer's customer engineers incurred in connection with maintenance and repair services, shall be promptly paid by Lessee. Lessee warrants that all of the Equipment shall be in good working order operating according to manufacturer's specification and eligible for the manufacturer's standard maintenance agreement upon delivery to and inspection and testing by the Lessor. If the Equipment is not free of physical defect or damage, operating according to manufacturer's specification, in good working order and/or eligible for the manufacturer's standard maintenance agreement, then Lessee agrees to reimburse Lessor for all costs, losses, expenses and fees associated with such equipment and the repair or replacement thereof.

#### **9. Location, Ownership and Use**

The Equipment shall, at all times, be the sole and exclusive property of Lessor. Lessee shall have no right or property interest therein, except for the right to use the Equipment in the normal operation of its business at the Location of Installation, or as otherwise provided herein. The Equipment is and shall remain personal property even if installed in or attached to real property. Lessor shall be permitted to display notice of its ownership on the Equipment by means of a suitable stencil, label or plaque affixed thereto.

Lessee shall keep the Equipment at all times free and clear from all claims, levies, encumbrances and process. Lessee shall give Lessor immediate notice of any such attachment or other judicial process affecting any of the Equipment. Without Lessor's written permission, Lessee shall not attempt to or actually: (i) pledge, lend, create a security interest in, sublet, exchange, trade, assign, swap, use for an allowance or credit or otherwise; (ii) allow another to use; (iii) part with possession; (iv) dispose of; or (v) remove from the Location of Installation, any item of Equipment. Lessee shall not cause the Equipment to be located outside of the United States. If any item of Equipment is exchanged, assigned, traded, swapped, used for an allowance or credit or otherwise to acquire new or different equipment (the "New Equipment") without Lessor's prior written consent, then all of the New Equipment shall become Equipment owned by Lessor subject to this Lease Agreement and the applicable Lease Schedule.

Any feature(s) installed on the Equipment at the time of delivery which are not specified on the Lease Schedule(s) are and shall remain the sole property of the Lessor.

Lessee shall cause the Equipment to be operated in accordance with the applicable vendor's or manufacturer's manual of instructions by competent and qualified personnel.

#### **10. Financing Statement**

Lessor is hereby authorized by Lessee to cause this Lease Agreement or other instruments, including Uniform Commercial Code Financing Statements, to be filed or recorded for the purposes of showing Lessor's interest in the Equipment. Lessee agrees to execute any such instruments as Lessor may request from time to time.

#### **11. Alterations and Attachments**

Upon prior written notice to Lessor, Lessee may, at its own expense, make minor alterations in or add attachments to the Equipment, provided such alterations and attachments shall not interfere with the normal operation of the Equipment and do not otherwise involve the pledge, assignment, exchange, trade or substitution of the Equipment or any component or part thereof. All such alterations and attachments to the Equipment shall become part of the Equipment leased to Lessee and owned by Lessor. If, in Lessor's sole determination, the alteration or attachment reduces the value of the Equipment or interferes with the normal and satisfactory operation or maintenance of any of the Equipment, or creates a safety hazard, Lessee shall, upon notice from Lessor to that effect, promptly remove the alteration or attachment at Lessee's expense and restore the Equipment to the condition the Equipment was in just prior to the alteration or attachment.

#### **12. Loss and Damage**

Lessee shall assume and bear the risk of loss, theft and damage (including any governmental requisition, condemnation or confiscation) to the Equipment and all component parts thereof from any and every cause whatsoever, whether or not covered by insurance. No loss or damage to the Equipment or any component part thereof shall impair any obligation of Lessee under this Lease Agreement, which shall continue in full force and effect except as hereinafter expressly provided. Lessee shall repair or cause to be repaired all damage to the Equipment. In the event that all or part of the Equipment shall, as a result of any cause whatsoever, become lost, stolen, destroyed or otherwise rendered irreparably unusable or damaged (collectively, the "Loss") then Lessee shall, within ten (10) days after the Loss, fully inform Lessor in writing of such a Loss and shall pay to Lessor the following amounts: (i) the Monthly Lease Charges (and other

amounts) due and owing under this Lease Agreement at the time of the Loss (or Event of Default, as defined hereinafter), plus (ii) the Original Cost of the Equipment subject to the Loss (or Event of Default, as defined hereinafter) multiplied by the "Percent of Original Cost." The Original Cost of a particular item of Equipment shall be Lessee's original purchase price of such item at the time of its purchase or payment to the applicable vendor by Lessor, plus additional or related charges such as taxes, delivery and freight, installation, maintenance, etc. The Percent of Original Cost shall be the Per Payment Factor multiplied by the number of lease payments Lessor has received from Lessee during the Initial Term subtracted from 112 and then divided by 100. The Per Payment Factor is the sum of 112 multiplied by 0.8 divided by the number of Monthly Lease Charges that are due during the Initial Term (collectively, the sum of (i) plus (ii) shall be the "Casualty Loss Value"). Upon receipt by Lessor of the Casualty Loss Value: (i) the applicable Equipment shall be removed from the Lease Schedule; and (ii) Lessee's obligation to pay Lease Charges associated with the applicable Equipment shall cease. Lessor may request, and Lessee shall complete, an affidavit(s) which swears out the facts supporting the Loss of any item of Equipment.

### **13. Insurance**

Until the Equipment is returned to Lessor or as otherwise herein provided, whether or not this Lease Agreement has terminated as to the Equipment, Lessee, at its expense, shall maintain: (i) property and casualty insurance insuring the Equipment for its Casualty Loss Value naming Lessor or its assigns as sole loss payee; and (ii) comprehensive public liability and third-party property insurance naming Lessor and its assigns as additional insureds. The insurance shall cover the interest of both the Lessor and Lessee in the Equipment, or as the case may be, shall protect both the Lessor and Lessee in respect to all risks arising out of the condition, delivery, installation, maintenance, use or operation of the Equipment. All such insurance shall provide for thirty (30) days prior written notice to Lessor of cancellation, restriction, or reduction of coverage and shall have a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts for loss or damage or return premium under any insurance policy issued on the Equipment. Prior to installation of the Equipment, all policies or certificates of insurance shall be delivered to Lessor by Lessee. Lessee agrees to keep the Equipment insured with an insurance company which is at least "A" rated by A.M. Best and in such form, including a maximum deductible, as may be satisfactory to Lessor. The proceeds of any loss or damage insurance shall be payable to Lessor, but Lessor shall remit all such insurance proceeds to Lessee at such time as Lessee either (i) provides Lessor satisfactory proof that the damage has been repaired and the Equipment has been restored to good working order and condition or (ii) pays to Lessor the Casualty Loss Value. It is understood and agreed that any payments made by Lessee or its insurance carrier for loss or damage of any kind whatsoever to the Equipment are not made as accelerated rental payments or adjustments of rental, but are made solely as indemnity to Lessor for loss or damage of its Equipment.

### **14. Enforcement of Warranties**

Lessee, in its own name, shall, so long as this Lease Agreement is in force, enforce any manufacturer's Equipment warranty.

### **15. Warranties, Disclaimers and Indemnity**

Lessor warrants that at the time the Equipment is delivered to Lessee, Lessor will have full right, power and authority to lease the Equipment to Lessee. EXCEPT FOR THE WARRANTY IN THE SENTENCE DIRECTLY PRECEDING THIS ONE, THE LESSOR DOES NOT MAKE ANY WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. LESSEE ACKNOWLEDGES THAT IT IS NOT

RELYING ON LESSOR'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE, THAT LESSOR HAS NOT SELECTED, MANUFACTURED, SOLD OR SUPPLIED ANY OF THE EQUIPMENT, AND THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES CONTAINED IN THIS LEASE AGREEMENT. LESSEE REPRESENTS AND WARRANTS THAT IT IS NOT A FOREIGN "FINANCIAL INSTITUTION" OR ACTING ON BEHALF OF A FOREIGN "FINANCIAL INSTITUTION" AS THAT TERM IS DEFINED IN THE BANK SECRECY ACT, 31 U.S.C. 5318, AS AMENDED. LESSEE ACKNOWLEDGES THAT LESSOR, IN COMPLIANCE WITH SECTION 326 OF THE USA PATRIOT ACT, WILL BE VERIFYING CERTAIN INFORMATION ABOUT LESSEE. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT LESSOR AND ITS REPRESENTATIVES AND EMPLOYEES HAVE NOT MADE ANY STATEMENT, REPRESENTATION OR WARRANTY RELATIVE TO THE ACCOUNTING OR TAX ENTRIES, TREATMENT, BENEFIT, USE OR CLASSIFICATION OF THE LEASE AGREEMENT OR ASSOCIATED LEASE SCHEDULES. LESSOR IS NOT ACTING AS A MUNICIPAL ADVISOR OR FINANCIAL ADVISOR TO LESSEE, AND LESSOR HAS NO FIDUCIARY DUTY TO LESSEE OR ANY OTHER PERSON PURSUANT TO SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934. THE INFORMATION CONTAINED IN THIS LEASE AGREEMENT OR ANY OTHER DOCUMENT PROVIDED BY LESSOR IS NOT INTENDED TO BE AND SHOULD NOT BE CONSTRUED AS "ADVICE" WITHIN THE MEANING OF SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934 AND THE MUNICIPAL ADVISOR RULES OF THE SEC. LESSEE HAS DISCUSSED THIS LEASE AGREEMENT WITH ITS OWN FINANCIAL AND/OR MUNICIPAL, LEGAL, ACCOUNTING, TAX AND OTHER ADVISORS AS LESSEE DEEMS APPROPRIATE. LESSEE ACKNOWLEDGES THAT IT AND/OR ITS INDEPENDENT ACCOUNTANTS ARE SOLELY RESPONSIBLE FOR (i) ANY AND ALL OF LESSEE'S ACCOUNTING AND TAX ENTRIES ASSOCIATED WITH THE LEASE AGREEMENT AND/OR THE LEASE SCHEDULES AND (ii) THE ACCOUNTING AND TAX TREATMENT, BENEFITS, USES AND CLASSIFICATION OF THE LEASE AGREEMENT OR ANY LEASE SCHEDULE; PROVIDED, THAT LESSEE REPRESENTS AND WARRANTS THAT IT SHALL AT ALL TIMES TREAT THIS LEASE AGREEMENT AND ALL LEASE SCHEDULES AS "OPERATING LEASES" UNDER ACCOUNTING PRINCIPLES GENERALLY ACCEPTED IN THE UNITED STATES OF AMERICA AND AS "TRUE LEASES" WITH RESPECT TO APPLICABLE FEDERAL INCOME TAX LAWS. THIS LEASE AGREEMENT IS INTENDED BY THE PARTIES TO BE A LEASE OF EQUIPMENT THAT IS OWNED BY LESSOR (OR WHICH LESSOR SHALL HAVE THE RIGHT TO LEASE) AND NOT A LOAN, SALE OR LEASE INTENDED AS A SALE OR LOAN. LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR ANY INFORMATION, INCLUDING BUT NOT LIMITED TO CONSUMER OR PATIENT INFORMATION, THAT IS AT ANY TIME ENTERED, STORED, TRANSFERRED TO, CONTAINED OR RETAINED ON ANY EQUIPMENT, WHETHER OR NOT SUCH INFORMATION IS SUBJECT TO FEDERAL, STATE OR OTHER LAW, INCLUDING BY WAY OF EXAMPLE ONLY AND NOT OF LIMITATION, THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA), FINANCIAL MODERNIZATION ACT (GRAMM-LEACH-BLILEY ACT), ETC. LESSOR SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE RELATIONSHIP BETWEEN THE LESSOR AND LESSEE, THIS LEASE AGREEMENT OR THE PERFORMANCE, POSSESSION, LEASE OR USE OF THE EQUIPMENT. THIS LEASE AGREEMENT IS A "FINANCE LEASE" AS THAT TERM IS DEFINED AND USED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE WILL BE CONFERRED ON LESSEE.

Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall be responsible for, indemnify, defend and hold Lessor harmless with respect to, any claim from a third party for any liability, claim, loss, damage or expense of any kind or

nature, whether based upon a theory of strict liability or otherwise, caused, directly or indirectly, by: (i) the inadequacy of any item of Equipment, including Software, for any purpose; (ii) any deficiency or any latent or other defects in any Equipment, including Software, whether or not detectable by Lessee; (iii) the selection, manufacture, rejection, ownership, lease, possession, maintenance, operation, use or performance of any item of Equipment, including Software; (iv) any interruption or loss of service, use or performance of any item of Equipment, including Software; (v) patent, trademark or copyright infringement; (vi) any information whatsoever or the loss, release, unauthorized access, transfer, theft, use or misuse thereof, or (vii) any loss of business or other special, incidental or consequential damages whether or not resulting from any of the foregoing. Lessee's duty to defend and indemnify Lessor shall survive the expiration, termination, settlement, cancellation, assignment or resolution of this Lease Agreement or a Lease Schedule and shall be binding upon Lessee's successors and permitted assigns. Lessee agrees to the provisions of this paragraph to the full extent permitted by the law of the State of North Carolina.

#### **16. Event of Default**

The occurrence of any of the following events shall constitute an Event of Default under this Lease Agreement and/or any Lease Schedule:

- (1) the nonpayment by Lessee of any Lease Charges when due, or the nonpayment by Lessee of any other sum required hereunder to be paid by Lessee which non-payment continues for a period of ten (10) days from the date when due;
- (2) the failure of Lessee to perform any other term, covenant or condition of this Lease Agreement, any Lease Schedule or any other document, agreement or instrument executed pursuant hereto or in connection herewith, which is not cured within ten (10) days after written notice thereof from Lessor;
- (3) Lessee attempts to or does remove, transfer, sell, swap, assign, sublease, trade, exchange, encumber, receive an allowance or credit for, or part with possession of, any item of Equipment;
- (4) Lessee ceases doing business as a going concern, is insolvent, makes an assignment for the benefit of creditors, fails to pay its debts as they become due, offers a settlement to creditors or calls a meeting of creditors for any such purpose, files a voluntary petition in bankruptcy, is subject to an involuntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files or has filed against it a petition seeking any reorganization, arrangement or composition, under any present or future statute, law or regulation;
- (5) any of Lessee's representations or warranties made herein or in any oral or written statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be false or misleading in any material respect;
- (6) Lessee defaults under or otherwise has accelerated any material obligation, credit agreement, loan agreement, conditional sales contract, lease, indenture or debenture; or Lessee defaults under any other agreement now existing or hereafter made with Lessor;
- (7) Lessee dissolves, liquidates or ceases or suspends the conduct of business, or ceases to maintain its existence; or
- (8) the breach or repudiation by any party thereto of any guaranty, subordination agreement or other agreement running in favor of Lessor obtained in connection with this Lease Agreement.

#### **17. Remedies**

Should any Event of Default occur, Lessor may, with or without notice or demand upon Lessee, retain any and all security deposits and pursue and enforce, alternatively, successively and/or concurrently, any one or more of the following remedies:

- (1) recover from Lessee all accrued and unpaid Lease Charges and other amounts due and owing on the date of the default; and
- (2) recover from Lessee from time to time all Lease Charges and other amounts as and when becoming due hereunder; and
- (3) either (A) accelerate, cause to become immediately due and recover the present value of all Lease Charges and other amounts due and/or likely to become due hereunder from the date of the default to the end of the lease term using a discount rate of four percent (4%); or (B) cause to become immediately due and payable and recover from Lessee the Casualty Loss Value of the Equipment which Lessee agrees is not a penalty but rather a reasonable forecast of the just compensation for the harm caused by the Event of Default, which harm is incapable or very difficult of accurate estimation; and
- (4) terminate any or all of the Lessee's rights, but not its obligations, associated with the lease of Equipment under this Lease Agreement; and
- (5) either (A) retake (by Lessor, independent contractor, or by requiring Lessee to assemble and surrender the Equipment in accordance with the provisions of Section 7 hereinabove) possession of the Equipment without terminating the Lease Schedule or the Lease Agreement free from claims by Lessee which claims are hereby expressly waived by Lessee; or (B) require Lessee to deliver the Equipment to a location designated by Lessor; and
- (6) upon Lessor's instructions after an Event of Default, Lessee agrees to cease immediately the use of any or all Software, to uninstall and delete all copies of such licensed Software from any computer systems owned or controlled by Lessee or its affiliates or used for Lessee's or Lessee's affiliate's benefit, to destroy any and all written documentation, manuals and materials provided with the Software, and to provide Lessor with a certificate signed by a Lessee officer who is responsible for Lessee's information systems, attesting to such cessation of use, deinstallation, deletion, and/or destruction of the Software; and
- (7) proceed by court action to enforce performance by Lessee of its obligations associated with any Lease Schedule and/or this Lease Agreement; and/or
- (8) pursue any other remedy Lessor may otherwise have, at law, equity or under any statute, and recover damages and expenses (including attorneys' fees) incurred by Lessor by reason of the Event of Default.

Upon repossession of the Equipment, Lessor shall have the right to lease, sell or otherwise dispose of such Equipment in a commercially reasonable manner, with or without notice, at a public or private sale. Lessor's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by Lessor of any other remedy. Lessor shall not be obligated to sell or re-lease the Equipment. Any sale or re-lease may be held at such place or places as are selected by Lessor, with or without having the Equipment present. Any such sale or re-lease, may be at wholesale or retail, in bulk or in parcels. Time and exactitude of each of the terms and conditions of this Lease Agreement are hereby declared to be of the essence. Lessor may accept past due payments in any amount without modifying the terms of this Lease Agreement and without waiving any rights of Lessor hereunder.

#### **18. Costs and Attorneys' Fees**

In the event of any default, claim, proceeding, including a bankruptcy proceeding, arbitration, mediation, counter-claim, action (whether legal or equitable), appeal or otherwise, whether initiated by Lessor or Lessee (or a debtor-in-possession or bankruptcy trustee), which arises out of, under, or is related in any way to this Lease Agreement, any Lease Schedule, or any other document, agreement or instrument executed pursuant hereto or in connection herewith, or any governmental examination or investigation of Lessee, which requires Lessor's participation (individually and collectively, the "Claim"), Lessee, in addition to all

other sums which may be owed by Lessee under the provisions of this Lease Agreement, shall pay to Lessor, all costs, expenses and fees paid or payable in connection with the Claim, including, but not limited to, reasonable attorneys' fees as permitted by law and out-of-pocket costs, including travel and related expenses incurred by Lessor or its attorneys.

#### **19. Lessor's Performance Option**

Should Lessee fail to make any payment or to do any act as provided by this Lease Agreement, then Lessor shall have the right (but not the obligation), without notice to Lessee of its intention to do so and without releasing Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of Lessor appears to affect the Equipment, and in exercising any such rights, Lessor may incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be due and payable by Lessee within ten (10) days of notice thereof.

#### **20. Quiet Possession and Inspection**

Lessor hereby covenants with Lessee that Lessee shall quietly possess the Equipment subject to and in accordance with the provisions hereof so long as Lessee is not in default hereunder; provided, however, that Lessor or its designated agent may, at any and all reasonable times during business hours, enter Lessee's premises for the purposes of inspecting the Equipment and the manner in which it is being used.

#### **21. Assignments**

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Lessee, however, shall not assign this Lease Agreement or sublet any of the Equipment without first obtaining the prior written consent of Lessor and its assigns, if any. Lessee acknowledges that the terms and conditions of this Lease Agreement have been fixed in anticipation of the possible assignment of Lessor's rights under this Lease Agreement and in and to the Equipment as collateral security to a third party ("Assignee" herein) which will rely upon and be entitled to the benefit of the provisions of this Lease Agreement. Lessee agrees with Lessor and such Assignee to recognize in writing any such assignment within fifteen (15) days after receipt of written notice thereof and to pay thereafter all sums due to Lessor hereunder directly to such Assignee if directed by Lessor, provided, however, that such recognition by Lessee shall not constitute a waiver of any defense, set-off or counterclaim whatsoever (whether arising from a breach of this Lease Agreement or not) that Lessee may from time to time have against Lessor. Upon such assignment, the Lessor shall remain obligated to perform any obligations it may have under this Lease Agreement and the Assignee shall (unless otherwise expressly agreed to in writing by the Assignee) have no obligation to perform such obligations. Any such assignment shall be subject to Lessee's rights to use and possess the Equipment so long as Lessee is not in default hereunder.

#### **22. Survival of Obligations**

All covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall be for the benefit of Lessor and Lessee and their successors, any assignee or secured party. Further, all covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall survive the execution and delivery of this Lease Agreement and the expiration or other termination of this Lease Agreement.

#### **23. Authority**

The parties hereto covenant and warrant that the persons executing this Lease Agreement and each Lease Schedule on their behalf have been duly authorized to do so, and this Lease Agreement and any Lease Schedule constitute a valid and binding obligation of the parties hereto. Lessee will, at Lessor's request,

provide to Lessor, Certificates of Authority naming the officers of the Lessee who have the authority to execute this Lease Agreement and any Lease Schedules attached thereto. Lessee agrees that it shall advise Lessor of any change in Lessee's name, address or structure within ten (10) days. Lessee's status as a component unit, political subdivision or other subentity of state, county or local government does not prevent Lessee from entering into binding commercial transactions and indemnity agreements. Further, no statute or law prevents or prohibits Lessee from entering into this Lease Agreement or any other agreement or document required hereunder. Any limitation of liability or benefits of sovereign immunity (to the extent such immunity may relate to enforcement of contracts) afforded to Lessee under law or statute is specifically waived by Lessee in its own right, and shall not apply to Lessor, this Lease Agreement or any other agreement or document required hereunder.

#### **24. Landlords' and Mortgagees' Waiver**

If requested, Lessee shall furnish waivers, in form and substance satisfactory to Lessor, from all landlords and mortgagees of any premises upon which any Equipment is located.

#### **25. Miscellaneous**

This Lease Agreement, the Lease Schedule(s), attached riders and any documents or instruments issued or executed pursuant hereto will have been made, executed and delivered in, and shall be governed by the internal laws (as opposed to conflicts of law provisions) and decisions of, the State of North Carolina. Lessee and Lessor consent to the jurisdiction of any state or federal court located within North Carolina. At Lessor's sole election and determination, Lessor may select an alternative forum, including arbitration or mediation, to adjudicate any dispute arising out of this Lease Agreement.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO THIS AGREEMENT OR SUCH TRANSACTIONS, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

This Lease Agreement was jointly negotiated by the parties, and the parties hereby agree that neither should be favored in the construction, interpretation or application of any provision or any ambiguity. There are no unwritten or oral agreements between the parties. This Lease Agreement and associated Lease Schedule(s) constitute the entire understanding and agreement between Lessor and Lessee with respect to the lease of the Equipment superseding all prior agreements, understandings, negotiations, discussions, proposals, representations, promises, commitments and offers between the parties, whether oral or written. This Lease Agreement and associated Lease Schedule(s) constitute a single unitary agreement. No provision of this Lease Agreement or any Lease Schedule shall be deemed waived, amended, discharged or modified orally or by custom, usage or course of conduct unless such waiver, amendment or modification is in writing and signed by an officer of each of the parties hereto. If any one or more of the provisions of this Lease Agreement or any Lease Schedule is for any reason held invalid, illegal or unenforceable, the remaining provisions of this Lease Agreement and any such Lease Schedule will be unimpaired, and the invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable valid, legal and enforceable provision that is closest to the original intention of the parties. Lessee agrees that neither the manufacturer, nor the supplier, nor any of their salespersons, employees or agents are agents of Lessor.

Any notice provided for herein shall be in writing and sent by overnight courier providing a receipt of delivery or by certified or registered mail to the parties at the addresses stated on page 1 of this Lease Agreement.

The Monthly Lease Charge is intended to be fixed from the Commencement Date to the end of the term. The three year

treasury rate is an integral part of the lease rate. The Lessee and Lessor agree that the lease rate shall also be fixed during the Installation Period but should the three year treasury note increase during such Installation Period, the lease rate will be adjusted on the Commencement Date.

Lessor is entitled to review a complete set of Lessee's financial statements, including a statement of cash flows, balance sheet and income statement, and any other financial information that Lessor may request. If during the Installation Period the Lessee's financial condition changes in any material respect (as determined by the Lessor in its sole discretion), then Lessor shall be entitled to stop purchasing equipment to be leased to Lessee and commence the applicable lease schedule(s).

This Lease Agreement shall not become effective until delivered to Lessor at its offices at Minnetonka, Minnesota and executed by Lessor. If this Lease Agreement shall be executed by Lessor prior to being executed by Lessee, it shall become void at Lessor's option five (5) days after the date of Lessor's execution hereof, unless Lessor shall have received by such date a copy hereof executed by a duly authorized representative of Lessee.

This Lease Agreement is made subject to the terms and conditions included herein and Lessee's acceptance is effective only to the extent that such terms and conditions are consistent with the terms and conditions herein. Any acceptance which contains terms and conditions which are in addition to or inconsistent with the terms and conditions herein will be a counter-offer and will not be binding unless agreed to in writing by Lessor.

The terms used in this Lease Agreement, unless otherwise defined, shall have the meanings ascribed to them in the Lease Schedule(s).

**26. REPOSSESSION**

LESSEE ACKNOWLEDGES THAT, PURSUANT TO SECTION 17 HEREOF, LESSOR HAS BEEN GIVEN THE RIGHT TO REPOSSESS THE EQUIPMENT SHOULD LESSEE BECOME IN DEFAULT OF ITS OBLIGATIONS HEREUNDER.

**27. Net Lease**

This Lease Agreement is a net lease and Lessee's obligations to pay all Lease Charges and other amounts payable hereunder shall be absolute and unconditional and, except as expressly provided herein, shall not be subject to any: (i) delay, abatement, reduction, defense, counterclaim, set-off, or recoupment; (ii) discontinuance or termination of any license; (iii) Equipment failure, defect or deficiency; (iv) damage to or destruction of the Equipment; or (v) dissatisfaction with the Equipment or otherwise, including any present or future claim against Lessor or the manufacturer, supplier, reseller or vendor of the Equipment. To the extent that the Equipment includes intangible (or intellectual) property, Lessee understands and agrees that: (i) Lessor is not a party to and does not have any responsibility under any Software license and/or other agreement

with respect to any Software; and (ii) Lessee will be responsible to pay all of the Lease Charges and perform all its other obligations under this Lease Agreement despite any defect, deficiency, failure, termination, dissatisfaction, damage or destruction of any Software or Software license. Further, Lessee agrees that it has an unconditional, irrevocable and absolute obligation to pay all Lease Charges and other amounts payable hereunder to the Lessor although (i) the Lessor does not hold title to any Software (or intellectual or intangible property), (ii) Lessor is not a party to any Software license (or intellectual or intangible property license) that is listed among the Equipment on any Lease Schedule and (iii) any license to Software is exclusively between the licensor of the Software ("Licensor") and the Lessee. Except as expressly provided herein, this Lease Agreement shall not terminate for any reason, including any defect in the Equipment or Lessor's title thereto or any destruction or loss of use of any item of Equipment.

**28. Funding Out**

Lessee shall have the option to terminate this Lease Agreement at the end of a fiscal period contingent upon the following conditions: (i) Appropriation of monies for this Lease Agreement has been terminated or not continued and such non-appropriation is memorialized in a formal act by the Lessee; (ii) Lessee has given Lessor one hundred twenty (120) days written notice of any likely non-appropriation; (iii) Lessee pays to Lessor all monies due and payable at the time of the termination plus all monies that would have become due and payable during the entire term of this Lease Agreement but for the termination; and (iv) Lessee's return, in compliance with this Lease Agreement, of all of the equipment listed on and subject to this Lease Agreement. Lessee further agrees that: (i) any monies authorized and allocated to it for the rental, lease or acquisition of equipment that is like the equipment listed on and subject to this Lease Agreement shall be remitted to Lessor until such monies or funds are exhausted; (ii) Lessee will use its best efforts to obtain authorization and appropriation of monies or funds in order to fulfill its obligations associated with this Lease Agreement by including in its budget for each fiscal appropriation period a formal request for monies in an amount no less than Lessee's total monetary obligations for the fiscal appropriations period; and (iii) Lessee will not seek the cancellation or termination of this Lease Agreement in order to permit Lessee to acquire similar or like equipment or to allocate funds to directly or indirectly perform essentially the same or similar applications, functions or purposes for which the equipment was or is being used.

**29. Headings**

Section headings herein are used for convenience only and shall not otherwise affect the provisions of this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed by their respective duly authorized representatives.

**Every Term is Agreed to and Accepted:**

WINTHROP RESOURCES CORPORATION

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

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**Every Term is Agreed to and Accepted:**

HAYWOOD COUNTY, NORTH CAROLINA

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

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**CERTIFICATION**

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
(Signature of finance officer)



Lease Agreement Number HA051116

## Lease Agreement

This Lease Agreement, dated May 11, 2016, by and between WINTHROP RESOURCES CORPORATION (the "Lessor") with an office located at 11100 Wayzata Boulevard, Suite 800, Minnetonka, Minnesota 55305 and HAYWOOD COUNTY, NORTH CAROLINA (the "Lessee") with an office located at 215 North Main Street, Room 416, Waynesville, North Carolina 28786.

Lessor hereby leases or grants to the Lessee the right to use and Lessee hereby rents and accepts the right to use the tangible property and equipment whether or not listed by serial number ("Hardware"), and software, general intangibles and related services ("Software") on the Lease Schedule(s) attached hereto or incorporated herein by reference from time to time (collectively, the Hardware, Software and all related services are the "Equipment"), subject to the terms and conditions hereof, as supplemented with respect to each item of Equipment by the terms and conditions set forth in the appropriate Lease Schedule. The term "Lease Agreement" shall include this Lease Agreement and the various Lease Schedule(s) identifying each item of Equipment or the appropriate Lease Schedule(s) identifying one or more particular items of Equipment.

### 1. Term

This Lease Agreement shall be effective from the latest date set forth on the signature page hereto (the "Effective Date") and shall terminate on the business day prior to the fifth anniversary of the Effective Date (the "Final Termination Date"), unless otherwise terminated prior to such date in accordance with the terms of this Lease Agreement. The applicability of this Lease Agreement, as to all Equipment designated on any particular Lease Schedule, shall commence on the Installation Date for all Equipment on such Lease Schedule and shall continue for an initial period ending that number of months from the Commencement Date as set forth in such Lease Schedule (the "Initial Term") and shall continue upon agreement of the parties thereafter until terminated; provided, however, that in no event shall the Initial Term or any extension thereof extend past the Final Termination Date; and provided further, that after giving effect to any extension agreed upon by the parties, the Lessee shall continue to properly treat the Lease Agreement and all Lease Schedules as an "operating lease" under accounting principles generally accepted in the United States of America and a "true lease" under applicable federal income tax law. The term of this Lease Agreement as to all Equipment designated on any particular Lease Schedule may be terminated without cause at the end of the Initial Term or at any time thereafter by either party mailing written notice of its termination to the other party not less than one-hundred twenty (120) days prior to such termination date.

### 2. Commencement Date

The Installation Date for each item of Equipment shall be the day said item of Equipment is installed at the Location of Installation, ready for use, and accepted in writing by the Lessee. The Commencement Date for any Lease Schedule is the first of the month following installation of all the Equipment on the Lease Schedule, unless the latest Installation Date for any Equipment on the Lease Schedule falls on the first day of the month, in which case such date shall be the Commencement Date. The Lessee is committed to lease Equipment associated with the Lease Schedule and agrees to complete, execute and deliver to Lessor one or more Certificate(s) of Acceptance listing the specific items of Equipment to be leased upon installation of such Equipment.

### 3. Lease Charge

The lease charges for the Equipment leased pursuant to this Lease Agreement shall be the aggregate "Monthly Lease Charge(s)" as set forth on each and every Lease Schedule

executed pursuant hereto (the aggregate "Monthly Lease Charge(s)" are the "Lease Charges"). Lessor and Lessee agree that the fair market value of the use of the Equipment leased on any Lease Schedule hereunder shall be the Monthly Lease Charge as set forth on such Lease Schedule. Lessee agrees to pay to Lessor the Lease Charges in accordance with the Lease Schedule(s), and the payments shall be made at Lessor's address indicated thereon. The Lease Charges shall be paid by Lessee monthly in advance with the first full month's payment due on the Commencement Date. The Lease Charge for the period from the Installation Date to the Commencement Date (the "Installation Period") shall be an amount equal to the "Monthly Lease Charge" divided by thirty (30) and multiplied by the number of days from and including the Installation Date to the Commencement Date and such amount shall be due and payable upon receipt of an invoice from Lessor. Charges for taxes made in accordance with Section 4 and charges made under any other provision of this Lease Agreement and payable by Lessee shall be paid to Lessor at Lessor's address specified on the Lease Schedule(s) on the date specified in invoices delivered to Lessee. If payment, as specified above, is not received by Lessor on the due date, Lessee agrees to and shall pay, to the extent permitted by law, on demand, as a late charge, an amount equal to one and one-half percent (1½%), or the maximum percentage allowed by law if less, of the amount past due ("Late Charges"). The parties agree that Late Charges will accrue until billed by Lessor.

### 4. Taxes

In addition to the Lease Charges set forth in Section 3, the Lessee shall reimburse Lessor for all license or registration fees, assessments, sales and use taxes, rental taxes, recycling, administrative or environmental fees, gross receipts taxes, personal property taxes and other taxes or fees now or hereafter imposed by any government, agency, province or otherwise upon the Equipment, the Lease Charges or upon the ownership, leasing, renting, purchase, possession, use, recycling or disposal of the Equipment, whether the same be assessed to Lessor or Lessee (the "Taxes"). Lessee's obligation to remit taxes and other non-rent related charges shall be due and payable upon invoice from Lessor in accordance with the terms of such invoice. Lessor shall file all property tax returns and pay all Taxes when due. Lessee, upon notice to Lessor, may, in Lessee's own name, contest or protest any Taxes, and Lessor shall honor any such notice except when in Lessor's sole opinion such contest is futile or will cause a levy or lien to arise on the Equipment or cloud Lessor's title

thereto. Lessee shall, in addition, be responsible to Lessor for the payment and discharge of any penalties or interest as a result of Lessee's actions or inactions. Nothing herein shall be construed to require Lessee to be responsible for any federal or state taxes or payments in lieu thereof, imposed upon or measured by the net income of Lessor, or state franchise taxes of Lessor, or except as provided hereinabove, any penalties or interest resulting from Lessor's failure to timely remit such tax payments.

#### **5. Delivery and Freight Costs**

Lessee shall inspect, test, and either accept or reject the Equipment before such time as the applicable vendor requires payment for such Equipment.

All transportation charges upon the Equipment for delivery to Lessee's designated Location of Installation are to be paid by Lessee. All rigging, drayage charges, structural alterations, rental of heavy equipment and/or other expense necessary to place the Equipment at the Location of Installation are to be promptly paid by Lessee.

#### **6. Installation**

Lessee agrees to pay for the actual installation of the Equipment at Lessee's site. Lessee shall make available and agrees to pay for all costs associated with providing a suitable place of installation and necessary electrical power, outlets and air conditioning required for operating the Equipment as defined in the Equipment manufacturer's installation manual or instructions. All supplies consumed or required by the Equipment shall be furnished and paid for by Lessee.

#### **7. Return to Lessor**

On the day following the last day of the lease term associated with a Lease Schedule (the "Return Date"), Lessee shall cause and pay for the Equipment listed on that Lease Schedule to be deinstalled, packed using the manufacturer's standard packing materials and shipped to a location designated in writing by Lessor (the "Return Location"). Irrespective of any other provision hereof, Lessee will bear the risk of damage from fire, the elements or otherwise until delivery of the Equipment to the Return Location. At such time as the Equipment is delivered to the Lessor at the Return Location, the Equipment will be at the risk of Lessor. If the Equipment listed on the applicable Lease Schedule is not at the Return Location within ten (10) days of the Return Date, then the Equipment shall be deemed to have been subject to a Loss pursuant to Section 12 and Lessee shall pay to Lessor the Casualty Loss Value in accordance with such Section 12.

#### **8. Maintenance**

Lessee, at its sole expense, shall maintain the Equipment in good working order and condition. Lessee shall enter into, pay for and maintain in force during the entire term of any Lease Schedule, a maintenance agreement with the manufacturer of the Equipment providing for continuous uninterrupted maintenance of the Equipment (the "Maintenance Agreement"). Upon Lessor's request, Lessee shall provide a copy of each such Maintenance Agreement to Lessor. Lessee will cause the manufacturer to keep the Equipment in good working order in accordance with the provisions of the Maintenance Agreement and make all necessary adjustments and repairs to the Equipment. The manufacturer is hereby authorized to accept the directions of Lessee with respect thereto. Lessee agrees to allow the manufacturer full and free access to the Equipment. All maintenance and service charges, whether under the Maintenance Agreement or otherwise, and all expenses, if any, of the manufacturer's customer engineers incurred in connection with maintenance and repair services, shall be promptly paid by Lessee. Lessee warrants that all of the Equipment shall be in good working order operating according to manufacturer's specification and eligible for the manufacturer's standard maintenance agreement upon delivery to and inspection and testing by the Lessor. If the Equipment is not free of physical defect or damage, operating according to manufacturer's specification, in good working order and/or eligible for the manufacturer's standard maintenance agreement, then Lessee agrees to reimburse Lessor for all costs, losses, expenses and fees associated with such equipment and the repair or replacement thereof.

#### **9. Location, Ownership and Use**

The Equipment shall, at all times, be the sole and exclusive property of Lessor. Lessee shall have no right or property interest therein, except for the right to use the Equipment in the normal operation of its business at the Location of Installation, or as otherwise provided herein. The Equipment is and shall remain personal property even if installed in or attached to real property. Lessor shall be permitted to display notice of its ownership on the Equipment by means of a suitable stencil, label or plaque affixed thereto.

Lessee shall keep the Equipment at all times free and clear from all claims, levies, encumbrances and process. Lessee shall give Lessor immediate notice of any such attachment or other judicial process affecting any of the Equipment. Without Lessor's written permission, Lessee shall not attempt to or actually: (i) pledge, lend, create a security interest in, sublet, exchange, trade, assign, swap, use for an allowance or credit or otherwise; (ii) allow another to use; (iii) part with possession; (iv) dispose of; or (v) remove from the Location of Installation, any item of Equipment. Lessee shall not cause the Equipment to be located outside of the United States. If any item of Equipment is exchanged, assigned, traded, swapped, used for an allowance or credit or otherwise to acquire new or different equipment (the "New Equipment") without Lessor's prior written consent, then all of the New Equipment shall become Equipment owned by Lessor subject to this Lease Agreement and the applicable Lease Schedule.

Any feature(s) installed on the Equipment at the time of delivery which are not specified on the Lease Schedule(s) are and shall remain the sole property of the Lessor.

Lessee shall cause the Equipment to be operated in accordance with the applicable vendor's or manufacturer's manual of instructions by competent and qualified personnel.

#### **10. Financing Statement**

Lessor is hereby authorized by Lessee to cause this Lease Agreement or other instruments, including Uniform Commercial Code Financing Statements, to be filed or recorded for the purposes of showing Lessor's interest in the Equipment. Lessee agrees to execute any such instruments as Lessor may request from time to time.

#### **11. Alterations and Attachments**

Upon prior written notice to Lessor, Lessee may, at its own expense, make minor alterations in or add attachments to the Equipment, provided such alterations and attachments shall not interfere with the normal operation of the Equipment and do not otherwise involve the pledge, assignment, exchange, trade or substitution of the Equipment or any component or part thereof. All such alterations and attachments to the Equipment shall become part of the Equipment leased to Lessee and owned by Lessor. If, in Lessor's sole determination, the alteration or attachment reduces the value of the Equipment or interferes with the normal and satisfactory operation or maintenance of any of the Equipment, or creates a safety hazard, Lessee shall, upon notice from Lessor to that effect, promptly remove the alteration or attachment at Lessee's expense and restore the Equipment to the condition the Equipment was in just prior to the alteration or attachment.

#### **12. Loss and Damage**

Lessee shall assume and bear the risk of loss, theft and damage (including any governmental requisition, condemnation or confiscation) to the Equipment and all component parts thereof from any and every cause whatsoever, whether or not covered by insurance. No loss or damage to the Equipment or any component part thereof shall impair any obligation of Lessee under this Lease Agreement, which shall continue in full force and effect except as hereinafter expressly provided. Lessee shall repair or cause to be repaired all damage to the Equipment. In the event that all or part of the Equipment shall, as a result of any cause whatsoever, become lost, stolen, destroyed or otherwise rendered irreparably unusable or damaged (collectively, the "Loss") then Lessee shall, within ten (10) days after the Loss, fully inform Lessor in writing of such a Loss and shall pay to Lessor the following amounts: (i) the Monthly Lease Charges (and other

amounts) due and owing under this Lease Agreement at the time of the Loss (or Event of Default, as defined hereinafter), plus (ii) the Original Cost of the Equipment subject to the Loss (or Event of Default, as defined hereinafter) multiplied by the "Percent of Original Cost." The Original Cost of a particular item of Equipment shall be Lessee's original purchase price of such item at the time of its purchase or payment to the applicable vendor by Lessor, plus additional or related charges such as taxes, delivery and freight, installation, maintenance, etc. The Percent of Original Cost shall be the Per Payment Factor multiplied by the number of lease payments Lessor has received from Lessee during the Initial Term subtracted from 112 and then divided by 100. The Per Payment Factor is the sum of 112 multiplied by 0.8 divided by the number of Monthly Lease Charges that are due during the Initial Term (collectively, the sum of (i) plus (ii) shall be the "Casualty Loss Value"). Upon receipt by Lessor of the Casualty Loss Value: (i) the applicable Equipment shall be removed from the Lease Schedule; and (ii) Lessee's obligation to pay Lease Charges associated with the applicable Equipment shall cease. Lessor may request, and Lessee shall complete, an affidavit(s) which swears out the facts supporting the Loss of any item of Equipment.

### **13. Insurance**

Until the Equipment is returned to Lessor or as otherwise herein provided, whether or not this Lease Agreement has terminated as to the Equipment, Lessee, at its expense, shall maintain: (i) property and casualty insurance insuring the Equipment for its Casualty Loss Value naming Lessor or its assigns as sole loss payee; and (ii) comprehensive public liability and third-party property insurance naming Lessor and its assigns as additional insureds. The insurance shall cover the interest of both the Lessor and Lessee in the Equipment, or as the case may be, shall protect both the Lessor and Lessee in respect to all risks arising out of the condition, delivery, installation, maintenance, use or operation of the Equipment. All such insurance shall provide for thirty (30) days prior written notice to Lessor of cancellation, restriction, or reduction of coverage and shall have a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts for loss or damage or return premium under any insurance policy issued on the Equipment. Prior to installation of the Equipment, all policies or certificates of insurance shall be delivered to Lessor by Lessee. Lessee agrees to keep the Equipment insured with an insurance company which is at least "A" rated by A.M. Best and in such form, including a maximum deductible, as may be satisfactory to Lessor. The proceeds of any loss or damage insurance shall be payable to Lessor, but Lessor shall remit all such insurance proceeds to Lessee at such time as Lessee either (i) provides Lessor satisfactory proof that the damage has been repaired and the Equipment has been restored to good working order and condition or (ii) pays to Lessor the Casualty Loss Value. It is understood and agreed that any payments made by Lessee or its insurance carrier for loss or damage of any kind whatsoever to the Equipment are not made as accelerated rental payments or adjustments of rental, but are made solely as indemnity to Lessor for loss or damage of its Equipment.

### **14. Enforcement of Warranties**

Lessee, in its own name, shall, so long as this Lease Agreement is in force, enforce any manufacturer's Equipment warranty.

### **15. Warranties, Disclaimers and Indemnity**

Lessor warrants that at the time the Equipment is delivered to Lessee, Lessor will have full right, power and authority to lease the Equipment to Lessee. EXCEPT FOR THE WARRANTY IN THE SENTENCE DIRECTLY PRECEDING THIS ONE, THE LESSOR DOES NOT MAKE ANY WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. LESSEE ACKNOWLEDGES THAT IT IS NOT

RELYING ON LESSOR'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE, THAT LESSOR HAS NOT SELECTED, MANUFACTURED, SOLD OR SUPPLIED ANY OF THE EQUIPMENT, AND THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES CONTAINED IN THIS LEASE AGREEMENT. LESSEE REPRESENTS AND WARRANTS THAT IT IS NOT A FOREIGN "FINANCIAL INSTITUTION" OR ACTING ON BEHALF OF A FOREIGN "FINANCIAL INSTITUTION" AS THAT TERM IS DEFINED IN THE BANK SECRECY ACT, 31 U.S.C. 5318, AS AMENDED. LESSEE ACKNOWLEDGES THAT LESSOR, IN COMPLIANCE WITH SECTION 326 OF THE USA PATRIOT ACT, WILL BE VERIFYING CERTAIN INFORMATION ABOUT LESSEE. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT LESSOR AND ITS REPRESENTATIVES AND EMPLOYEES HAVE NOT MADE ANY STATEMENT, REPRESENTATION OR WARRANTY RELATIVE TO THE ACCOUNTING OR TAX ENTRIES, TREATMENT, BENEFIT, USE OR CLASSIFICATION OF THE LEASE AGREEMENT OR ASSOCIATED LEASE SCHEDULES. LESSOR IS NOT ACTING AS A MUNICIPAL ADVISOR OR FINANCIAL ADVISOR TO LESSEE, AND LESSOR HAS NO FIDUCIARY DUTY TO LESSEE OR ANY OTHER PERSON PURSUANT TO SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934. THE INFORMATION CONTAINED IN THIS LEASE AGREEMENT OR ANY OTHER DOCUMENT PROVIDED BY LESSOR IS NOT INTENDED TO BE AND SHOULD NOT BE CONSTRUED AS "ADVICE" WITHIN THE MEANING OF SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934 AND THE MUNICIPAL ADVISOR RULES OF THE SEC. LESSEE HAS DISCUSSED THIS LEASE AGREEMENT WITH ITS OWN FINANCIAL AND/OR MUNICIPAL, LEGAL, ACCOUNTING, TAX AND OTHER ADVISORS AS LESSEE DEEMS APPROPRIATE. LESSEE ACKNOWLEDGES THAT IT AND/OR ITS INDEPENDENT ACCOUNTANTS ARE SOLELY RESPONSIBLE FOR (i) ANY AND ALL OF LESSEE'S ACCOUNTING AND TAX ENTRIES ASSOCIATED WITH THE LEASE AGREEMENT AND/OR THE LEASE SCHEDULES AND (ii) THE ACCOUNTING AND TAX TREATMENT, BENEFITS, USES AND CLASSIFICATION OF THE LEASE AGREEMENT OR ANY LEASE SCHEDULE; PROVIDED, THAT LESSEE REPRESENTS AND WARRANTS THAT IT SHALL AT ALL TIMES TREAT THIS LEASE AGREEMENT AND ALL LEASE SCHEDULES AS "OPERATING LEASES" UNDER ACCOUNTING PRINCIPLES GENERALLY ACCEPTED IN THE UNITED STATES OF AMERICA AND AS "TRUE LEASES" WITH RESPECT TO APPLICABLE FEDERAL INCOME TAX LAWS. THIS LEASE AGREEMENT IS INTENDED BY THE PARTIES TO BE A LEASE OF EQUIPMENT THAT IS OWNED BY LESSOR (OR WHICH LESSOR SHALL HAVE THE RIGHT TO LEASE) AND NOT A LOAN, SALE OR LEASE INTENDED AS A SALE OR LOAN. LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR ANY INFORMATION, INCLUDING BUT NOT LIMITED TO CONSUMER OR PATIENT INFORMATION, THAT IS AT ANY TIME ENTERED, STORED, TRANSFERRED TO, CONTAINED OR RETAINED ON ANY EQUIPMENT, WHETHER OR NOT SUCH INFORMATION IS SUBJECT TO FEDERAL, STATE OR OTHER LAW, INCLUDING BY WAY OF EXAMPLE ONLY AND NOT OF LIMITATION, THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA), FINANCIAL MODERNIZATION ACT (GRAMM-LEACH-BLILEY ACT), ETC. LESSOR SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE RELATIONSHIP BETWEEN THE LESSOR AND LESSEE, THIS LEASE AGREEMENT OR THE PERFORMANCE, POSSESSION, LEASE OR USE OF THE EQUIPMENT. THIS LEASE AGREEMENT IS A "FINANCE LEASE" AS THAT TERM IS DEFINED AND USED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE WILL BE CONFERRED ON LESSEE.

Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall be responsible for, indemnify, defend and hold Lessor harmless with respect to, any claim from a third party for any liability, claim, loss, damage or expense of any kind or

nature, whether based upon a theory of strict liability or otherwise, caused, directly or indirectly, by: (i) the inadequacy of any item of Equipment, including Software, for any purpose; (ii) any deficiency or any latent or other defects in any Equipment, including Software, whether or not detectable by Lessee; (iii) the selection, manufacture, rejection, ownership, lease, possession, maintenance, operation, use or performance of any item of Equipment, including Software; (iv) any interruption or loss of service, use or performance of any item of Equipment, including Software; (v) patent, trademark or copyright infringement; (vi) any information whatsoever or the loss, release, unauthorized access, transfer, theft, use or misuse thereof, or (vii) any loss of business or other special, incidental or consequential damages whether or not resulting from any of the foregoing. Lessee's duty to defend and indemnify Lessor shall survive the expiration, termination, settlement, cancellation, assignment or resolution of this Lease Agreement or a Lease Schedule and shall be binding upon Lessee's successors and permitted assigns. Lessee agrees to the provisions of this paragraph to the full extent permitted by the law of the State of North Carolina.

#### 16. Event of Default

The occurrence of any of the following events shall constitute an Event of Default under this Lease Agreement and/or any Lease Schedule:

- (1) the nonpayment by Lessee of any Lease Charges when due, or the nonpayment by Lessee of any other sum required hereunder to be paid by Lessee which non-payment continues for a period of ten (10) days from the date when due;
- (2) the failure of Lessee to perform any other term, covenant or condition of this Lease Agreement, any Lease Schedule or any other document, agreement or instrument executed pursuant hereto or in connection herewith, which is not cured within ten (10) days after written notice thereof from Lessor;
- (3) Lessee attempts to or does remove, transfer, sell, swap, assign, sublease, trade, exchange, encumber, receive an allowance or credit for, or part with possession of, any item of Equipment;
- (4) Lessee ceases doing business as a going concern, is insolvent, makes an assignment for the benefit of creditors, fails to pay its debts as they become due, offers a settlement to creditors or calls a meeting of creditors for any such purpose, files a voluntary petition in bankruptcy, is subject to an involuntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files or has filed against it a petition seeking any reorganization, arrangement or composition, under any present or future statute, law or regulation;
- (5) any of Lessee's representations or warranties made herein or in any oral or written statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be false or misleading in any material respect;
- (6) Lessee defaults under or otherwise has accelerated any material obligation, credit agreement, loan agreement, conditional sales contract, lease, indenture or debenture; or Lessee defaults under any other agreement now existing or hereafter made with Lessor;
- (7) Lessee dissolves, liquidates or ceases or suspends the conduct of business, or ceases to maintain its existence; or
- (8) the breach or repudiation by any party thereto of any guaranty, subordination agreement or other agreement running in favor of Lessor obtained in connection with this Lease Agreement.

#### 17. Remedies

Should any Event of Default occur, Lessor may, with or without notice or demand upon Lessee, retain any and all security deposits and pursue and enforce, alternatively, successively and/or concurrently, any one or more of the following remedies:

- (1) recover from Lessee all accrued and unpaid Lease Charges and other amounts due and owing on the date of the default; and
- (2) recover from Lessee from time to time all Lease Charges and other amounts as and when becoming due hereunder; and
- (3) either (A) accelerate, cause to become immediately due and recover the present value of all Lease Charges and other amounts due and/or likely to become due hereunder from the date of the default to the end of the lease term using a discount rate of four percent (4%); or (B) cause to become immediately due and payable and recover from Lessee the Casualty Loss Value of the Equipment which Lessee agrees is not a penalty but rather a reasonable forecast of the just compensation for the harm caused by the Event of Default, which harm is incapable or very difficult of accurate estimation; and
- (4) terminate any or all of the Lessee's rights, but not its obligations, associated with the lease of Equipment under this Lease Agreement; and
- (5) either (A) retake (by Lessor, independent contractor, or by requiring Lessee to assemble and surrender the Equipment in accordance with the provisions of Section 7 hereinabove) possession of the Equipment without terminating the Lease Schedule or the Lease Agreement free from claims by Lessee which claims are hereby expressly waived by Lessee; or (B) require Lessee to deliver the Equipment to a location designated by Lessor; and
- (6) upon Lessor's instructions after an Event of Default, Lessee agrees to cease immediately the use of any or all Software, to uninstall and delete all copies of such licensed Software from any computer systems owned or controlled by Lessee or its affiliates or used for Lessee's or Lessee's affiliate's benefit, to destroy any and all written documentation, manuals and materials provided with the Software, and to provide Lessor with a certificate signed by a Lessee officer who is responsible for Lessee's information systems, attesting to such cessation of use, deinstallation, deletion, and/or destruction of the Software; and
- (7) proceed by court action to enforce performance by Lessee of its obligations associated with any Lease Schedule and/or this Lease Agreement; and/or
- (8) pursue any other remedy Lessor may otherwise have, at law, equity or under any statute, and recover damages and expenses (including attorneys' fees) incurred by Lessor by reason of the Event of Default.

Upon repossession of the Equipment, Lessor shall have the right to lease, sell or otherwise dispose of such Equipment in a commercially reasonable manner, with or without notice, at a public or private sale. Lessor's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by Lessor of any other remedy. Lessor shall not be obligated to sell or re-lease the Equipment. Any sale or re-lease may be held at such place or places as are selected by Lessor, with or without having the Equipment present. Any such sale or re-lease, may be at wholesale or retail, in bulk or in parcels. Time and exactitude of each of the terms and conditions of this Lease Agreement are hereby declared to be of the essence. Lessor may accept past due payments in any amount without modifying the terms of this Lease Agreement and without waiving any rights of Lessor hereunder.

#### 18. Costs and Attorneys' Fees

In the event of any default, claim, proceeding, including a bankruptcy proceeding, arbitration, mediation, counter-claim, action (whether legal or equitable), appeal or otherwise, whether initiated by Lessor or Lessee (or a debtor-in-possession or bankruptcy trustee), which arises out of, under, or is related in any way to this Lease Agreement, any Lease Schedule, or any other document, agreement or instrument executed pursuant hereto or in connection herewith, or any governmental examination or investigation of Lessee, which requires Lessor's participation (individually and collectively, the "Claim"), Lessee, in addition to all

other sums which may be owed by Lessee under the provisions of this Lease Agreement, shall pay to Lessor, all costs, expenses and fees paid or payable in connection with the Claim, including, but not limited to, reasonable attorneys' fees as permitted by law and out-of-pocket costs, including travel and related expenses incurred by Lessor or its attorneys.

#### **19. Lessor's Performance Option**

Should Lessee fail to make any payment or to do any act as provided by this Lease Agreement, then Lessor shall have the right (but not the obligation), without notice to Lessee of its intention to do so and without releasing Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of Lessor appears to affect the Equipment, and in exercising any such rights, Lessor may incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be due and payable by Lessee within ten (10) days of notice thereof.

#### **20. Quiet Possession and Inspection**

Lessor hereby covenants with Lessee that Lessee shall quietly possess the Equipment subject to and in accordance with the provisions hereof so long as Lessee is not in default hereunder; provided, however, that Lessor or its designated agent may, at any and all reasonable times during business hours, enter Lessee's premises for the purposes of inspecting the Equipment and the manner in which it is being used.

#### **21. Assignments**

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Lessee, however, shall not assign this Lease Agreement or sublet any of the Equipment without first obtaining the prior written consent of Lessor and its assigns, if any. Lessee acknowledges that the terms and conditions of this Lease Agreement have been fixed in anticipation of the possible assignment of Lessor's rights under this Lease Agreement and in and to the Equipment as collateral security to a third party ("Assignee" herein) which will rely upon and be entitled to the benefit of the provisions of this Lease Agreement. Lessee agrees with Lessor and such Assignee to recognize in writing any such assignment within fifteen (15) days after receipt of written notice thereof and to pay thereafter all sums due to Lessor hereunder directly to such Assignee if directed by Lessor, provided, however, that such recognition by Lessee shall not constitute a waiver of any defense, set-off or counterclaim whatsoever (whether arising from a breach of this Lease Agreement or not) that Lessee may from time to time have against Lessor. Upon such assignment, the Lessor shall remain obligated to perform any obligations it may have under this Lease Agreement and the Assignee shall (unless otherwise expressly agreed to in writing by the Assignee) have no obligation to perform such obligations. Any such assignment shall be subject to Lessee's rights to use and possess the Equipment so long as Lessee is not in default hereunder.

#### **22. Survival of Obligations**

All covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall be for the benefit of Lessor and Lessee and their successors, any assignee or secured party. Further, all covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall survive the execution and delivery of this Lease Agreement and the expiration or other termination of this Lease Agreement.

#### **23. Authority**

The parties hereto covenant and warrant that the persons executing this Lease Agreement and each Lease Schedule on their behalf have been duly authorized to do so, and this Lease Agreement and any Lease Schedule constitute a valid and binding obligation of the parties hereto. Lessee will, at Lessor's request,

provide to Lessor, Certificates of Authority naming the officers of the Lessee who have the authority to execute this Lease Agreement and any Lease Schedules attached thereto. Lessee agrees that it shall advise Lessor of any change in Lessee's name, address or structure within ten (10) days. Lessee's status as a component unit, political subdivision or other subentity of state, county or local government does not prevent Lessee from entering into binding commercial transactions and indemnity agreements. Further, no statute or law prevents or prohibits Lessee from entering into this Lease Agreement or any other agreement or document required hereunder. Any limitation of liability or benefits of sovereign immunity (to the extent such immunity may relate to enforcement of contracts) afforded to Lessee under law or statute is specifically waived by Lessee in its own right, and shall not apply to Lessor, this Lease Agreement or any other agreement or document required hereunder.

#### **24. Landlords' and Mortgagees' Waiver**

If requested, Lessee shall furnish waivers, in form and substance satisfactory to Lessor, from all landlords and mortgagees of any premises upon which any Equipment is located.

#### **25. Miscellaneous**

This Lease Agreement, the Lease Schedule(s), attached riders and any documents or instruments issued or executed pursuant hereto will have been made, executed and delivered in, and shall be governed by the internal laws (as opposed to conflicts of law provisions) and decisions of, the State of North Carolina. Lessee and Lessor consent to the jurisdiction of any state or federal court located within North Carolina. At Lessor's sole election and determination, Lessor may select an alternative forum, including arbitration or mediation, to adjudicate any dispute arising out of this Lease Agreement.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO THIS AGREEMENT OR SUCH TRANSACTIONS, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

This Lease Agreement was jointly negotiated by the parties, and the parties hereby agree that neither should be favored in the construction, interpretation or application of any provision or any ambiguity. There are no unwritten or oral agreements between the parties. This Lease Agreement and associated Lease Schedule(s) constitute the entire understanding and agreement between Lessor and Lessee with respect to the lease of the Equipment superseding all prior agreements, understandings, negotiations, discussions, proposals, representations, promises, commitments and offers between the parties, whether oral or written. This Lease Agreement and associated Lease Schedule(s) constitute a single unitary agreement. No provision of this Lease Agreement or any Lease Schedule shall be deemed waived, amended, discharged or modified orally or by custom, usage or course of conduct unless such waiver, amendment or modification is in writing and signed by an officer of each of the parties hereto. If any one or more of the provisions of this Lease Agreement or any Lease Schedule is for any reason held invalid, illegal or unenforceable, the remaining provisions of this Lease Agreement and any such Lease Schedule will be unimpaired, and the invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable valid, legal and enforceable provision that is closest to the original intention of the parties. Lessee agrees that neither the manufacturer, nor the supplier, nor any of their salespersons, employees or agents are agents of Lessor.

Any notice provided for herein shall be in writing and sent by overnight courier providing a receipt of delivery or by certified or registered mail to the parties at the addresses stated on page 1 of this Lease Agreement.

The Monthly Lease Charge is intended to be fixed from the Commencement Date to the end of the term. The three year

treasury rate is an integral part of the lease rate. The Lessee and Lessor agree that the lease rate shall also be fixed during the Installation Period but should the three year treasury note increase during such Installation Period, the lease rate will be adjusted on the Commencement Date.

Lessor is entitled to review a complete set of Lessee's financial statements, including a statement of cash flows, balance sheet and income statement, and any other financial information that Lessor may request. If during the Installation Period the Lessee's financial condition changes in any material respect (as determined by the Lessor in its sole discretion), then Lessor shall be entitled to stop purchasing equipment to be leased to Lessee and commence the applicable lease schedule(s).

This Lease Agreement shall not become effective until delivered to Lessor at its offices at Minnetonka, Minnesota and executed by Lessor. If this Lease Agreement shall be executed by Lessor prior to being executed by Lessee, it shall become void at Lessor's option five (5) days after the date of Lessor's execution hereof, unless Lessor shall have received by such date a copy hereof executed by a duly authorized representative of Lessee.

This Lease Agreement is made subject to the terms and conditions included herein and Lessee's acceptance is effective only to the extent that such terms and conditions are consistent with the terms and conditions herein. Any acceptance which contains terms and conditions which are in addition to or inconsistent with the terms and conditions herein will be a counter-offer and will not be binding unless agreed to in writing by Lessor.

The terms used in this Lease Agreement, unless otherwise defined, shall have the meanings ascribed to them in the Lease Schedule(s).

**26. REPOSSESSION**

LESSEE ACKNOWLEDGES THAT, PURSUANT TO SECTION 17 HEREOF, LESSOR HAS BEEN GIVEN THE RIGHT TO REPOSSESS THE EQUIPMENT SHOULD LESSEE BECOME IN DEFAULT OF ITS OBLIGATIONS HEREUNDER.

**27. Net Lease**

This Lease Agreement is a net lease and Lessee's obligations to pay all Lease Charges and other amounts payable hereunder shall be absolute and unconditional and, except as expressly provided herein, shall not be subject to any: (i) delay, abatement, reduction, defense, counterclaim, set-off, or recoupment; (ii) discontinuance or termination of any license; (iii) Equipment failure, defect or deficiency; (iv) damage to or destruction of the Equipment; or (v) dissatisfaction with the Equipment or otherwise, including any present or future claim against Lessor or the manufacturer, supplier, reseller or vendor of the Equipment. To the extent that the Equipment includes intangible (or intellectual) property, Lessee understands and agrees that: (i) Lessor is not a party to and does not have any responsibility under any Software license and/or other agreement

with respect to any Software; and (ii) Lessee will be responsible to pay all of the Lease Charges and perform all its other obligations under this Lease Agreement despite any defect, deficiency, failure, termination, dissatisfaction, damage or destruction of any Software or Software license. Further, Lessee agrees that it has an unconditional, irrevocable and absolute obligation to pay all Lease Charges and other amounts payable hereunder to the Lessor although (i) the Lessor does not hold title to any Software (or intellectual or intangible property), (ii) Lessor is not a party to any Software license (or intellectual or intangible property license) that is listed among the Equipment on any Lease Schedule and (iii) any license to Software is exclusively between the licensor of the Software ("Licensor") and the Lessee. Except as expressly provided herein, this Lease Agreement shall not terminate for any reason, including any defect in the Equipment or Lessor's title thereto or any destruction or loss of use of any item of Equipment.

**28. Funding Out**

Lessee shall have the option to terminate this Lease Agreement at the end of a fiscal period contingent upon the following conditions: (i) Appropriation of monies for this Lease Agreement has been terminated or not continued and such non-appropriation is memorialized in a formal act by the Lessee; (ii) Lessee has given Lessor one hundred twenty (120) days written notice of any likely non-appropriation; (iii) Lessee pays to Lessor all monies due and payable at the time of the termination plus all monies that would have become due and payable during the entire term of this Lease Agreement but for the termination; and (iv) Lessee's return, in compliance with this Lease Agreement, of all of the equipment listed on and subject to this Lease Agreement. Lessee further agrees that: (i) any monies authorized and allocated to it for the rental, lease or acquisition of equipment that is like the equipment listed on and subject to this Lease Agreement shall be remitted to Lessor until such monies or funds are exhausted; (ii) Lessee will use its best efforts to obtain authorization and appropriation of monies or funds in order to fulfill its obligations associated with this Lease Agreement by including in its budget for each fiscal appropriation period a formal request for monies in an amount no less than Lessee's total monetary obligations for the fiscal appropriations period; and (iii) Lessee will not seek the cancellation or termination of this Lease Agreement in order to permit Lessee to acquire similar or like equipment or to allocate funds to directly or indirectly perform essentially the same or similar applications, functions or purposes for which the equipment was or is being used.

**29. Headings**

Section headings herein are used for convenience only and shall not otherwise affect the provisions of this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed by their respective duly authorized representatives.

**Every Term is Agreed to and Accepted:**

WINTHROP RESOURCES CORPORATION

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

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**Every Term is Agreed to and Accepted:**

HAYWOOD COUNTY, NORTH CAROLINA

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

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**CERTIFICATION**

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
(Signature of finance officer)



Lease Agreement Number HA051116

## Lease Agreement

This Lease Agreement, dated May 11, 2016, by and between WINTHROP RESOURCES CORPORATION (the "Lessor") with an office located at 11100 Wayzata Boulevard, Suite 800, Minnetonka, Minnesota 55305 and HAYWOOD COUNTY, NORTH CAROLINA (the "Lessee") with an office located at 215 North Main Street, Room 416, Waynesville, North Carolina 28786.

Lessor hereby leases or grants to the Lessee the right to use and Lessee hereby rents and accepts the right to use the tangible property and equipment whether or not listed by serial number ("Hardware"), and software, general intangibles and related services ("Software") on the Lease Schedule(s) attached hereto or incorporated herein by reference from time to time (collectively, the Hardware, Software and all related services are the "Equipment"), subject to the terms and conditions hereof, as supplemented with respect to each item of Equipment by the terms and conditions set forth in the appropriate Lease Schedule. The term "Lease Agreement" shall include this Lease Agreement and the various Lease Schedule(s) identifying each item of Equipment or the appropriate Lease Schedule(s) identifying one or more particular items of Equipment.

### 1. Term

This Lease Agreement shall be effective from the latest date set forth on the signature page hereto (the "Effective Date") and shall terminate on the business day prior to the fifth anniversary of the Effective Date (the "Final Termination Date"), unless otherwise terminated prior to such date in accordance with the terms of this Lease Agreement. The applicability of this Lease Agreement, as to all Equipment designated on any particular Lease Schedule, shall commence on the Installation Date for all Equipment on such Lease Schedule and shall continue for an initial period ending that number of months from the Commencement Date as set forth in such Lease Schedule (the "Initial Term") and shall continue upon agreement of the parties thereafter until terminated; provided, however, that in no event shall the Initial Term or any extension thereof extend past the Final Termination Date; and provided further, that after giving effect to any extension agreed upon by the parties, the Lessee shall continue to properly treat the Lease Agreement and all Lease Schedules as an "operating lease" under accounting principles generally accepted in the United States of America and a "true lease" under applicable federal income tax law. The term of this Lease Agreement as to all Equipment designated on any particular Lease Schedule may be terminated without cause at the end of the Initial Term or at any time thereafter by either party mailing written notice of its termination to the other party not less than one-hundred twenty (120) days prior to such termination date.

### 2. Commencement Date

The Installation Date for each item of Equipment shall be the day said item of Equipment is installed at the Location of Installation, ready for use, and accepted in writing by the Lessee. The Commencement Date for any Lease Schedule is the first of the month following installation of all the Equipment on the Lease Schedule, unless the latest Installation Date for any Equipment on the Lease Schedule falls on the first day of the month, in which case such date shall be the Commencement Date. The Lessee is committed to lease Equipment associated with the Lease Schedule and agrees to complete, execute and deliver to Lessor one or more Certificate(s) of Acceptance listing the specific items of Equipment to be leased upon installation of such Equipment.

### 3. Lease Charge

The lease charges for the Equipment leased pursuant to this Lease Agreement shall be the aggregate "Monthly Lease Charge(s)" as set forth on each and every Lease Schedule

executed pursuant hereto (the aggregate "Monthly Lease Charge(s)" are the "Lease Charges"). Lessor and Lessee agree that the fair market value of the use of the Equipment leased on any Lease Schedule hereunder shall be the Monthly Lease Charge as set forth on such Lease Schedule. Lessee agrees to pay to Lessor the Lease Charges in accordance with the Lease Schedule(s), and the payments shall be made at Lessor's address indicated thereon. The Lease Charges shall be paid by Lessee monthly in advance with the first full month's payment due on the Commencement Date. The Lease Charge for the period from the Installation Date to the Commencement Date (the "Installation Period") shall be an amount equal to the "Monthly Lease Charge" divided by thirty (30) and multiplied by the number of days from and including the Installation Date to the Commencement Date and such amount shall be due and payable upon receipt of an invoice from Lessor. Charges for taxes made in accordance with Section 4 and charges made under any other provision of this Lease Agreement and payable by Lessee shall be paid to Lessor at Lessor's address specified on the Lease Schedule(s) on the date specified in invoices delivered to Lessee. If payment, as specified above, is not received by Lessor on the due date, Lessee agrees to and shall pay, to the extent permitted by law, on demand, as a late charge, an amount equal to one and one-half percent (1½%), or the maximum percentage allowed by law if less, of the amount past due ("Late Charges"). The parties agree that Late Charges will accrue until billed by Lessor.

### 4. Taxes

In addition to the Lease Charges set forth in Section 3, the Lessee shall reimburse Lessor for all license or registration fees, assessments, sales and use taxes, rental taxes, recycling, administrative or environmental fees, gross receipts taxes, personal property taxes and other taxes or fees now or hereafter imposed by any government, agency, province or otherwise upon the Equipment, the Lease Charges or upon the ownership, leasing, renting, purchase, possession, use, recycling or disposal of the Equipment, whether the same be assessed to Lessor or Lessee (the "Taxes"). Lessee's obligation to remit taxes and other non-rent related charges shall be due and payable upon invoice from Lessor in accordance with the terms of such invoice. Lessor shall file all property tax returns and pay all Taxes when due. Lessee, upon notice to Lessor, may, in Lessee's own name, contest or protest any Taxes, and Lessor shall honor any such notice except when in Lessor's sole opinion such contest is futile or will cause a levy or lien to arise on the Equipment or cloud Lessor's title

thereto. Lessee shall, in addition, be responsible to Lessor for the payment and discharge of any penalties or interest as a result of Lessee's actions or inactions. Nothing herein shall be construed to require Lessee to be responsible for any federal or state taxes or payments in lieu thereof, imposed upon or measured by the net income of Lessor, or state franchise taxes of Lessor, or except as provided hereinabove, any penalties or interest resulting from Lessor's failure to timely remit such tax payments.

#### **5. Delivery and Freight Costs**

Lessee shall inspect, test, and either accept or reject the Equipment before such time as the applicable vendor requires payment for such Equipment.

All transportation charges upon the Equipment for delivery to Lessee's designated Location of Installation are to be paid by Lessee. All rigging, drayage charges, structural alterations, rental of heavy equipment and/or other expense necessary to place the Equipment at the Location of Installation are to be promptly paid by Lessee.

#### **6. Installation**

Lessee agrees to pay for the actual installation of the Equipment at Lessee's site. Lessee shall make available and agrees to pay for all costs associated with providing a suitable place of installation and necessary electrical power, outlets and air conditioning required for operating the Equipment as defined in the Equipment manufacturer's installation manual or instructions. All supplies consumed or required by the Equipment shall be furnished and paid for by Lessee.

#### **7. Return to Lessor**

On the day following the last day of the lease term associated with a Lease Schedule (the "Return Date"), Lessee shall cause and pay for the Equipment listed on that Lease Schedule to be deinstalled, packed using the manufacturer's standard packing materials and shipped to a location designated in writing by Lessor (the "Return Location"). Irrespective of any other provision hereof, Lessee will bear the risk of damage from fire, the elements or otherwise until delivery of the Equipment to the Return Location. At such time as the Equipment is delivered to the Lessor at the Return Location, the Equipment will be at the risk of Lessor. If the Equipment listed on the applicable Lease Schedule is not at the Return Location within ten (10) days of the Return Date, then the Equipment shall be deemed to have been subject to a Loss pursuant to Section 12 and Lessee shall pay to Lessor the Casualty Loss Value in accordance with such Section 12.

#### **8. Maintenance**

Lessee, at its sole expense, shall maintain the Equipment in good working order and condition. Lessee shall enter into, pay for and maintain in force during the entire term of any Lease Schedule, a maintenance agreement with the manufacturer of the Equipment providing for continuous uninterrupted maintenance of the Equipment (the "Maintenance Agreement"). Upon Lessor's request, Lessee shall provide a copy of each such Maintenance Agreement to Lessor. Lessee will cause the manufacturer to keep the Equipment in good working order in accordance with the provisions of the Maintenance Agreement and make all necessary adjustments and repairs to the Equipment. The manufacturer is hereby authorized to accept the directions of Lessee with respect thereto. Lessee agrees to allow the manufacturer full and free access to the Equipment. All maintenance and service charges, whether under the Maintenance Agreement or otherwise, and all expenses, if any, of the manufacturer's customer engineers incurred in connection with maintenance and repair services, shall be promptly paid by Lessee. Lessee warrants that all of the Equipment shall be in good working order operating according to manufacturer's specification and eligible for the manufacturer's standard maintenance agreement upon delivery to and inspection and testing by the Lessor. If the Equipment is not free of physical defect or damage, operating according to manufacturer's specification, in good working order and/or eligible for the manufacturer's standard maintenance agreement, then Lessee agrees to reimburse Lessor for all costs, losses, expenses and fees associated with such equipment and the repair or replacement thereof.

#### **9. Location, Ownership and Use**

The Equipment shall, at all times, be the sole and exclusive property of Lessor. Lessee shall have no right or property interest therein, except for the right to use the Equipment in the normal operation of its business at the Location of Installation, or as otherwise provided herein. The Equipment is and shall remain personal property even if installed in or attached to real property. Lessor shall be permitted to display notice of its ownership on the Equipment by means of a suitable stencil, label or plaque affixed thereto.

Lessee shall keep the Equipment at all times free and clear from all claims, levies, encumbrances and process. Lessee shall give Lessor immediate notice of any such attachment or other judicial process affecting any of the Equipment. Without Lessor's written permission, Lessee shall not attempt to or actually: (i) pledge, lend, create a security interest in, sublet, exchange, trade, assign, swap, use for an allowance or credit or otherwise; (ii) allow another to use; (iii) part with possession; (iv) dispose of; or (v) remove from the Location of Installation, any item of Equipment. Lessee shall not cause the Equipment to be located outside of the United States. If any item of Equipment is exchanged, assigned, traded, swapped, used for an allowance or credit or otherwise to acquire new or different equipment (the "New Equipment") without Lessor's prior written consent, then all of the New Equipment shall become Equipment owned by Lessor subject to this Lease Agreement and the applicable Lease Schedule.

Any feature(s) installed on the Equipment at the time of delivery which are not specified on the Lease Schedule(s) are and shall remain the sole property of the Lessor.

Lessee shall cause the Equipment to be operated in accordance with the applicable vendor's or manufacturer's manual of instructions by competent and qualified personnel.

#### **10. Financing Statement**

Lessor is hereby authorized by Lessee to cause this Lease Agreement or other instruments, including Uniform Commercial Code Financing Statements, to be filed or recorded for the purposes of showing Lessor's interest in the Equipment. Lessee agrees to execute any such instruments as Lessor may request from time to time.

#### **11. Alterations and Attachments**

Upon prior written notice to Lessor, Lessee may, at its own expense, make minor alterations in or add attachments to the Equipment, provided such alterations and attachments shall not interfere with the normal operation of the Equipment and do not otherwise involve the pledge, assignment, exchange, trade or substitution of the Equipment or any component or part thereof. All such alterations and attachments to the Equipment shall become part of the Equipment leased to Lessee and owned by Lessor. If, in Lessor's sole determination, the alteration or attachment reduces the value of the Equipment or interferes with the normal and satisfactory operation or maintenance of any of the Equipment, or creates a safety hazard, Lessee shall, upon notice from Lessor to that effect, promptly remove the alteration or attachment at Lessee's expense and restore the Equipment to the condition the Equipment was in just prior to the alteration or attachment.

#### **12. Loss and Damage**

Lessee shall assume and bear the risk of loss, theft and damage (including any governmental requisition, condemnation or confiscation) to the Equipment and all component parts thereof from any and every cause whatsoever, whether or not covered by insurance. No loss or damage to the Equipment or any component part thereof shall impair any obligation of Lessee under this Lease Agreement, which shall continue in full force and effect except as hereinafter expressly provided. Lessee shall repair or cause to be repaired all damage to the Equipment. In the event that all or part of the Equipment shall, as a result of any cause whatsoever, become lost, stolen, destroyed or otherwise rendered irreparably unusable or damaged (collectively, the "Loss") then Lessee shall, within ten (10) days after the Loss, fully inform Lessor in writing of such a Loss and shall pay to Lessor the following amounts: (i) the Monthly Lease Charges (and other

amounts) due and owing under this Lease Agreement at the time of the Loss (or Event of Default, as defined hereinafter), plus (ii) the Original Cost of the Equipment subject to the Loss (or Event of Default, as defined hereinafter) multiplied by the "Percent of Original Cost." The Original Cost of a particular item of Equipment shall be Lessee's original purchase price of such item at the time of its purchase or payment to the applicable vendor by Lessor, plus additional or related charges such as taxes, delivery and freight, installation, maintenance, etc. The Percent of Original Cost shall be the Per Payment Factor multiplied by the number of lease payments Lessor has received from Lessee during the Initial Term subtracted from 112 and then divided by 100. The Per Payment Factor is the sum of 112 multiplied by 0.8 divided by the number of Monthly Lease Charges that are due during the Initial Term (collectively, the sum of (i) plus (ii) shall be the "Casualty Loss Value"). Upon receipt by Lessor of the Casualty Loss Value: (i) the applicable Equipment shall be removed from the Lease Schedule; and (ii) Lessee's obligation to pay Lease Charges associated with the applicable Equipment shall cease. Lessor may request, and Lessee shall complete, an affidavit(s) which swears out the facts supporting the Loss of any item of Equipment.

### **13. Insurance**

Until the Equipment is returned to Lessor or as otherwise herein provided, whether or not this Lease Agreement has terminated as to the Equipment, Lessee, at its expense, shall maintain: (i) property and casualty insurance insuring the Equipment for its Casualty Loss Value naming Lessor or its assigns as sole loss payee; and (ii) comprehensive public liability and third-party property insurance naming Lessor and its assigns as additional insureds. The insurance shall cover the interest of both the Lessor and Lessee in the Equipment, or as the case may be, shall protect both the Lessor and Lessee in respect to all risks arising out of the condition, delivery, installation, maintenance, use or operation of the Equipment. All such insurance shall provide for thirty (30) days prior written notice to Lessor of cancellation, restriction, or reduction of coverage and shall have a clause specifying that no action or misrepresentation by Lessee shall invalidate such policy. Lessor shall be under no duty to ascertain the existence of or to examine any such policy or to advise Lessee in the event any such policy shall not comply with the requirements hereof. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts for loss or damage or return premium under any insurance policy issued on the Equipment. Prior to installation of the Equipment, all policies or certificates of insurance shall be delivered to Lessor by Lessee. Lessee agrees to keep the Equipment insured with an insurance company which is at least "A" rated by A.M. Best and in such form, including a maximum deductible, as may be satisfactory to Lessor. The proceeds of any loss or damage insurance shall be payable to Lessor, but Lessor shall remit all such insurance proceeds to Lessee at such time as Lessee either (i) provides Lessor satisfactory proof that the damage has been repaired and the Equipment has been restored to good working order and condition or (ii) pays to Lessor the Casualty Loss Value. It is understood and agreed that any payments made by Lessee or its insurance carrier for loss or damage of any kind whatsoever to the Equipment are not made as accelerated rental payments or adjustments of rental, but are made solely as indemnity to Lessor for loss or damage of its Equipment.

### **14. Enforcement of Warranties**

Lessee, in its own name, shall, so long as this Lease Agreement is in force, enforce any manufacturer's Equipment warranty.

### **15. Warranties, Disclaimers and Indemnity**

Lessor warrants that at the time the Equipment is delivered to Lessee, Lessor will have full right, power and authority to lease the Equipment to Lessee. EXCEPT FOR THE WARRANTY IN THE SENTENCE DIRECTLY PRECEDING THIS ONE, THE LESSOR DOES NOT MAKE ANY WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. LESSEE ACKNOWLEDGES THAT IT IS NOT

RELYING ON LESSOR'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE, THAT LESSOR HAS NOT SELECTED, MANUFACTURED, SOLD OR SUPPLIED ANY OF THE EQUIPMENT, AND THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES CONTAINED IN THIS LEASE AGREEMENT. LESSEE REPRESENTS AND WARRANTS THAT IT IS NOT A FOREIGN "FINANCIAL INSTITUTION" OR ACTING ON BEHALF OF A FOREIGN "FINANCIAL INSTITUTION" AS THAT TERM IS DEFINED IN THE BANK SECRECY ACT, 31 U.S.C. 5318, AS AMENDED. LESSEE ACKNOWLEDGES THAT LESSOR, IN COMPLIANCE WITH SECTION 326 OF THE USA PATRIOT ACT, WILL BE VERIFYING CERTAIN INFORMATION ABOUT LESSEE. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT LESSOR AND ITS REPRESENTATIVES AND EMPLOYEES HAVE NOT MADE ANY STATEMENT, REPRESENTATION OR WARRANTY RELATIVE TO THE ACCOUNTING OR TAX ENTRIES, TREATMENT, BENEFIT, USE OR CLASSIFICATION OF THE LEASE AGREEMENT OR ASSOCIATED LEASE SCHEDULES. LESSOR IS NOT ACTING AS A MUNICIPAL ADVISOR OR FINANCIAL ADVISOR TO LESSEE, AND LESSOR HAS NO FIDUCIARY DUTY TO LESSEE OR ANY OTHER PERSON PURSUANT TO SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934. THE INFORMATION CONTAINED IN THIS LEASE AGREEMENT OR ANY OTHER DOCUMENT PROVIDED BY LESSOR IS NOT INTENDED TO BE AND SHOULD NOT BE CONSTRUED AS "ADVICE" WITHIN THE MEANING OF SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934 AND THE MUNICIPAL ADVISOR RULES OF THE SEC. LESSEE HAS DISCUSSED THIS LEASE AGREEMENT WITH ITS OWN FINANCIAL AND/OR MUNICIPAL, LEGAL, ACCOUNTING, TAX AND OTHER ADVISORS AS LESSEE DEEMS APPROPRIATE. LESSEE ACKNOWLEDGES THAT IT AND/OR ITS INDEPENDENT ACCOUNTANTS ARE SOLELY RESPONSIBLE FOR (i) ANY AND ALL OF LESSEE'S ACCOUNTING AND TAX ENTRIES ASSOCIATED WITH THE LEASE AGREEMENT AND/OR THE LEASE SCHEDULES AND (ii) THE ACCOUNTING AND TAX TREATMENT, BENEFITS, USES AND CLASSIFICATION OF THE LEASE AGREEMENT OR ANY LEASE SCHEDULE; PROVIDED, THAT LESSEE REPRESENTS AND WARRANTS THAT IT SHALL AT ALL TIMES TREAT THIS LEASE AGREEMENT AND ALL LEASE SCHEDULES AS "OPERATING LEASES" UNDER ACCOUNTING PRINCIPLES GENERALLY ACCEPTED IN THE UNITED STATES OF AMERICA AND AS "TRUE LEASES" WITH RESPECT TO APPLICABLE FEDERAL INCOME TAX LAWS. THIS LEASE AGREEMENT IS INTENDED BY THE PARTIES TO BE A LEASE OF EQUIPMENT THAT IS OWNED BY LESSOR (OR WHICH LESSOR SHALL HAVE THE RIGHT TO LEASE) AND NOT A LOAN, SALE OR LEASE INTENDED AS A SALE OR LOAN. LESSOR SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR ANY INFORMATION, INCLUDING BUT NOT LIMITED TO CONSUMER OR PATIENT INFORMATION, THAT IS AT ANY TIME ENTERED, STORED, TRANSFERRED TO, CONTAINED OR RETAINED ON ANY EQUIPMENT, WHETHER OR NOT SUCH INFORMATION IS SUBJECT TO FEDERAL, STATE OR OTHER LAW, INCLUDING BY WAY OF EXAMPLE ONLY AND NOT OF LIMITATION, THE HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT OF 1996 (HIPAA), FINANCIAL MODERNIZATION ACT (GRAMM-LEACH-BLILEY ACT), ETC. LESSOR SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE RELATIONSHIP BETWEEN THE LESSOR AND LESSEE, THIS LEASE AGREEMENT OR THE PERFORMANCE, POSSESSION, LEASE OR USE OF THE EQUIPMENT. THIS LEASE AGREEMENT IS A "FINANCE LEASE" AS THAT TERM IS DEFINED AND USED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE WILL BE CONFERRED ON LESSEE.

Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall be responsible for, indemnify, defend and hold Lessor harmless with respect to, any claim from a third party for any liability, claim, loss, damage or expense of any kind or

nature, whether based upon a theory of strict liability or otherwise, caused, directly or indirectly, by: (i) the inadequacy of any item of Equipment, including Software, for any purpose; (ii) any deficiency or any latent or other defects in any Equipment, including Software, whether or not detectable by Lessee; (iii) the selection, manufacture, rejection, ownership, lease, possession, maintenance, operation, use or performance of any item of Equipment, including Software; (iv) any interruption or loss of service, use or performance of any item of Equipment, including Software; (v) patent, trademark or copyright infringement; (vi) any information whatsoever or the loss, release, unauthorized access, transfer, theft, use or misuse thereof, or (vii) any loss of business or other special, incidental or consequential damages whether or not resulting from any of the foregoing. Lessee's duty to defend and indemnify Lessor shall survive the expiration, termination, settlement, cancellation, assignment or resolution of this Lease Agreement or a Lease Schedule and shall be binding upon Lessee's successors and permitted assigns. Lessee agrees to the provisions of this paragraph to the full extent permitted by the law of the State of North Carolina.

#### 16. Event of Default

The occurrence of any of the following events shall constitute an Event of Default under this Lease Agreement and/or any Lease Schedule:

- (1) the nonpayment by Lessee of any Lease Charges when due, or the nonpayment by Lessee of any other sum required hereunder to be paid by Lessee which non-payment continues for a period of ten (10) days from the date when due;
- (2) the failure of Lessee to perform any other term, covenant or condition of this Lease Agreement, any Lease Schedule or any other document, agreement or instrument executed pursuant hereto or in connection herewith, which is not cured within ten (10) days after written notice thereof from Lessor;
- (3) Lessee attempts to or does remove, transfer, sell, swap, assign, sublease, trade, exchange, encumber, receive an allowance or credit for, or part with possession of, any item of Equipment;
- (4) Lessee ceases doing business as a going concern, is insolvent, makes an assignment for the benefit of creditors, fails to pay its debts as they become due, offers a settlement to creditors or calls a meeting of creditors for any such purpose, files a voluntary petition in bankruptcy, is subject to an involuntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files or has filed against it a petition seeking any reorganization, arrangement or composition, under any present or future statute, law or regulation;
- (5) any of Lessee's representations or warranties made herein or in any oral or written statement or certificate at any time given in writing pursuant hereto or in connection herewith shall be false or misleading in any material respect;
- (6) Lessee defaults under or otherwise has accelerated any material obligation, credit agreement, loan agreement, conditional sales contract, lease, indenture or debenture; or Lessee defaults under any other agreement now existing or hereafter made with Lessor;
- (7) Lessee dissolves, liquidates or ceases or suspends the conduct of business, or ceases to maintain its existence; or
- (8) the breach or repudiation by any party thereto of any guaranty, subordination agreement or other agreement running in favor of Lessor obtained in connection with this Lease Agreement.

#### 17. Remedies

Should any Event of Default occur, Lessor may, with or without notice or demand upon Lessee, retain any and all security deposits and pursue and enforce, alternatively, successively and/or concurrently, any one or more of the following remedies:

- (1) recover from Lessee all accrued and unpaid Lease Charges and other amounts due and owing on the date of the default; and
- (2) recover from Lessee from time to time all Lease Charges and other amounts as and when becoming due hereunder; and
- (3) either (A) accelerate, cause to become immediately due and recover the present value of all Lease Charges and other amounts due and/or likely to become due hereunder from the date of the default to the end of the lease term using a discount rate of four percent (4%); or (B) cause to become immediately due and payable and recover from Lessee the Casualty Loss Value of the Equipment which Lessee agrees is not a penalty but rather a reasonable forecast of the just compensation for the harm caused by the Event of Default, which harm is incapable or very difficult of accurate estimation; and
- (4) terminate any or all of the Lessee's rights, but not its obligations, associated with the lease of Equipment under this Lease Agreement; and
- (5) either (A) retake (by Lessor, independent contractor, or by requiring Lessee to assemble and surrender the Equipment in accordance with the provisions of Section 7 hereinabove) possession of the Equipment without terminating the Lease Schedule or the Lease Agreement free from claims by Lessee which claims are hereby expressly waived by Lessee; or (B) require Lessee to deliver the Equipment to a location designated by Lessor; and
- (6) upon Lessor's instructions after an Event of Default, Lessee agrees to cease immediately the use of any or all Software, to uninstall and delete all copies of such licensed Software from any computer systems owned or controlled by Lessee or its affiliates or used for Lessee's or Lessee's affiliate's benefit, to destroy any and all written documentation, manuals and materials provided with the Software, and to provide Lessor with a certificate signed by a Lessee officer who is responsible for Lessee's information systems, attesting to such cessation of use, deinstallation, deletion, and/or destruction of the Software; and
- (7) proceed by court action to enforce performance by Lessee of its obligations associated with any Lease Schedule and/or this Lease Agreement; and/or
- (8) pursue any other remedy Lessor may otherwise have, at law, equity or under any statute, and recover damages and expenses (including attorneys' fees) incurred by Lessor by reason of the Event of Default.

Upon repossession of the Equipment, Lessor shall have the right to lease, sell or otherwise dispose of such Equipment in a commercially reasonable manner, with or without notice, at a public or private sale. Lessor's pursuit and enforcement of any one or more remedies shall not be deemed an election or waiver by Lessor of any other remedy. Lessor shall not be obligated to sell or re-lease the Equipment. Any sale or re-lease may be held at such place or places as are selected by Lessor, with or without having the Equipment present. Any such sale or re-lease, may be at wholesale or retail, in bulk or in parcels. Time and exactitude of each of the terms and conditions of this Lease Agreement are hereby declared to be of the essence. Lessor may accept past due payments in any amount without modifying the terms of this Lease Agreement and without waiving any rights of Lessor hereunder.

#### 18. Costs and Attorneys' Fees

In the event of any default, claim, proceeding, including a bankruptcy proceeding, arbitration, mediation, counter-claim, action (whether legal or equitable), appeal or otherwise, whether initiated by Lessor or Lessee (or a debtor-in-possession or bankruptcy trustee), which arises out of, under, or is related in any way to this Lease Agreement, any Lease Schedule, or any other document, agreement or instrument executed pursuant hereto or in connection herewith, or any governmental examination or investigation of Lessee, which requires Lessor's participation (individually and collectively, the "Claim"), Lessee, in addition to all

other sums which may be owed by Lessee under the provisions of this Lease Agreement, shall pay to Lessor, all costs, expenses and fees paid or payable in connection with the Claim, including, but not limited to, reasonable attorneys' fees as permitted by law and out-of-pocket costs, including travel and related expenses incurred by Lessor or its attorneys.

#### **19. Lessor's Performance Option**

Should Lessee fail to make any payment or to do any act as provided by this Lease Agreement, then Lessor shall have the right (but not the obligation), without notice to Lessee of its intention to do so and without releasing Lessee from any obligation hereunder to make or to do the same, to make advances to preserve the Equipment or Lessor's title thereto, and to pay, purchase, contest or compromise any insurance premium, encumbrance, charge, tax, lien or other sum which in the judgment of Lessor appears to affect the Equipment, and in exercising any such rights, Lessor may incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be due and payable by Lessee within ten (10) days of notice thereof.

#### **20. Quiet Possession and Inspection**

Lessor hereby covenants with Lessee that Lessee shall quietly possess the Equipment subject to and in accordance with the provisions hereof so long as Lessee is not in default hereunder; provided, however, that Lessor or its designated agent may, at any and all reasonable times during business hours, enter Lessee's premises for the purposes of inspecting the Equipment and the manner in which it is being used.

#### **21. Assignments**

This Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Lessee, however, shall not assign this Lease Agreement or sublet any of the Equipment without first obtaining the prior written consent of Lessor and its assigns, if any. Lessee acknowledges that the terms and conditions of this Lease Agreement have been fixed in anticipation of the possible assignment of Lessor's rights under this Lease Agreement and in and to the Equipment as collateral security to a third party ("Assignee" herein) which will rely upon and be entitled to the benefit of the provisions of this Lease Agreement. Lessee agrees with Lessor and such Assignee to recognize in writing any such assignment within fifteen (15) days after receipt of written notice thereof and to pay thereafter all sums due to Lessor hereunder directly to such Assignee if directed by Lessor, provided, however, that such recognition by Lessee shall not constitute a waiver of any defense, set-off or counterclaim whatsoever (whether arising from a breach of this Lease Agreement or not) that Lessee may from time to time have against Lessor. Upon such assignment, the Lessor shall remain obligated to perform any obligations it may have under this Lease Agreement and the Assignee shall (unless otherwise expressly agreed to in writing by the Assignee) have no obligation to perform such obligations. Any such assignment shall be subject to Lessee's rights to use and possess the Equipment so long as Lessee is not in default hereunder.

#### **22. Survival of Obligations**

All covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall be for the benefit of Lessor and Lessee and their successors, any assignee or secured party. Further, all covenants, agreements, representations, and warranties contained in this Lease Agreement, any Lease Schedule, or in any document attached thereto, shall survive the execution and delivery of this Lease Agreement and the expiration or other termination of this Lease Agreement.

#### **23. Authority**

The parties hereto covenant and warrant that the persons executing this Lease Agreement and each Lease Schedule on their behalf have been duly authorized to do so, and this Lease Agreement and any Lease Schedule constitute a valid and binding obligation of the parties hereto. Lessee will, at Lessor's request,

provide to Lessor, Certificates of Authority naming the officers of the Lessee who have the authority to execute this Lease Agreement and any Lease Schedules attached thereto. Lessee agrees that it shall advise Lessor of any change in Lessee's name, address or structure within ten (10) days. Lessee's status as a component unit, political subdivision or other subentity of state, county or local government does not prevent Lessee from entering into binding commercial transactions and indemnity agreements. Further, no statute or law prevents or prohibits Lessee from entering into this Lease Agreement or any other agreement or document required hereunder. Any limitation of liability or benefits of sovereign immunity (to the extent such immunity may relate to enforcement of contracts) afforded to Lessee under law or statute is specifically waived by Lessee in its own right, and shall not apply to Lessor, this Lease Agreement or any other agreement or document required hereunder.

#### **24. Landlords' and Mortgagees' Waiver**

If requested, Lessee shall furnish waivers, in form and substance satisfactory to Lessor, from all landlords and mortgagees of any premises upon which any Equipment is located.

#### **25. Miscellaneous**

This Lease Agreement, the Lease Schedule(s), attached riders and any documents or instruments issued or executed pursuant hereto will have been made, executed and delivered in, and shall be governed by the internal laws (as opposed to conflicts of law provisions) and decisions of, the State of North Carolina. Lessee and Lessor consent to the jurisdiction of any state or federal court located within North Carolina. At Lessor's sole election and determination, Lessor may select an alternative forum, including arbitration or mediation, to adjudicate any dispute arising out of this Lease Agreement.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH IRREVOCABLY WAIVES ANY RIGHT TO A TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO THIS AGREEMENT OR SUCH TRANSACTIONS, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE.

This Lease Agreement was jointly negotiated by the parties, and the parties hereby agree that neither should be favored in the construction, interpretation or application of any provision or any ambiguity. There are no unwritten or oral agreements between the parties. This Lease Agreement and associated Lease Schedule(s) constitute the entire understanding and agreement between Lessor and Lessee with respect to the lease of the Equipment superseding all prior agreements, understandings, negotiations, discussions, proposals, representations, promises, commitments and offers between the parties, whether oral or written. This Lease Agreement and associated Lease Schedule(s) constitute a single unitary agreement. No provision of this Lease Agreement or any Lease Schedule shall be deemed waived, amended, discharged or modified orally or by custom, usage or course of conduct unless such waiver, amendment or modification is in writing and signed by an officer of each of the parties hereto. If any one or more of the provisions of this Lease Agreement or any Lease Schedule is for any reason held invalid, illegal or unenforceable, the remaining provisions of this Lease Agreement and any such Lease Schedule will be unimpaired, and the invalid, illegal or unenforceable provisions shall be replaced by a mutually acceptable valid, legal and enforceable provision that is closest to the original intention of the parties. Lessee agrees that neither the manufacturer, nor the supplier, nor any of their salespersons, employees or agents are agents of Lessor.

Any notice provided for herein shall be in writing and sent by overnight courier providing a receipt of delivery or by certified or registered mail to the parties at the addresses stated on page 1 of this Lease Agreement.

The Monthly Lease Charge is intended to be fixed from the Commencement Date to the end of the term. The three year

treasury rate is an integral part of the lease rate. The Lessee and Lessor agree that the lease rate shall also be fixed during the Installation Period but should the three year treasury note increase during such Installation Period, the lease rate will be adjusted on the Commencement Date.

Lessor is entitled to review a complete set of Lessee's financial statements, including a statement of cash flows, balance sheet and income statement, and any other financial information that Lessor may request. If during the Installation Period the Lessee's financial condition changes in any material respect (as determined by the Lessor in its sole discretion), then Lessor shall be entitled to stop purchasing equipment to be leased to Lessee and commence the applicable lease schedule(s).

This Lease Agreement shall not become effective until delivered to Lessor at its offices at Minnetonka, Minnesota and executed by Lessor. If this Lease Agreement shall be executed by Lessor prior to being executed by Lessee, it shall become void at Lessor's option five (5) days after the date of Lessor's execution hereof, unless Lessor shall have received by such date a copy hereof executed by a duly authorized representative of Lessee.

This Lease Agreement is made subject to the terms and conditions included herein and Lessee's acceptance is effective only to the extent that such terms and conditions are consistent with the terms and conditions herein. Any acceptance which contains terms and conditions which are in addition to or inconsistent with the terms and conditions herein will be a counter-offer and will not be binding unless agreed to in writing by Lessor.

The terms used in this Lease Agreement, unless otherwise defined, shall have the meanings ascribed to them in the Lease Schedule(s).

**26. REPOSSESSION**

LESSEE ACKNOWLEDGES THAT, PURSUANT TO SECTION 17 HEREOF, LESSOR HAS BEEN GIVEN THE RIGHT TO REPOSSESS THE EQUIPMENT SHOULD LESSEE BECOME IN DEFAULT OF ITS OBLIGATIONS HEREUNDER.

**27. Net Lease**

This Lease Agreement is a net lease and Lessee's obligations to pay all Lease Charges and other amounts payable hereunder shall be absolute and unconditional and, except as expressly provided herein, shall not be subject to any: (i) delay, abatement, reduction, defense, counterclaim, set-off, or recoupment; (ii) discontinuance or termination of any license; (iii) Equipment failure, defect or deficiency; (iv) damage to or destruction of the Equipment; or (v) dissatisfaction with the Equipment or otherwise, including any present or future claim against Lessor or the manufacturer, supplier, reseller or vendor of the Equipment. To the extent that the Equipment includes intangible (or intellectual) property, Lessee understands and agrees that: (i) Lessor is not a party to and does not have any responsibility under any Software license and/or other agreement

with respect to any Software; and (ii) Lessee will be responsible to pay all of the Lease Charges and perform all its other obligations under this Lease Agreement despite any defect, deficiency, failure, termination, dissatisfaction, damage or destruction of any Software or Software license. Further, Lessee agrees that it has an unconditional, irrevocable and absolute obligation to pay all Lease Charges and other amounts payable hereunder to the Lessor although (i) the Lessor does not hold title to any Software (or intellectual or intangible property), (ii) Lessor is not a party to any Software license (or intellectual or intangible property license) that is listed among the Equipment on any Lease Schedule and (iii) any license to Software is exclusively between the licensor of the Software ("Licensor") and the Lessee. Except as expressly provided herein, this Lease Agreement shall not terminate for any reason, including any defect in the Equipment or Lessor's title thereto or any destruction or loss of use of any item of Equipment.

**28. Funding Out**

Lessee shall have the option to terminate this Lease Agreement at the end of a fiscal period contingent upon the following conditions: (i) Appropriation of monies for this Lease Agreement has been terminated or not continued and such non-appropriation is memorialized in a formal act by the Lessee; (ii) Lessee has given Lessor one hundred twenty (120) days written notice of any likely non-appropriation; (iii) Lessee pays to Lessor all monies due and payable at the time of the termination plus all monies that would have become due and payable during the entire term of this Lease Agreement but for the termination; and (iv) Lessee's return, in compliance with this Lease Agreement, of all of the equipment listed on and subject to this Lease Agreement. Lessee further agrees that: (i) any monies authorized and allocated to it for the rental, lease or acquisition of equipment that is like the equipment listed on and subject to this Lease Agreement shall be remitted to Lessor until such monies or funds are exhausted; (ii) Lessee will use its best efforts to obtain authorization and appropriation of monies or funds in order to fulfill its obligations associated with this Lease Agreement by including in its budget for each fiscal appropriation period a formal request for monies in an amount no less than Lessee's total monetary obligations for the fiscal appropriations period; and (iii) Lessee will not seek the cancellation or termination of this Lease Agreement in order to permit Lessee to acquire similar or like equipment or to allocate funds to directly or indirectly perform essentially the same or similar applications, functions or purposes for which the equipment was or is being used.

**29. Headings**

Section headings herein are used for convenience only and shall not otherwise affect the provisions of this Lease Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be signed by their respective duly authorized representatives.

**Every Term is Agreed to and Accepted:**

WINTHROP RESOURCES CORPORATION

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

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**Every Term is Agreed to and Accepted:**

HAYWOOD COUNTY, NORTH CAROLINA

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

Print Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

**CERTIFICATION**

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
(Signature of finance officer)

**LEASE SCHEDULE NO. 002**

This Lease Schedule is issued pursuant to the Lease Agreement Number HA051116 dated May 11, 2016. The terms of the Lease Agreement and the terms and conditions of Certificates of Acceptance executed pursuant to Lease Schedule 002, including Installation Dates and descriptions and serial numbers of Equipment contained therein, are a part hereof and are incorporated by reference herein.

**LESSOR**

Winthrop Resources Corporation  
11100 Wayzata Boulevard  
Suite 800  
Minnetonka, MN 55305

**LESSEE**

Haywood County, North Carolina  
215 North Main Street, Room 416  
Waynesville, NC 28786

**SUPPLIER OF EQUIPMENT**

Various

**LOCATION OF INSTALLATION**

Various

Term of Lease from Commencement Date: 42 months

Monthly Lease Charge: \$8,560.00

Anticipated Delivery and Installation: May - August 2016

Security Deposit: Upon Lessee's execution of this Lease Schedule, Lessee shall deliver a security deposit in the amount of \$8,560.00. If there is no event of default, this security deposit may be applied toward the total amounts due pursuant to this Lease Schedule.

**EQUIPMENT**

<b><u>MANUFACTURER</u></b>	<b><u>QTY</u></b>	<b><u>MACHINE/MODEL</u></b>	<b><u>EQUIPMENT DESCRIPTION (including features)</u></b>
<b>SEE ATTACHMENT A</b>			

This Lease Schedule is contingent on Lessee receiving any and all required approvals, including Local Governmental Commission approval, that may be necessary to authorize Lessee's obligations hereunder. Upon the following events occurring, Lessor will cease all Lease Charges associated with Lease Schedule Number 001R of Lease Agreement Number HA061113 ("Lease Schedule 001R"): (i) Receipt by Lessor of all Lease Charges (and taxes) due (or levied) through June 30, 2016 associated with Lease Schedule 001R; (ii) execution and delivery of this Lease Schedule Number 002 ("Lease Schedule 002"). Lessee shall return of all of the equipment listed on Attachment A to this Lease Schedule 002 under the words "Returning Equipment" (the "Returning Equipment") by December 31, 2016. If the Returning Equipment is not received by December 31, 2016, Lessee agrees to pay additional Lease Charges for the Returning Equipment in the amount of \$3,000.00 for each month or portion of a month until all of the Returning Equipment is received by Lessor. The parties agree that Lessor shall retain and keep, and that Lessee releases any claim to, all monies, received by Lessor that are related to Lease Schedule 001R and \$8,560.00 of the security deposit associated with Lease Schedule 001R shall transfer to and become the security deposit for this Lease Schedule 002. Lessee hereby certifies that all of the Equipment listed on Attachment A to this Lease Schedule 002 under the words "Transferring Equipment" (the "Transferring Equipment") is (i) in its possession, (ii) in good working order and satisfactory in all respects, and (iii) irrevocably accepted as of July 1, 2016. Therefore, the Installation Date of the Transferring Equipment shall be July 1, 2016. The Monthly Lease Charge will be prorated and charged as interim rent between the date an item of equipment is accepted and the Commencement Date. Lessee agrees to lease from Lessor new Equipment (excluding Transferring Equipment) that has an acquisition value of \$263,817.43.

LESSOR IS NOT ACTING AS A MUNICIPAL ADVISOR OR FINANCIAL ADVISOR TO LESSEE, AND LESSOR HAS NO FIDUCIARY DUTY TO LESSEE OR ANY OTHER PERSON PURSUANT TO SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934. THE INFORMATION CONTAINED IN THIS LEASE AGREEMENT OR ANY OTHER DOCUMENT PROVIDED BY LESSOR IS NOT INTENDED TO BE AND SHOULD NOT BE CONSTRUED AS "ADVICE" WITHIN THE MEANING OF SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934 AND THE MUNICIPAL ADVISOR RULES OF THE SEC. LESSEE HAS DISCUSSED THIS LEASE AGREEMENT WITH ITS OWN FINANCIAL AND/OR MUNICIPAL, LEGAL, ACCOUNTING, TAX AND OTHER ADVISORS AS LESSEE DEEMS APPROPRIATE.

**CERTIFICATION**

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
(Signature of finance officer)

**Agreed to and Accepted:**

**WINTHROP RESOURCES CORPORATION**  
**"LESSOR"**

**Agreed to and Accepted:**

**HAYWOOD COUNTY, NORTH CAROLINA**  
**"LESSEE"**

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

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

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

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

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

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

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

Lease Schedule Number: 002

**ATTACHMENT A**

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (including features)</u>
<b><u>Transferring Equipment</u></b>			
Cisco	1	UCS-SP6-ES-B22	UCS SP B22 Entry Bundle 2x6248 1xCH 2xB22w/2XE52420 48GB
Cisco	2	UCS-SP6-ES-B22M3	B22M3 w/2xE5-242048GBVIC1240 (Not a standalone SKU)
Cisco	4	N20-BBLKD	UCS 2.5 Inch HDD Blanking Panel
Cisco	4	N20-BHTS1	CPU Heat Sink for UCS B22 M3 and B200 M1/M2 Blade Servers
Cisco	4	UCS-CPU-E5-2420	1.90 GHz E5-2420/95W 6C/15MB Cache/DDR3 1333MHz
Cisco	12	UCS-MR-1X082RY-A	8GB DDR3-1600MHz RDIMM/PC3-12800/Dual Rank 1.35v
Cisco	7	UCSB-MLOM-40G-01	Cisco UCS VIC 1240 Modular LOM for M3 Blade Servers
Cisco	1	UCS-SP-INFRA-CHSS	UCS SP Base 5108 Blade Server AC Chassis
Cisco	1	N01-UAC1	Single Phase AC Power Module for UCS 5108
Cisco	1	N20-CAK	Accessory Kit for UCS 5108 Blade Server Chassis
Cisco	8	N20-CBLKB1	Blade Slot Banking Panel for UCS 5108/Single Slot
Cisco	8	N20-FAN5	Fan Module for UCS 5108
Cisco	1	N20-FW011	UCS Blade Server Chassis FW Package 2.1
Cisco	1	RP-LS	RecoverPoint License Solution
Cisco	1	456-104-615	RP/SE LOC for LPS V5=IC
Cisco	2	UCS-IOM-2208XP	UCS 2208XP I/O Module (8 External, 32 Internal 10Gb Ports)
Cisco	4	UCSB-PSU-2500ACPL	2500W Platinum AC Hot Plug Power Supply for UCS 5108 Chassis
Cisco	4	CAB-C19-CBN	Cabinet Jumper Power Cord, 250VAC 16A, C20-C19 Connectors
Cisco	2	UCS-SP-INFRA-FI	UCS 6248 FI w/12p LIC Cables Bundle
Cisco	12	DS-SFP-FC8G-SW	8Gbps Fibre Channel SW SFP+ LC
Cisco	8	SFP-10G-SR	10GBase-SR SFP Module
Cisco	25	SFP-H10GB-CU3M	10GBase-CU SFP+ Cable 3 Meter
Cisco	2	UCS-ACC-6248UP	UCS 6248UP Chassis Accessory Kit
Cisco	2	UCS-BLKE-6200	UCS 6200 Series Expansion Module Blank
Cisco	4	UCS-FAN-6248UP	UCS 6248UP Fan Module
Cisco	2	UCS-FI-DL2	UCS 6248 Layer 2 Daughter Card
Cisco	4	UCS-PSU-6248UP-AC	UCS 6248UP Power Supply/100-240VAC
Cisco	16	GLC-T=	1000Base-T SFP
Cisco	5	UCSB-B200-M3-U	UCS B200 M3 Blade Server w/o CPU Memory HDD mLOM/Mezz (Upg)
Cisco	10	UCS-CPU-E5-2650	2.00GHz E5-2650/95W 8C/20MB Cache DDR3 1600MHz
Cisco	80	UCS-MR-1X162RY-A	16GB DDR3-1600MHz RDIMM/PC3-12800 Dual Rank 1.35v
Cisco	10	A03-D300GA2	300GB 6GB SAS 10K RPM SFF HDD/Hot Plug/Drive Sled Mounted
Cisco	10	UCSB-HS-01-EP	CPU Heat Sink for UCS B200 M3 and B420 M3
Cisco	1	N5K-C5548UP-FA	Nexus 5548 UP Chassis 32 10GbE Ports 2 PS 2 Fans
Cisco	1	N5K-C5548UP-FA	Nexus 5548 UP Chassis 32 10GbE Ports 2PS 2 Fans
Cisco	2	N55-BAS1K9	Layer 3 Base License for Nexus 5500 Platform
Cisco	2	N5548-ACC-KIT	Nexus 5548 Chassis Accessory Kit
Cisco	2	N55-M-BLNK	Nexus 5500 Module Blank Cover
Cisco	4	N55-PAC-750W	Nexus 5500 PS 750W Front to Back Airflow
Cisco	2	N55-D160L3-V2	Nexus 5548 Layer 3 Daughter Card Version 2
Cisco	1	SFP-H10GB-CU1M	10GBase-CU SFP+ Cable 1 Meter
Cisco	2	N55-8P-SSK9	Nexus 5500 Storage License 8 Ports
Cisco	2	N5KUK9-521N1.1B	Nexus 5000 Base OS Software Rel 5.2(1)N1(1b)
Cisco	8	CAB-9K12A-NA	Power Cord 125VAC 13A NEMA 5-15 Plug North America
Cisco	4	N5548P-FAN	Nexus 5548P Fan Module
Cisco	2	N2K-C2248TP-E	N2K-C2248TP-E-1GE (48x100/1000-T+4x10GE) Airflow/PS Option
Cisco	2	N2248TP-E-FA-BUN	Standard Airflow Pack: N2K-C2248TP-E-1GE 2 AC PS 1Fan
Cisco	2	N2K-C2232PP	N2K-C2232PP-10GE (32x1/10GE+8x10GE) Airflow/ Power Option
Cisco	4	CAB-C13-C14-2M	Power Cord Jumper C13-C14 Connectors 2 Meter Length
Cisco	2	N2232PP-FA-BUN	Standard Airflow Pack: N2K-C2232PP-10GE 2 AC PS 1Fan
Cisco	2	N10-MGT011	UCS Manager v2.1
Cisco	4	N2XX-ACPCI01=	Cisco UCS P81E Virtual Interface Card/2-Port 10Gbps
<b><u>Returning Equipment</u></b>			
EMC	1	NS120-AUX-CR	NS120 ARRAY NO FC. NO ISCSI PORTS. FIELD

**ATTACHMENT A**

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (including features)</u>
EMC	6	NS-SA07-010	DISK 1000GB 7.2K 512BPS SATA 3GB 32MB -R
EMC	1	V-NS4-14615K	CX4 VAULT 146GB 15K 4GB DRVIES
EMC	1	NS4-4PDAE	4G DAE FACTORY INSTALL
EMC	10	NS-4G15-300	300GB 15K 4GB FC 520BPS
EMC	1	NS122-C-FD	NS-120 INT-2DM-4GB-2 OP 10GE 2CU 1GE FLD
EMC	1	NS120-CS-FD	NS-120 CONTROL STATION (FIELD INSTALL)
EMC	1	NS120-IS-AL	NS120 ACCOMPANYING ISCSI LIC
EMC	1	NS120-CIFS-L	CELERRA NS-120 CIFS LICENSE
EMC	1	NS120-REPV2LU	NS-120 CELERRA REPLICATOR V2 ADD-ON LIC
EMC	1	VNX53D153015M	VNX5300 DPE; 15X3 DRV-MIN RCK 8X300G
EMC	5	V31-DAE-N-15	3U DAE WITH 15X3.5 INCH DRIVE SLOTS
EMC	1	VNX5300CS2M	VNX5300 2ND CONTROL STATION - MINI RACK
EMC	1	VNX5300CSM	VNX5300 CONTROL STATION - MINI RACK
EMC	1	VNX5300DMEM	VNX5300 DME: 1 DM+FC SLIC - MINI RACK
EMC	1	VNX5300DMM	VNX5300 ADD ON DM+FC SLIC - MINI RACK
EMC	2	VDMMXG2TWPBAS	VNX5300 2PT 10GBE TWINAZ DM MODULE-FACTRY
EMC	53	V3-VS15-300	300GB 15K SAS DISK DRIVE
EMC	3	FLV3VS6F-100	100GB FST CACHE FLSH 15X3.5IN DPE/DAE
EMC	17	V3-VS07-010	1TB 7200RPM 6GB SAS DISK DRIVE
EMC	1	VNXDMCBLD2S2S	VNX CABLE KIT FOR DPE+2 DM; 1 CS; 2 SPS
EMC	1	VNXFCSFPS	ADDITIONAL 2 G FC SFP FOR VNX 51/53
EMC	4	SFP-TWINACT-3M	SFP+ TO SFP+ 3M ACTIVE 10G CABLE
EMC	1	VNX53-KIT	DOCUMENTATION KIT FOR VNX5300
EMC	1	VNXSPSAS	2ND OPTIONAL SPS FOR VNX 51/53
EMC	1	VNXOE32	VNX BLK & FILE OE INYO
EMC	1	ADMNRP5300	VNX MOUNTING AND REPORTING 5300
EMC	1	VSPMXGFCOTWAS	VNX5300 2 PT FCOE IO MOD PAIR-TWAX
EMC	1	ESRS-GW-200	EMC SECURE REMOTE SUPPORT GATEWAY CLIENT
EMC	1	UNIU-V53	UNISPHERE UNIFIED & VNX OE VNX5300
EMC	1	BASE-V53	BASE FILE LICENSE (CIFS/FTP) FOR VNX5300
EMC	1	ADVP-V53	ADV FILE LICENSE (NFS; MPFS & PNFS) FOR 5300
EMC	1	FSTS-V53	FAST SUITE FOR VNX5300
EMC	1	LPS-V53	LOCAL PROTECTION SUITE FOR VNX5300

Agreed to and Accepted:  
**WINTHROP RESOURCES CORPORATION**  
 "LESSOR"

Agreed to and Accepted:  
**HAYWOOD COUNTY, NORTH CAROLINA**  
 "LESSEE"

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**LEASE SCHEDULE NO. 002**

This Lease Schedule is issued pursuant to the Lease Agreement Number HA051116 dated May 11, 2016. The terms of the Lease Agreement and the terms and conditions of Certificates of Acceptance executed pursuant to Lease Schedule 002, including Installation Dates and descriptions and serial numbers of Equipment contained therein, are a part hereof and are incorporated by reference herein.

**LESSOR**

Winthrop Resources Corporation  
11100 Wayzata Boulevard  
Suite 800  
Minnetonka, MN 55305

**LESSEE**

Haywood County, North Carolina  
215 North Main Street, Room 416  
Waynesville, NC 28786

**SUPPLIER OF EQUIPMENT**

Various

**LOCATION OF INSTALLATION**

Various

Term of Lease from Commencement Date: 42 months

Monthly Lease Charge: \$8,560.00

Anticipated Delivery and Installation: May - August 2016

Security Deposit: Upon Lessee's execution of this Lease Schedule, Lessee shall deliver a security deposit in the amount of \$8,560.00. If there is no event of default, this security deposit may be applied toward the total amounts due pursuant to this Lease Schedule.

**EQUIPMENT**

<b><u>MANUFACTURER</u></b>	<b><u>QTY</u></b>	<b><u>MACHINE/MODEL</u></b>	<b><u>EQUIPMENT DESCRIPTION (including features)</u></b>
<b>SEE ATTACHMENT A</b>			

This Lease Schedule is contingent on Lessee receiving any and all required approvals, including Local Governmental Commission approval, that may be necessary to authorize Lessee's obligations hereunder. Upon the following events occurring, Lessor will cease all Lease Charges associated with Lease Schedule Number 001R of Lease Agreement Number HA061113 ("Lease Schedule 001R"): (i) Receipt by Lessor of all Lease Charges (and taxes) due (or levied) through June 30, 2016 associated with Lease Schedule 001R; (ii) execution and delivery of this Lease Schedule Number 002 ("Lease Schedule 002"). Lessee shall return of all of the equipment listed on Attachment A to this Lease Schedule 002 under the words "Returning Equipment" (the "Returning Equipment") by December 31, 2016. If the Returning Equipment is not received by December 31, 2016, Lessee agrees to pay additional Lease Charges for the Returning Equipment in the amount of \$3,000.00 for each month or portion of a month until all of the Returning Equipment is received by Lessor. The parties agree that Lessor shall retain and keep, and that Lessee releases any claim to, all monies, received by Lessor that are related to Lease Schedule 001R and \$8,560.00 of the security deposit associated with Lease Schedule 001R shall transfer to and become the security deposit for this Lease Schedule 002. Lessee hereby certifies that all of the Equipment listed on Attachment A to this Lease Schedule 002 under the words "Transferring Equipment" (the "Transferring Equipment") is (i) in its possession, (ii) in good working order and satisfactory in all respects, and (iii) irrevocably accepted as of July 1, 2016. Therefore, the Installation Date of the Transferring Equipment shall be July 1, 2016. The Monthly Lease Charge will be prorated and charged as interim rent between the date an item of equipment is accepted and the Commencement Date. Lessee agrees to lease from Lessor new Equipment (excluding Transferring Equipment) that has an acquisition value of \$263,817.43.

LESSOR IS NOT ACTING AS A MUNICIPAL ADVISOR OR FINANCIAL ADVISOR TO LESSEE, AND LESSOR HAS NO FIDUCIARY DUTY TO LESSEE OR ANY OTHER PERSON PURSUANT TO SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934. THE INFORMATION CONTAINED IN THIS LEASE AGREEMENT OR ANY OTHER DOCUMENT PROVIDED BY LESSOR IS NOT INTENDED TO BE AND SHOULD NOT BE CONSTRUED AS "ADVICE" WITHIN THE MEANING OF SECTION 15B OF THE SECURITIES EXCHANGE ACT OF 1934 AND THE MUNICIPAL ADVISOR RULES OF THE SEC. LESSEE HAS DISCUSSED THIS LEASE AGREEMENT WITH ITS OWN FINANCIAL AND/OR MUNICIPAL, LEGAL, ACCOUNTING, TAX AND OTHER ADVISORS AS LESSEE DEEMS APPROPRIATE.

**CERTIFICATION**

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
(Signature of finance officer)

**Agreed to and Accepted:**

**WINTHROP RESOURCES CORPORATION**  
**"LESSOR"**

**Agreed to and Accepted:**

**HAYWOOD COUNTY, NORTH CAROLINA**  
**"LESSEE"**

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

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

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

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

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

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

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

Lease Schedule Number: 002

**ATTACHMENT A**

<b><u>MANUFACTURER</u></b>	<b><u>QTY</u></b>	<b><u>MACHINE/MODEL</u></b>	<b><u>EQUIPMENT DESCRIPTION (including features)</u></b>
<b><u>Transferring Equipment</u></b>			
Cisco	1	UCS-SP6-ES-B22	UCS SP B22 Entry Bundle 2x6248 1xCH 2xB22w/2XE52420 48GB
Cisco	2	UCS-SP6-ES-B22M3	B22M3 w/2xE5-242048GBVIC1240 (Not a standalone SKU)
Cisco	4	N20-BBLKD	UCS 2.5 Inch HDD Blanking Panel
Cisco	4	N20-BHTS1	CPU Heat Sink for UCS B22 M3 and B200 M1/M2 Blade Servers
Cisco	4	UCS-CPU-E5-2420	1.90 GHz E5-2420/95W 6C/15MB Cache/DDR3 1333MHz
Cisco	12	UCS-MR-1X082RY-A	8GB DDR3-1600MHz RDIMM/PC3-12800/Dual Rank 1.35v
Cisco	7	UCSB-MLOM-40G-01	Cisco UCS VIC 1240 Modular LOM for M3 Blade Servers
Cisco	1	UCS-SP-INFRA-CHSS	UCS SP Base 5108 Blade Server AC Chassis
Cisco	1	N01-UAC1	Single Phase AC Power Module for UCS 5108
Cisco	1	N20-CAK	Accessory Kit for UCS 5108 Blade Server Chassis
Cisco	8	N20-CBLKB1	Blade Slot Banking Panel for UCS 5108/Single Slot
Cisco	8	N20-FAN5	Fan Module for UCS 5108
Cisco	1	N20-FW011	UCS Blade Server Chassis FW Package 2.1
Cisco	1	RP-LS	RecoverPoint License Solution
Cisco	1	456-104-615	RP/SE LOC for LPS V5=IC
Cisco	2	UCS-IOM-2208XP	UCS 2208XP I/O Module (8 External, 32 Internal 10Gb Ports)
Cisco	4	UCSB-PSU-2500ACPL	2500W Platinum AC Hot Plug Power Supply for UCS 5108 Chassis
Cisco	4	CAB-C19-CBN	Cabinet Jumper Power Cord, 250VAC 16A, C20-C19 Connectors
Cisco	2	UCS-SP-INFRA-FI	UCS 6248 FI w/12p LIC Cables Bundle
Cisco	12	DS-SFP-FC8G-SW	8Gbps Fibre Channel SW SFP+ LC
Cisco	8	SFP-10G-SR	10GBase-SR SFP Module
Cisco	25	SFP-H10GB-CU3M	10GBase-CU SFP+ Cable 3 Meter
Cisco	2	UCS-ACC-6248UP	UCS 6248UP Chassis Accessory Kit
Cisco	2	UCS-BLKE-6200	UCS 6200 Series Expansion Module Blank
Cisco	4	UCS-FAN-6248UP	UCS 6248UP Fan Module
Cisco	2	UCS-FI-DL2	UCS 6248 Layer 2 Daughter Card
Cisco	4	UCS-PSU-6248UP-AC	UCS 6248UP Power Supply/100-240VAC
Cisco	16	GLC-T=	1000Base-T SFP
Cisco	5	UCSB-B200-M3-U	UCS B200 M3 Blade Server w/o CPU Memory HDD mLOM/Mezz (Upg)
Cisco	10	UCS-CPU-E5-2650	2.00GHz E5-2650/95W 8C/20MB Cache DDR3 1600MHz
Cisco	80	UCS-MR-1X162RY-A	16GB DDR3-1600MHz RDIMM/PC3-12800 Dual Rank 1.35v
Cisco	10	A03-D300GA2	300GB 6GB SAS 10K RPM SFF HDD/Hot Plug/Drive Sled Mounted
Cisco	10	UCSB-HS-01-EP	CPU Heat Sink for UCS B200 M3 and B420 M3
Cisco	1	N5K-C5548UP-FA	Nexus 5548 UP Chassis 32 10GbE Ports 2 PS 2 Fans
Cisco	1	N5K-C5548UP-FA	Nexus 5548 UP Chassis 32 10GbE Ports 2PS 2 Fans
Cisco	2	N55-BAS1K9	Layer 3 Base License for Nexus 5500 Platform
Cisco	2	N5548-ACC-KIT	Nexus 5548 Chassis Accessory Kit
Cisco	2	N55-M-BLNK	Nexus 5500 Module Blank Cover
Cisco	4	N55-PAC-750W	Nexus 5500 PS 750W Front to Back Airflow
Cisco	2	N55-D160L3-V2	Nexus 5548 Layer 3 Daughter Card Version 2
Cisco	1	SFP-H10GB-CU1M	10GBase-CU SFP+ Cable 1 Meter
Cisco	2	N55-8P-SSK9	Nexus 5500 Storage License 8 Ports
Cisco	2	N5KUK9-521N1.1B	Nexus 5000 Base OS Software Rel 5.2(1)N1(1b)
Cisco	8	CAB-9K12A-NA	Power Cord 125VAC 13A NEMA 5-15 Plug North America
Cisco	4	N5548P-FAN	Nexus 5548P Fan Module
Cisco	2	N2K-C2248TP-E	N2K-C2248TP-E-1GE (48x100/1000-T+4x10GE) Airflow/PS Option
Cisco	2	N2248TP-E-FA-BUN	Standard Airflow Pack: N2K-C2248TP-E-1GE 2 AC PS 1Fan
Cisco	2	N2K-C2232PP	N2K-C2232PP-10GE (32x1/10GE+8x10GE) Airflow/ Power Option
Cisco	4	CAB-C13-C14-2M	Power Cord Jumper C13-C14 Connectors 2 Meter Length
Cisco	2	N2232PP-FA-BUN	Standard Airflow Pack: N2K-C2232PP-10GE 2 AC PS 1Fan
Cisco	2	N10-MGT011	UCS Manager v2.1
Cisco	4	N2XX-ACPCI01=	Cisco UCS P81E Virtual Interface Card/2-Port 10Gbps
<b><u>Returning Equipment</u></b>			
EMC	1	NS120-AUX-CR	NS120 ARRAY NO FC. NO ISCSI PORTS. FIELD

Lease Schedule Number: 002

**ATTACHMENT A**

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (including features)</u>
EMC	6	NS-SA07-010	DISK 1000GB 7.2K 512BPS SATA 3GB 32MB -R
EMC	1	V-NS4-14615K	CX4 VAULT 146GB 15K 4GB DRVIES
EMC	1	NS4-4PDAE	4G DAE FACTORY INSTALL
EMC	10	NS-4G15-300	300GB 15K 4GB FC 520BPS
EMC	1	NS122-C-FD	NS-120 INT-2DM-4GB-2 OP 10GE 2CU 1GE FLD
EMC	1	NS120-CS-FD	NS-120 CONTROL STATION (FIELD INSTALL)
EMC	1	NS120-IS-AL	NS120 ACCOMPANYING ISCSI LIC
EMC	1	NS120-CIFS-L	CELERRA NS-120 CIFS LICENSE
EMC	1	NS120-REPV2LU	NS-120 CELERRA REPLICATOR V2 ADD-ON LIC
EMC	1	VNX53D153015M	VNX5300 DPE; 15X3 DRV-MIN RCK 8X300G
EMC	5	V31-DAE-N-15	3U DAE WITH 15X3.5 INCH DRIVE SLOTS
EMC	1	VNX5300CS2M	VNX5300 2ND CONTROL STATION - MINI RACK
EMC	1	VNX5300CSM	VNX5300 CONTROL STATION - MINI RACK
EMC	1	VNX5300DMEM	VNX5300 DME: 1 DM+FC SLIC - MINI RACK
EMC	1	VNX5300DMM	VNX5300 ADD ON DM+FC SLIC - MINI RACK
EMC	2	VDMMXG2TWPBAS	VNX5300 2PT 10GBE TWINAZ DM MODULE-FACTRY
EMC	53	V3-VS15-300	300GB 15K SAS DISK DRIVE
EMC	3	FLV3VS6F-100	100GB FST CACHE FLSH 15X3.5IN DPE/DAE
EMC	17	V3-VS07-010	1TB 7200RPM 6GB SAS DISK DRIVE
EMC	1	VNXDMCBLD2S2S	VNX CABLE KIT FOR DPE+2 DM; 1 CS; 2 SPS
EMC	1	VNXFCSFPS	ADDITIONAL 2 G FC SFP FOR VNX 51/53
EMC	4	SFP-TWINACT-3M	SFP+ TO SFP+ 3M ACTIVE 10G CABLE
EMC	1	VNX53-KIT	DOCUMENTATION KIT FOR VNX5300
EMC	1	VNXSPSAS	2ND OPTIONAL SPS FOR VNX 51/53
EMC	1	VNXOE32	VNX BLK & FILE OE INYO
EMC	1	ADMNRP5300	VNX MOUNTING AND REPORTING 5300
EMC	1	VSPMXGFCOTWAS	VNX5300 2 PT FCOE IO MOD PAIR-TWAX
EMC	1	ESRS-GW-200	EMC SECURE REMOTE SUPPORT GATEWAY CLIENT
EMC	1	UNIU-V53	UNISPHERE UNIFIED & VNX OE VNX5300
EMC	1	BASE-V53	BASE FILE LICENSE (CIFS/FTP) FOR VNX5300
EMC	1	ADVP-V53	ADV FILE LICENSE (NFS; MPFS & PNFS) FOR 5300
EMC	1	FSTS-V53	FAST SUITE FOR VNX5300
EMC	1	LPS-V53	LOCAL PROTECTION SUITE FOR VNX5300

Agreed to and Accepted:  
**WINTHROP RESOURCES CORPORATION**  
 "LESSOR"

Agreed to and Accepted:  
**HAYWOOD COUNTY, NORTH CAROLINA**  
 "LESSEE"

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**LEASE SCHEDULE NO. 002**

This Lease Schedule is issued pursuant to the Lease Agreement Number HA051116 dated May 11, 2016. The terms of the Lease Agreement and the terms and conditions of Certificates of Acceptance executed pursuant to Lease Schedule 002, including Installation Dates and descriptions and serial numbers of Equipment contained therein, are a part hereof and are incorporated by reference herein.

**LESSOR**

Winthrop Resources Corporation  
11100 Wayzata Boulevard  
Suite 800  
Minnetonka, MN 55305

**LESSEE**

Haywood County, North Carolina  
215 North Main Street, Room 416  
Waynesville, NC 28786

**SUPPLIER OF EQUIPMENT**

Various

**LOCATION OF INSTALLATION**

Various

Term of Lease from Commencement Date: 42 months

Monthly Lease Charge: \$8,560.00

Anticipated Delivery and Installation: May - August 2016

Security Deposit: Upon Lessee's execution of this Lease Schedule, Lessee shall deliver a security deposit in the amount of \$8,560.00. If there is no event of default, this security deposit may be applied toward the total amounts due pursuant to this Lease Schedule.

**EQUIPMENT**

<u><b>MANUFACTURER</b></u>	<u><b>QTY</b></u>	<u><b>MACHINE/MODEL</b></u>	<u><b>EQUIPMENT DESCRIPTION (including features)</b></u>
<b>SEE ATTACHMENT A</b>			

This Lease Schedule is contingent on Lessee receiving any and all required approvals, including Local Governmental Commission approval, that may be necessary to authorize Lessee's obligations hereunder. Upon the following events occurring, Lessor will cease all Lease Charges associated with Lease Schedule Number 001R of Lease Agreement Number HA061113 ("Lease Schedule 001R"): (i) Receipt by Lessor of all Lease Charges (and taxes) due (or levied) through June 30, 2016 associated with Lease Schedule 001R; (ii) execution and delivery of this Lease Schedule Number 002 ("Lease Schedule 002"). Lessee shall return of all of the equipment listed on Attachment A to this Lease Schedule 002 under the words "Returning Equipment" (the "Returning Equipment") by December 31, 2016. If the Returning Equipment is not received by December 31, 2016, Lessee agrees to pay additional Lease Charges for the Returning Equipment in the amount of \$3,000.00 for each month or portion of a month until all of the Returning Equipment is received by Lessor. The parties agree that Lessor shall retain and keep, and that Lessee releases any claim to, all monies, received by Lessor that are related to Lease Schedule 001R and \$8,560.00 of the security deposit associated with Lease Schedule 001R shall transfer to and become the security deposit for this Lease Schedule 002. Lessee hereby certifies that all of the Equipment listed on Attachment A to this Lease Schedule 002 under the words "Transferring Equipment" (the "Transferring Equipment") is (i) in its possession, (ii) in good working order and satisfactory in all respects, and (iii) irrevocably accepted as of July 1, 2016. Therefore, the Installation Date of the Transferring Equipment shall be July 1, 2016. The Monthly Lease Charge will be prorated and charged as interim rent between the date an item of equipment is accepted and the Commencement Date. Lessee agrees to lease from Lessor new Equipment (excluding Transferring Equipment) that has an acquisition value of \$263,817.43.

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**CERTIFICATION**

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
(Signature of finance officer)

**Agreed to and Accepted:**  
**WINTHROP RESOURCES CORPORATION**  
**"LESSOR"**

**Agreed to and Accepted:**  
**HAYWOOD COUNTY, NORTH CAROLINA**  
**"LESSEE"**

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

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

**Print Name:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

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

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

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

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

Lease Schedule Number: 002

**ATTACHMENT A**

<b><u>MANUFACTURER</u></b>	<b><u>QTY</u></b>	<b><u>MACHINE/MODEL</u></b>	<b><u>EQUIPMENT DESCRIPTION (including features)</u></b>
<b><u>Transferring Equipment</u></b>			
Cisco	1	UCS-SP6-ES-B22	UCS SP B22 Entry Bundle 2x6248 1xCH 2xB22w/2XE52420 48GB
Cisco	2	UCS-SP6-ES-B22M3	B22M3 w/2xE5-242048GBVIC1240 (Not a standalone SKU)
Cisco	4	N20-BBLKD	UCS 2.5 Inch HDD Blanking Panel
Cisco	4	N20-BHTS1	CPU Heat Sink for UCS B22 M3 and B200 M1/M2 Blade Servers
Cisco	4	UCS-CPU-E5-2420	1.90 GHz E5-2420/95W 6C/15MB Cache/DDR3 1333MHz
Cisco	12	UCS-MR-1X082RY-A	8GB DDR3-1600MHz RDIMM/PC3-12800/Dual Rank 1.35v
Cisco	7	UCSB-MLOM-40G-01	Cisco UCS VIC 1240 Modular LOM for M3 Blade Servers
Cisco	1	UCS-SP-INFRA-CHSS	UCS SP Base 5108 Blade Server AC Chassis
Cisco	1	N01-UAC1	Single Phase AC Power Module for UCS 5108
Cisco	1	N20-CAK	Accessory Kit for UCS 5108 Blade Server Chassis
Cisco	8	N20-CBLKB1	Blade Slot Banking Panel for UCS 5108/Single Slot
Cisco	8	N20-FAN5	Fan Module for UCS 5108
Cisco	1	N20-FW011	UCS Blade Server Chassis FW Package 2.1
Cisco	1	RP-LS	RecoverPoint License Solution
Cisco	1	456-104-615	RP/SE LOC for LPS V5=IC
Cisco	2	UCS-IOM-2208XP	UCS 2208XP I/O Module (8 External, 32 Internal 10Gb Ports)
Cisco	4	UCSB-PSU-2500ACPL	2500W Platinum AC Hot Plug Power Supply for UCS 5108 Chassis
Cisco	4	CAB-C19-CBN	Cabinet Jumper Power Cord, 250VAC 16A, C20-C19 Connectors
Cisco	2	UCS-SP-INFRA-FI	UCS 6248 FI w/12p LIC Cables Bundle
Cisco	12	DS-SFP-FC8G-SW	8Gbps Fibre Channel SW SFP+ LC
Cisco	8	SFP-10G-SR	10GBase-SR SFP Module
Cisco	25	SFP-H10GB-CU3M	10GBase-CU SFP+ Cable 3 Meter
Cisco	2	UCS-ACC-6248UP	UCS 6248UP Chassis Accessory Kit
Cisco	2	UCS-BLKE-6200	UCS 6200 Series Expansion Module Blank
Cisco	4	UCS-FAN-6248UP	UCS 6248UP Fan Module
Cisco	2	UCS-FI-DL2	UCS 6248 Layer 2 Daughter Card
Cisco	4	UCS-PSU-6248UP-AC	UCS 6248UP Power Supply/100-240VAC
Cisco	16	GLC-T=	1000Base-T SFP
Cisco	5	UCSB-B200-M3-U	UCS B200 M3 Blade Server w/o CPU Memory HDD mLOM/Mezz (Upg)
Cisco	10	UCS-CPU-E5-2650	2.00GHz E5-2650/95W 8C/20MB Cache DDR3 1600MHz
Cisco	80	UCS-MR-1X162RY-A	16GB DDR3-1600MHz RDIMM/PC3-12800 Dual Rank 1.35v
Cisco	10	A03-D300GA2	300GB 6GB SAS 10K RPM SFF HDD/Hot Plug/Drive Sled Mounted
Cisco	10	UCSB-HS-01-EP	CPU Heat Sink for UCS B200 M3 and B420 M3
Cisco	1	N5K-C5548UP-FA	Nexus 5548 UP Chassis 32 10GbE Ports 2 PS 2 Fans
Cisco	1	N5K-C5548UP-FA	Nexus 5548 UP Chassis 32 10GbE Ports 2PS 2 Fans
Cisco	2	N55-BAS1K9	Layer 3 Base License for Nexus 5500 Platform
Cisco	2	N5548-ACC-KIT	Nexus 5548 Chassis Accessory Kit
Cisco	2	N55-M-BLNK	Nexus 5500 Module Blank Cover
Cisco	4	N55-PAC-750W	Nexus 5500 PS 750W Front to Back Airflow
Cisco	2	N55-D160L3-V2	Nexus 5548 Layer 3 Daughter Card Version 2
Cisco	1	SFP-H10GB-CU1M	10GBase-CU SFP+ Cable 1 Meter
Cisco	2	N55-8P-SSK9	Nexus 5500 Storage License 8 Ports
Cisco	2	N5KUK9-521N1.1B	Nexus 5000 Base OS Software Rel 5.2(1)N1(1b)
Cisco	8	CAB-9K12A-NA	Power Cord 125VAC 13A NEMA 5-15 Plug North America
Cisco	4	N5548P-FAN	Nexus 5548P Fan Module
Cisco	2	N2K-C2248TP-E	N2K-C2248TP-E-1GE (48x100/1000-T+4x10GE) Airflow/PS Option
Cisco	2	N2248TP-E-FA-BUN	Standard Airflow Pack: N2K-C2248TP-E-1GE 2 AC PS 1Fan
Cisco	2	N2K-C2232PP	N2K-C2232PP-10GE (32x1/10GE+8x10GE) Airflow/ Power Option
Cisco	4	CAB-C13-C14-2M	Power Cord Jumper C13-C14 Connectors 2 Meter Length
Cisco	2	N2232PP-FA-BUN	Standard Airflow Pack: N2K-C2232PP-10GE 2 AC PS 1Fan
Cisco	2	N10-MGT011	UCS Manager v2.1
Cisco	4	N2XX-ACPCI01=	Cisco UCS P81E Virtual Interface Card/2-Port 10Gbps
<b><u>Returning Equipment</u></b>			
EMC	1	NS120-AUX-CR	NS120 ARRAY NO FC. NO ISCSI PORTS. FIELD

Lease Schedule Number: 002

**ATTACHMENT A**

<u>MANUFACTURER</u>	<u>QTY</u>	<u>MACHINE/MODEL</u>	<u>EQUIPMENT DESCRIPTION (including features)</u>
EMC	6	NS-SA07-010	DISK 1000GB 7.2K 512BPS SATA 3GB 32MB -R
EMC	1	V-NS4-14615K	CX4 VAULT 146GB 15K 4GB DRVIES
EMC	1	NS4-4PDAE	4G DAE FACTORY INSTALL
EMC	10	NS-4G15-300	300GB 15K 4GB FC 520BPS
EMC	1	NS122-C-FD	NS-120 INT-2DM-4GB-2 OP 10GE 2CU 1GE FLD
EMC	1	NS120-CS-FD	NS-120 CONTROL STATION (FIELD INSTALL)
EMC	1	NS120-IS-AL	NS120 ACCOMPANYING ISCSI LIC
EMC	1	NS120-CIFS-L	CELERRA NS-120 CIFS LICENSE
EMC	1	NS120-REPV2LU	NS-120 CELERRA REPLICATOR V2 ADD-ON LIC
EMC	1	VNX53D153015M	VNX5300 DPE; 15X3 DRV-MIN RCK 8X300G
EMC	5	V31-DAE-N-15	3U DAE WITH 15X3.5 INCH DRIVE SLOTS
EMC	1	VNX5300CS2M	VNX5300 2ND CONTROL STATION - MINI RACK
EMC	1	VNX5300CSM	VNX5300 CONTROL STATION - MINI RACK
EMC	1	VNX5300DMMEM	VNX5300 DME: 1 DM+FC SLIC - MINI RACK
EMC	1	VNX5300DMM	VNX5300 ADD ON DM+FC SLIC - MINI RACK
EMC	2	VDMMXG2TWBAS	VNX5300 2PT 10GBE TWINAZ DM MODULE-FACTRY
EMC	53	V3-VS15-300	300GB 15K SAS DISK DRIVE
EMC	3	FLV3VS6F-100	100GB FST CACHE FLSH 15X3.5IN DPE/DAE
EMC	17	V3-VS07-010	1TB 7200RPM 6GB SAS DISK DRIVE
EMC	1	VNXDMCBLD2S2S	VNX CABLE KIT FOR DPE+2 DM; 1 CS; 2 SPS
EMC	1	VNXFCSFPS	ADDITIONAL 2 G FC SFP FOR VNX 51/53
EMC	4	SFP-TWINACT-3M	SFP+ TO SFP+ 3M ACTIVE 10G CABLE
EMC	1	VNX53-KIT	DOCUMENTATION KIT FOR VNX5300
EMC	1	VNXSPSAS	2ND OPTIONAL SPS FOR VNX 51/53
EMC	1	VNXOE32	VNX BLK & FILE OE INYO
EMC	1	ADMNRP5300	VNX MOUNTING AND REPORTING 5300
EMC	1	VSPMXGFCOTWAS	VNX5300 2 PT FCOE IO MOD PAIR-TWAX
EMC	1	ESRS-GW-200	EMC SECURE REMOTE SUPPORT GATEWAY CLIENT
EMC	1	UNIU-V53	UNISPHERE UNIFIED & VNX OE VNX5300
EMC	1	BASE-V53	BASE FILE LICENSE (CIFS/FTP) FOR VNX5300
EMC	1	ADVP-V53	ADV FILE LICENSE (NFS; MPFS & PNFS) FOR 5300
EMC	1	FSTS-V53	FAST SUITE FOR VNX5300
EMC	1	LPS-V53	LOCAL PROTECTION SUITE FOR VNX5300

Agreed to and Accepted:  
**WINTHROP RESOURCES CORPORATION**  
 "LESSOR"

Agreed to and Accepted:  
**HAYWOOD COUNTY, NORTH CAROLINA**  
 "LESSEE"

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_