

**(Month) (Year) EQUIPMENT LEASE-PURCHASE AGREEMENT**

**CERTIFICATE OF THE STATE OF MARYLAND**

I **HEREBY CERTIFY** as of the \_\_\_ day of \_\_\_, 2010, that I am the Chief Deputy Treasurer of Maryland (the "Treasurer"), acting on behalf of the various departments or agencies (the "Agencies") of the State of Maryland (the "State") using the Equipment (the "Equipment"), that I hold the office set forth below, and that I hereby execute and deliver this Certificate for the benefit of all persons interested in the execution and delivery of that certain \_\_\_\_\_ Equipment Lease-Purchase Agreement dated as of \_\_\_\_\_, 2010 and Equipment Schedule (the "Equipment Schedule"), and, each dated as of \_\_\_\_\_, by and between \_\_\_\_\_ and the State (collectively, the "Lease"). Terms defined in the Lease and the Equipment Schedules are used in this Certificate with the same meanings as used therein. I do further certify as follows:

1. I am the Chief Deputy Treasurer of the State, and in such capacity, I am familiar with and have personal knowledge of the matters hereinafter stated.

2. The signature appearing opposite my name is my true and genuine signature:

<u>OFFICE</u>	<u>NAME</u>	<u>SIGNATURE</u>
Chief Deputy Treasurer	Bernadette T. Benik	_____

3. The Lease, the Equipment Schedule thereto, and all certificates and other documents (collectively, the "Financing Documents"), to which the State is a party, as executed and delivered or as approved, as appropriate, are in compliance with the State's and the Agencies operating budgets as proposed for the fiscal year 2011, which were previously validly adopted and are in full force and effect as of July 1, 2010, subject to such changes and revisions therein as may be approved by the representatives of the State executing the same. In making this certification, I have relied upon the representations of the appropriate official or officials of the Department of Budget and Management (the "Department") and the Agencies, and I am personally aware of no fact or other matter that would make my reliance upon the representations of the Department unreasonable.

4. To the best of my knowledge, (i) the representations and warranties of the State in the Financing Documents are true and correct on and as of the date hereof as though made on and as of the date hereof, and (ii) the State has complied with all terms on its part to be performed or satisfied by it under the Lease at or prior to the date hereof.

5. To the best of my knowledge no litigation is pending or, to my knowledge, threatened in any court to restrain or enjoin the execution or delivery of the Financing Documents or the payment of the Lease Payments, or in any way contesting or affecting the Financing Documents, the operating budget, or the Lease, or contesting the powers of the State or contesting the authorization of the Financing Documents.

6. The officials of the Department, the Treasurer, and the Agencies will take all actions necessary to appropriate or otherwise provide for all amounts required to be paid under the Lease during the State's fiscal period ending June 30, 2011, and to the best knowledge and belief of the Department, the Treasurer, and the Agencies, there is no reason to believe that the State will not make such appropriation or have sufficient other funds to make such payments as the same become due.

7. The Equipment is personal property and when used by the State should not be or become fixtures under State law currently in effect.

8. The Equipment will be used by the State only for the purpose of performing one or more of its governmental or proprietary functions consistent with the permissible scope of its authority. No more than 10% of the total use of any portion of the Equipment leased on behalf of any State agency shall be used, on an average yearly basis, directly or indirectly in any trade or business carried on by any person other than Lessee or be used by an organization described in Section 501(c)(3) of the Code, provided that such private business use, if any, that is not related or disproportionate to the governmental use shall not exceed 5% of the total use of such Equipment on an average yearly basis.

9. The Equipment is essential to the proper, efficient, and economic functioning of the State and to the services that the State provides. The State has an immediate need for and expects to make immediate use of substantially all the Equipment, which use is not temporary or expected to diminish in the foreseeable future.

10. The State will prepare or cause to be prepared and will file or cause to be filed a Form 8038-G in the manner and within the time provided by Section 149(e) of the Internal Revenue Code of 1986, as amended.

11. The Federal Taxpayer Identification Number of the State is 52-6002033.

**IN WITNESS WHEREOF**, I have executed this Certificate as of the day and year first above written.

**WITNESS:**

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

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

EQUIPMENT SCHEDULE NO. \_\_

TO

(Month) (Year) EQUIPMENT LEASE-PURCHASE AGREEMENT

(Agency Name)

**THIS EQUIPMENT SCHEDULE NO. \_\_** dated as of \_\_\_\_\_, 2010, (the "Equipment Schedule"), is executed by and between \_\_\_\_\_. ("Lessor") and the **STATE OF MARYLAND** ("Lessee"), acting by and through the **STATE TREASURER'S OFFICE** (the "Office"), on behalf of the \_\_\_\_\_.

**WITNESSETH:**

**WHEREAS**, Lessor and Lessee have entered into that certain (Month) (Year) Equipment Lease-Purchase Agreement dated as of \_\_\_\_\_ (the "Lease") (unless otherwise defined herein all terms having a defined meaning in the Lease shall have the same meaning when used herein), which Lease provides for the execution and delivery of one or more Equipment Schedules for the purpose of identifying the Equipment to be leased and purchased pursuant to the Lease and specifying certain terms and conditions applicable to the lease and purchase of such Equipment; and,

**WHEREAS**, Lessor desires to lease and Lessee desires to lease from Lessor, the items of Equipment described in Exhibit A on the terms and conditions of the Lease and as herein provided.

**NOW, THEREFORE**, in consideration of the premises, Lessor and Lessee hereby agree as follows:

**1. EQUIPMENT**. The items of Equipment described in Exhibit A shall be subject to the terms and conditions of the Lease, the terms of which Lease are incorporated by reference herein and made a part hereof and this Equipment Schedule. In the event of a conflict between the terms of the Lease and the terms of this Equipment Schedule, the terms of this Equipment Schedule shall prevail.

**2. LOCATION OF EQUIPMENT**. The Equipment shall be kept at the Equipment Location (herein so called) set forth on Exhibit A.

**3. LEASE TERM**. The Lease Term (herein so called) with respect to the Equipment described in Exhibit A shall commence on the date of acceptance (the "Acceptance Date") as set forth in the Acceptance Certificate (Exhibit C attached hereto), and shall continue for an initial term ending on July 1, 2010. Unless earlier terminated pursuant to the terms of the Lease, the Lease term hereunder shall automatically renew for two annual renewal terms commencing on July 2 of each year and ending on the following July 1.

**4. LEASE PAYMENTS**. (a) Lessee hereby agrees to make the Lease Payments (herein so called) to Lessor in such amounts and at such times as set forth on Exhibit B.

(b) Upon the exercise by Lessee of any option granted under the Lease to terminate the Lease or this Equipment Schedule prior to the expiration of the term thereof and hereof, Lessee agrees to pay to Lessor the applicable principal balances as shown on Exhibit B for the lease and purchase of the Equipment.

(c) In the event of a termination or nonrenewal of the Lease Term pursuant to Section 5, Section 18, Section 26, or Section 27 of the Lease, moneys shall be applied first to the payment of all obligations of Lessee then due and owing hereunder, and then to the payment of the principal balance or Concluding Payment amount as set forth in Exhibit B applicable at the time of such termination or nonrenewal.

(d) The principal components of the Lease Payments bear interest at the total interest cost of \_\_\_\_\_% per annum.

**5. REPRESENTATIONS AND WARRANTIES.** By execution and delivery of this Equipment Schedule, Lessee confirms that all representations and warranties contained in Section 7 of the Lease are true and correct as of the date hereof. Further, Lessee represents and warrants as of the date hereof that: (i) Lessee reasonably has sufficient appropriations or other funds legally available to pay all Lease Payments and other amounts due hereunder for the fiscal period ending on June 30, 2010; and (ii) the use of the Equipment by Lessee is essential to the Lessee's proper, efficient, and economic operation and will be used for the purposes set forth on Exhibit C.

**6. LIMITATIONS ON WARRANTIES.** Lessee represents, warrants, acknowledges, and agrees that the Equipment is of a size, design, and capability selected by Lessee; that Lessee is satisfied that the Equipment is suitable for its purpose; that Lessor is neither a manufacturer nor a vendor of the Equipment; and that **LESSOR HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY, OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT WHATSOEVER OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE, OR ANY OTHER REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT THERETO, AND LESSOR SHALL NOT BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES OF OR TO LESSEE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE EQUIPMENT AND THE MAINTENANCE THEREOF.**

**7. EQUIPMENT COST.** The cost of all items of Equipment described on Exhibit A shall not exceed \$ \_\_\_\_\_ of which the Equipment Cost (herein so called) of \$ \_\_\_\_\_ is financed hereunder, and shall be disbursed in such amounts and no earlier than such dates (the "Acquisition Dates") as are reflected on Exhibit A.

**8. COVENANTS, DELIVERY, AND ACCEPTANCE.** (a) Lessee agrees to use its best efforts, and as of the date hereof, reasonably expects, to acquire the Equipment on or before \_\_\_\_\_, 20\_\_.

(b) Lessee will cause the Equipment to be delivered at the Equipment Location. Lessee will pay all transportation and other costs, if any, incurred in connection with the delivery of the Equipment. Lessee will accept the Equipment as soon as it has been delivered and is operational, or in the event that the manufacturer or vendor allows a pre-acceptance test period, as soon as the test period has expired.

**9. REQUEST FOR PAYMENT.** Immediately following acceptance, Lessee will request that payment be made to the Vendor to reimburse such by executing, if required, and delivering to Lessor the following:

(a) a request that payment be made to the Vendor;

(b) a true copy of the applicable purchase order and, where applicable, a duplicate original of any change order approved by Lessee increasing the Equipment Cost in an amount in excess of the original purchase order price;

(c) bills of sale for any component of the Equipment for which a bill of sale may be delivered;

(d) a true copy of the Vendor's statement or invoice; and

(e) an Acceptance Certificate and an Equipment Use Certificate as set forth in Exhibits C and D, respectively.

**10. PAYMENT.** Upon receipt of the items required by Section 9 hereof in a form acceptable to Lessor, Lessor shall make payment to the Vendor and shall certify the fact of such payment to Lessee.

**IN WITNESS WHEREOF**, Lessee and Lessor have executed this Equipment Schedule as of the date and year first above written.

**STATE OF MARYLAND acting  
by and through the State  
Treasurer's Office**

By: \_\_\_\_\_  
Name:  
Title:

**Lessor**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**TO**

**EQUIPMENT SCHEDULE NO. \_\_\_\_**

**(Month) (Year) EQUIPMENT LEASE-PURCHASE AGREEMENT**

**(Agency Name)**

<b>Vendor Cost</b>	<b>Equipment Financed</b>	<b>Amount</b>	<b>Acquisition Date</b>
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(SEE ATTACHED INVOICES)

**Equipment Location**

## ESCROW AGREEMENT

**THIS ESCROW AGREEMENT**, made and entered into this \_\_ day of \_\_\_\_\_, 2010, by and among \_\_\_\_\_ (the “Escrow Agent”), \_\_\_\_\_ (the “Lessor”), and the **STATE TREASURER OF MARYLAND** (the “Treasurer”) on behalf of the \_\_\_\_\_.

### RECITALS

A. The Lessor and Lessee have entered into that certain (Month) (Year) Equipment Lease-Purchase Agreement dated as of \_\_\_\_\_, 2010 (the “Lease”), a duplicate of which has been furnished to each of the parties, Equipment Schedule No. \_\_\_\_\_, dated \_\_\_\_\_ (the “Equipment Schedule”), whereby Lessor has agreed to acquire certain Equipment (defined in the Equipment Schedule), and to lease the Equipment to the Lessee, and the Lessee has agreed to lease the Equipment from the Lessor, in the manner and on the terms set forth in the Lease.

B. In order to secure the obligations of the Lessor under the Lease, Lessee has requested Lessor to set aside in escrow with the Escrow Agent, pursuant to the terms hereof, funds to permit the purchase of the Equipment.

C. The Lessee, as agent for Lessor, will cause the Equipment to be acquired in accordance with the purchase orders or contracts therefor, and neither Lessor nor the Escrow Agent shall be obligated to assume or perform any obligation of the Lessee with respect thereto.

### AGREEMENTS

**NOW, THEREFORE, IN CONSIDERATION OF** the premises and the mutual covenants contained herein, the parties agree as follows:

#### **ARTICLE I APPOINTMENT OF ESCROW AGENT; DEFINITIONS**

Section 1.01 Appointment of Escrow Agent. The Lessor and the Lessee hereby appoint and employ the Escrow Agent, upon direction of the Lessee, to receive, hold, invest, and disburse the moneys to be paid to it pursuant to this Escrow Agreement and the Lease for credit to the Acquisition Fund established by this Escrow Agreement, and to perform certain other functions, all as hereinafter provided. By executing and delivering this Escrow Agreement, the Escrow Agent accepts the duties and obligations of the Escrow Agent provided herein, but only upon terms and conditions herein set forth.

Section 1.02. Definitions. Certain terms used in this Escrow Agreement are defined in the Lease and the Recitals to this Escrow Agreement. When and if used herein, such terms shall have the meanings given to them by the language employed in the Lease or the Recitals to this Escrow Agreement (as the case may be) defining such terms, unless the context clearly indicates otherwise. In addition, unless the context otherwise requires, the terms defined in this Section 1.02 shall, for all purposes of this Escrow Agreement, have the meanings herein specified.

“Acquisition Fund” means the fund by that name established and held by the Escrow Agent pursuant to Article II of this Escrow Agreement.

“Commencement Date” means the day when Lessor deposits with the Escrow Agent the

moneys required to be deposited pursuant to Article II.

“Lessee Representative” means the representative of the Lessee or a person authorized by the Lessee to act on its behalf under or with respect to this Escrow Agreement, as evidenced by a certificate conferring such authorization executed by the Treasurer or Chief Deputy Treasurer of Lessee.

## **ARTICLE II ACQUISITION FUND**

Section 2.01. Deposit of Moneys by Lessor. At the Commencement Date, Lessor shall deposit with the Escrow Agent \$\_\_\_\_\_ as authorized by Section 3(e) of the Lease, and by the Equipment Schedule. The Escrow Agent shall deposit said money in the Acquisition Fund to be held, applied, and disbursed as hereinafter provided.

Section 2.02. Collateral. All escrowed funds on deposit with the Escrow Agent are required to be secured by collateral as provided in Section 6-202 of the State Finance and Procurement Article of the Annotated Code of Maryland. To perfect the security interest of the Lessor in the collateral pledged by the Escrow Agent, a Federal Reserve Bank or a third party financial institution, acceptable to the Lessor, the Lessee and the Escrow Agent, will hold the collateral in a custody account for the benefit of the Lessor.

Section 2.03. Acquisition Fund. The Escrow Agent shall establish a special fund designated as the “Equipment Acquisition Fund” (hereinafter referred to as the “Acquisition Fund”); shall keep such Fund separate and apart from all other funds and moneys held by it; and shall administer such Acquisition Fund as provided in this Section and Article III hereof. Except as otherwise permitted by Section 2.05 below, the Acquisition Fund shall be expended for Equipment Costs.

Section 2.04. Payment of Acquisition Costs. The Escrow Agent shall pay from the Acquisition Fund any Equipment Costs, as hereinafter provided, upon receipt from Lessee and Lessor of a duly executed Payment Request Form in substantially the form attached hereto as Exhibit A. No disbursement from the Acquisition Fund shall be made unless and until Lessor has approved such payment, stating each amount to be paid and the name of the person, firm or corporation to whom payment is due. Each such Payment Request shall be signed by the Lessee Representative and by Lessor, and shall be subject to the following:

- (a) Delivery to Lessor of a certificate of Lessee to the effect that:
  - (i) an obligation in the stated amount has been incurred by Lessee, and that the same is a proper charge against the Acquisition Fund Equipment Costs identified in the Lease, and has not been paid; (ii) the Lessee Representative has no notice of any vendor’s, mechanic’s or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made; (iii) such requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date of such certificate, entitled to retain; and (iv) the Equipment is insured in accordance with the Lease.
- (b) Delivery to Lessor of a duplicate original invoice;

- (c) Delivery to Lessor of an appropriate Acceptance Certificate if such disbursement is the final disbursement hereunder for Equipment Costs.
- (d) The disbursement shall occur during the Acquisition Period set forth in the applicable Equipment Schedule; and
- (e) There shall exist no Event of Default (nor any event which, with notice or lapse of time or both, would become an Event of Default).

Section 2.05 Transfers from Acquisition Fund; Termination

- (a) If at the conclusion of the Acquisition Period under the Equipment Schedule all of the moneys on deposit in the Acquisition Fund have not been paid out, the parties agree and direct that the Escrow Agent shall disburse such remaining moneys, when and as directed by the Treasurer either: (i) to complete the acquisition of the Equipment; or (ii) on the next succeeding Lease Payment dates for application against the interest portion of the Lease Payment due on such dates.
- (b) If this Escrow Agreement is terminated by Lessor as authorized under Article VII, or if Lessee terminates the Lease Agreement in the event of nonappropriation as provided in Section 5 of the Lease Agreement, all or a portion of the moneys and/or investments in the Acquisition Fund shall be paid and/or transferred to the Lessor or its assignee by the Escrow Agent, upon receipt by the Escrow Agent of a written demand for such payment from the Lessor, accompanied by such proof of such termination as the Escrow Agent may reasonably request. Such moneys shall be credited against amounts, if any, due to Lessor under the Lease or which would have been due to Lessor if the Lease had not been terminated in the event of non-appropriation.

**ARTICLE III  
MONEYS IN FUND; INVESTMENT; TERMINATION**

Section 3.01. Held in Trust. The moneys and investments held by the Escrow Agent under this Escrow Agreement are irrevocably held in trust for the benefit of the Lessor and the Lessee and for the purposes herein specified, and such moneys and any income or interest earned thereon shall be expended only as provided in this Escrow Agreement, and shall not, to the extent permitted by applicable law, be subject to levy or attachment or lien by or for the benefit of any creditor of either Lessor or Lessee.

Section 302. Security Interest. The Escrow Agent and Lessee acknowledge and agree that the Acquisition Fund and all proceeds thereof are being held by Escrow Agent for disbursement or return as set forth herein. The Lessee hereby grants to Lessor a first priority perfected security interest in the Acquisition Fund, and all proceeds thereof, and all investments made with any amounts in the Acquisition Fund. If the Acquisition Fund, or any part thereof, is converted to investments as set forth in this Escrow Agreement, such investments shall be made in the name of Escrow Agent and the Escrow Agent hereby agrees to hold such investments as bailee for Lessor so that Lessor is deemed to have possession of such investments for the purpose of perfecting its security interest.

Section 3.03. Investments Authorized. Moneys held by the Escrow Agent hereunder shall be invested by the Escrow Agent upon order of the Lessee Representative in Qualified Investments (as defined in Section 3.04 hereof). Such investments shall be registered in the name of the Escrow Agent and held by the Escrow Agent. The Escrow Agent may purchase or sell to itself or any affiliate, as principal or agent, investments authorized by this Section. Such investments and reinvestments shall be made giving full consideration for the time at which funds are required to be available, based upon estimated cash flow requirements to be provided by the Lessee representative. The Escrow Agent may act as purchaser or agent in the making or disposing of any investment.

Section 3.04. Qualified Investments. “Qualified Investments” are those investments authorized by Sections 6-222 and 6-223 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, and generally consist of: (i) direct general obligations of the United States of America; (ii) general obligations of the agencies and instrumentalities of the United States; (iii) certificates of deposit, time deposits, or demand deposits with any bank or savings institution qualified as a depository of public funds in the State of Maryland, provided that such certificates of deposit, time deposits, or demand deposits, if not insured by the Federal Deposit Insurance Corporation, are fully collateralized by obligations described in Section 6-202 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time; (iv) repurchase agreements collateralized at 102% by obligations described in clauses (i) and (ii); and (v) certain money market mutual funds that have received the highest possible rating from at least one nationally recognized statistical rating organization. In no event shall “Qualified Investments” include any investments other than those permitted by Sections 6-222 and 6-223 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time.

Section 3.05. Disposition of Investments. Any income received on the investment of moneys held by the Escrow Agent hereunder shall be credited to the Acquisition Fund.

Section 3.06. Accounting. The Escrow Agent shall furnish to the Lessee and the Lessor or its respective assignee, no less often than quarterly, an accounting of all investments made by the Escrow Agent. The Escrow Agent shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with this Escrow Agreement, except only for its own willful misconduct.

Section 3.07. Valuation and Disposition of Investments. For the purpose of determining the amount in the Acquisition Fund, all Qualified Investments credited to such fund shall be valued at cost (exclusive of accrued interest after the first interest payments following purchase). The Escrow Agent may sell at the best price obtainable, or present for redemption, any Qualified Investment so purchased by the Escrow Agent, whenever it shall be necessary in order to provide moneys to meet any required payment, transfer, withdrawal, or disbursement from the Acquisition Fund to which Qualified Investment is credited, and the Escrow Agent shall not be liable or responsible for any loss resulting from such investment.

Section 3.08. Termination. This Escrow Agreement shall terminate upon the occurrence of the final distribution of all moneys in the Acquisition Fund.

#### **ARTICLE IV THE ESCROW AGENT**

Section 4.01. Compensation of Escrow Agent. Lessor shall pay, from its own funds and

not from any fund created hereunder, an annual fee of \$\_\_\_\_\_ to the Escrow Agent for its services under this Escrow Agreement.

Section 4.02. Removal of Escrow Agent. The Lessee and Lessor, by written agreement between themselves, may by written request, at any time and for any reason, remove the Escrow Agent and any successor thereto, and shall thereupon appoint a successor or successors thereto, but any such successor shall be a bank or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least \_\_\_\_\_, and be subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus set forth in its most recent report of condition so published.

Section 4.03. Resignation of Escrow Agent. The Escrow Agent or any successor may at any time resign by giving written notice to the Lessee or Lessor of its intention to resign and of the proposed date of resignation, which shall be a date not less than 60 days after such notice, unless an earlier resignation date and the appointment of a successor Escrow Agent shall have been or are approved by Lessee and Lessor. Upon receiving such notice of resignation, the Lessee and Lessor shall promptly appoint a successor Escrow Agent by an instrument in writing; provided, however, that in the event the Lessee and Lessor fail to appoint a successor Escrow Agent within 30 days following receipt of such written notice of resignation, the Lessee may appoint a successor Escrow Agent, and in the event the Lessee fails to appoint a successor Escrow Agent within 30 days following the expiration of such initial 30-day period, the resigning Escrow Agent may petition the appropriate court having jurisdiction to appoint a successor Escrow Agent. Any resignation or removal of the Escrow Agent shall become effective upon acceptance of appointment by the successor Escrow Agent.

Section 4.04. Merger or Consolidation. Any company into which the Escrow Agent may be merged or converted, or with which it may be consolidated, or any company resulting from any merger, conversion or consolidation to which it shall be a party, or any company to which the Escrow Agent may sell or transfer all or substantially all of its corporate trust business (provided that such company shall be eligible under Section 4.02), shall be the successor to the Escrow Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding. The Escrow Agent shall promptly give notice to the Lessee and the Lessor or its assignee of any such merger, conversion or consolidation.

Section 4.05. Protection and Rights of the Escrow Agent.

- (a) The Escrow Agent shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition, or other paper or document that it shall, in good faith, believe to be genuine and to have been passed or signed by the proper person or to have been prepared and furnished pursuant to any of the provisions of this Escrow Agreement and the Escrow Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements. The Escrow Agent may consult with counsel, who may be counsel to Lessor or Lessee, with regard to legal questions, and the

opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith in accordance therewith.

- (b) Whenever in the administration of its duties under this Escrow Agreement, the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed), shall be deemed to be conclusively proved and established by the certificate of the Lessee Representative or the Lessor, and such certificate shall be full warranty to the Escrow Agent for any action taken or suffered under the provisions of this Escrow Agreement upon the faith thereof, but in its discretion the Escrow Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.
- (c) The recitals, statements, and representations by Lessee and Lessor continued in this Escrow Agreement shall be taken and construed as made by and on the part of Lessee and Lessor, as the case may be, and not by the Escrow Agent, and the Escrow Agent does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.
- (d) The Escrow Agent may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, or receivers, and shall be entitled to rely on the advice of counsel concerning all matters of trust and its duty hereunder, and the Escrow Agent shall not be answerable for default or misconduct of any such attorney, agent, or receiver selected by it with reasonable care. The Escrow Agent shall not be answerable for the exercise of any discretion or power under this Escrow Agreement or for anything whatever in connection with then funds and accounts established hereunder, except only for its own willful misconduct or negligence.

## **ARTICLE V ASSIGNMENT; AMENDMENTS**

Section 5.01. Assignment. Except as provided in Article IV and below, the rights and duties of each of the parties under this Escrow Agreement shall not be assignable to any person or entity without the written consent of all the other parties. Notwithstanding the above, the Lessor may freely assign all or any part of its interest in this Escrow Agreement and the Acquisition Fund established hereunder in connection with an assignment by Lessor of the Lease, subject to the provisions contained therein.

Section 5.02. Amendments. This Escrow Agreement may be amended in writing by agreement among all of the parties.

## **ARTICLE VI COVENANTS; FURTHER ASSURANCES**

Section 6.01. Compliance with and Enforcement of Escrow Agreement. The Lessee

covenants and agrees to perform all obligations and duties imposed on it under this Escrow Agreement.

Section 6.02. Lease. The Lessor and the Lessee covenant and agree to perform all their respective obligations and duties under the Lease Agreement.

Section 6.03. Further Assurances. The Lessor and the Lessee will make, execute, and deliver any and all such further resolutions, instruments, and assurances as reasonably may be necessary or proper to carry out the intention or to facilitate the performance of this Escrow Agreement, and for better assuring and confirming the rights and benefits provided herein.

## **ARTICLE VII DEFAULT AND TERMINATION**

Section 7.01. Default and Termination.

- (a) The Lessor shall have the right to terminate this Escrow Agreement upon an Event of Default under the Lease Agreement. Upon notice and direction from the Lessor or its assignee to the Escrow Agent of such occurrence, the Escrow Agent shall pay and/or transfer to the Lessor or its assignee all moneys and/or investments in the Acquisition Fund in accordance with Section 2.04(b).
- (b) In the event of failure by the Lessee, or Escrow Agent to observe and perform any covenant, condition, or agreement on its part to be observed or performed under this Escrow Agreement, any non-defaulting party hereto shall have all of the rights and remedies now or hereafter existing at law or in equity against the defaulting party.
- (c) No delay or omission to exercise any such right or power accruing upon any default shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

## **ARTICLE VIII LIMITATION OF LIABILITY**

Section 8.01. Limited Liability of Escrow Agent. The Escrow Agent shall have no obligation or liability to any of the other parties with respect to this Escrow Agreement or the failure or refusal of any other party to perform any covenant or agreement made by any of them under this Escrow Agreement or the Lease Agreement, but shall be responsible solely for the business-like performance of the duties expressly imposed upon the Escrow Agent hereunder. The recitals of facts, covenants, and agreements herein contained pertaining to Lessee and Lessor shall be taken as statements, covenants, and agreements of the Lessee or the Lessor (as the case may be), and the Escrow Agent assumes no responsibility for the correctness of the same, and makes no representations as to the validity or sufficiency of this Escrow Agreement, and shall incur no responsibility in respect thereof, other than in connection with the duties or obligations herein imposed upon it. The Escrow Agent shall not be liable in connection with the performance of its duties hereunder except for its own negligence or willful misconduct.

Section 8.02. Indemnification. To the extent permitted by applicable law and subject to

appropriations and the general requirements of public policy, the Lessee agrees to indemnify and save the Escrow Agent harmless from and against all claims, suits, and actions brought against it, or to which it is made a party, and from all losses and damages suffered by it as a result thereof, where and to the extent of such claim, suit, or action arises in connection with this Escrow Agreement, the transactions described herein and in the Lease Agreement, or the Escrow Agent's employment as an escrow agent by Lessee and Lessor, including but not limited to claims, suits, or actions arising out of the ownership, use, or operation of the Equipment by Lessee, and excluding claims, suits, or actions arising from events solely and directly attributable to acts of the Lessor. Such indemnification shall not extend to claims, suits, and actions brought against the Escrow Agent for failure to perform and carry out the duties specifically imposed upon and to be performed by it pursuant to this Escrow Agreement or for any claims, suits and actions arising against the Escrow Agent due to its own negligence or willful misconduct. The indemnification arising under this paragraph shall end upon the termination of this Escrow Agreement, except for any matters that arise prior to the date of termination.

Section 8.03. Discretion of Escrow Agent to File Civil Action in the Event of Dispute. If Lessor or Lessee are in disagreement about the interpretation of this Escrow Agreement, or about the rights and obligations, or the propriety of any action contemplated by the Escrow Agent hereunder, the Escrow Agent may, but shall not be required to, file an appropriate civil action to resolve the disagreement. The Escrow Agent shall be indemnified by Lessee in accordance with Section 8.02 for all costs in connection with such civil action, and shall be fully protected in suspending all or part of its activities under this Escrow Agreement until a final judgment in such action is received. The indemnification arising under this paragraph shall end upon the termination of this Escrow Agreement, except for any matters that arise prior to the date of termination.

Section 8.04. Opinion of Counsel. Before being required to take any action, the Escrow Agent may require (i) an opinion of counsel acceptable to the Escrow Agent, which counsel may be counsel to any of the parties hereto, and which opinion shall be made available to the other parties hereto upon request, or (ii) a verified certificate of any party hereto, or (iii) both (i) and (ii), concerning the proposed action. If it does so in good faith, the Escrow Agent shall be absolutely protected in relying thereon.

Section 8.05. Limitation of Rights to Parties. Nothing in this Escrow Agreement, expressed or implied, is intended or shall be construed to give any person other than the Lessee, Lessor, or the Escrow Agent any legal or equitable right, remedy, or claim under or in respect of this Escrow Agreement or any covenant, condition, or provision hereof; and all such covenants, conditions, and provisions are and shall be for the sole and exclusive benefit of the Lessee, the Lessor and the Escrow Agent.

## **ARTICLE IX**

### **MISCELLANEOUS**

Section 9.01. Records. The Escrow Agent shall keep complete and accurate records of all moneys received and disbursed under this Escrow Agreement, which shall be available for inspection by the Lessee, the Lessor, or the agent of either of them, at any time during regular business hours.

Section 9.02. Notices. All written notices to be given under this Escrow Agreement shall be given by mail to the party entitled thereto at its address set forth in the attached Exhibit B, or at such address as the party may provide to the other parties in writing from time to time. Any such notice shall be deemed to have been received 72 hours after its deposit in the United States mail in registered or certified form, with postage fully prepaid.

Section 9.03. Governing Laws. This Escrow Agreement shall be construed and governed in accordance with the laws of the State of Maryland.

Section 9.04. Partial Invalidity. Any provision of this Escrow Agreement found to be prohibited by law shall be ineffective only to the extent of such prohibition, and shall not invalidate the remainder of this Escrow Agreement.

Section 9.05. Binding Effect; Successors. This Escrow Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Whenever in this Escrow Agreement any party hereto is named or referred to, such references shall be deemed to include the successors or assigns thereof, and all covenants and agreements contained in this Escrow Agreement by or on behalf of any party hereto shall bind and inure to the benefit of the successors and assigns thereof whether so expressed or not.

Section 9.06. Execution in Counterparts. This Escrow Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 9.07. Headings. The headings or titles of the several Articles and Sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of this Escrow Agreement. All references herein to "Articles", "Sections", and other subdivisions are to the corresponding Articles, Sections, or subdivisions of this Escrow Agreement; and the words "herein," "hereof," "hereunder," and other words of similar import refer to this Escrow Agreement as a whole and not to any particular Article, Section, or subdivision.

**IN WITNESS WHEREOF**, the parties have executed this Escrow Agreement as of the date and year first above written.

\_\_\_\_\_  
**as Escrow Agent**

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

Name \_\_\_\_\_

Title \_\_\_\_\_

\_\_\_\_\_  
**as Lessor**

By:

Name \_\_\_\_\_

Title \_\_\_\_\_

**MARYLAND STATE  
TREASURER'S  
OFFICE**

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

Bernadette T. Benik  
Chief Deputy Treasurer

Approved for form and legal sufficiency  
for the State of Maryland.

\_\_\_\_\_  
Counsel to the State Treasurer

**EXHIBIT A**

**Payment Request Form**

**Request No. \_\_\_**

Re: (Month) (Year) Equipment Lease-Purchase Agreement dated as of \_\_\_\_\_, 2010 by and between \_\_\_\_\_, as Lessor and the State of Maryland, acting by and through the State Treasurer’s Office, as Lessee (the “Lease”)

In accordance with the terms of the Escrow Agreement, dated as of \_\_\_\_\_ (the “Escrow Agreement”) by and among \_\_\_\_\_ (“Lessor”), the State of Maryland (“Lessee”) and \_\_\_\_\_ (the “Escrow Agent”), the undersigned hereby requests the Escrow Agent to pay the following persons the following amounts from the Acquisition Fund created under the Escrow Agreement (the “Acquisition Fund”) for the following purposes.

Payee’s Name and Address	Invoice Number	Dollar Amount	Purpose

The undersigned hereby certifies as follows:

- (i) An obligation in the stated amount has been incurred by Lessee, and the same is a proper charge against the Acquisition Fund for costs relating to the Equipment identified in the Lease, and has not been paid. Attached hereto is a duplicate original invoice with respect to such obligation.
- (ii) The undersigned, as Lessee Representative, has no notice of any vendor’s, mechanic’s or other liens or rights to liens, chattel mortgages, conditional sales contracts or security interest which should be satisfied or discharged before such payment is made.
- (iii) This requisition contains no item representing payment on account, or any retained percentages which Lessee is, at the date hereof, entitled to retain.
- (iv) The Equipment is insured in accordance with the Lease.
- (v) No Event of Default, and no event which with notice or lapse of time, or both, would become an Event of Default, under the Lease has occurred and is continuing at the date hereof.

(vi) The disbursement shall occur during the Acquisition Period set forth in the applicable Equipment Schedule.

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

**LESSEE:**  
**State of Maryland, acting by and**  
**through**  
**the State Treasurer's Office**

By: \_\_\_\_\_  
Bernadette T. Benik  
Chief Deputy Treasurer

Disbursement of funds from the Acquisition  
Fund in accordance with the foregoing  
Payment Request hereby is authorized

Name of Firm as Lessor under the Lease

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

