



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER
ISCH0253

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF:
KRISTA FERRELL 304-558-2596

RFQ COPY

TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

DEPARTMENT OF ADMINISTRATION  
 IS&C - CHIEF FINANCIAL OFFICER  
 1 DAVIS SQUARE  
 CHARLESTON, WV  
 25301 304-558-5472

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
06/18/2008				

BID OPENING DATE: 06/19/2008 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
				ADDENDUM NO. 2		
				THIS ADDENDUM IS PROVIDED TO ANSWER QUESTIONS SUBMITTED IN REGARD TO THIS PROCUREMENT.		
				TO PROVIDE A COPY OF THE LEASE/PURCHASE AGREEMENT WITHOUT ESCROW		
				PLEASE NOTE: BIDS MAY BE FAXED TO THE PURCHASING DIVISION AT 304-558-3970. FAX TRANSMISSIONS MUST BE RECEIVED PRIOR TO THE BID OPENING DATE/TIME AND IN THEIR ENTIRTY TO BE CONSIDERED. VENDOR ASSUMES ALL RESPONSIBILITY FOR ANY FAILED OR INCOMPLETE TRANSMISSION.		
				***** END ADDENDUM NO. 2 *****		
0001	1	LS		946-54		
				FINANCING		

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
-----------	-----------	------

TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE
-------	------	-----------------------------------

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

**GENERAL TERMS & CONDITIONS  
REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125.00 registration fee.
5. All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
14. **HIPAA Business Associate Addendum** - The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.

---

**INSTRUCTIONS TO BIDDERS**

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in cases of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications.

**SIGNED BID TO:**

Department of Administration  
Purchasing Division  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130

ISCH0253  
Addendum No. 2  
Questions and Answers

1. Question: What is the anticipated closing date of the financing?

We anticipate completing the purchase order for the product prior to June 26, 2008. The purchase order for the financing would be completed as close to or prior to this date.

2. Question: Will the financing fund into escrow until the purchase is complete.

The financing would not need to fund into escrow. The contract for the software purchase requires payments in equal installments over 3 years. If the total cost of the software were to be \$12 million we would require the financing to be funded in \$4 million installments on or about June 26, 2008, June 26, 2009 and June 26, 2010. It would not be required that the money be funded into an escrow account but should be available for each period. The \$4 million financing payments would be made directly to the State of West Virginia's vendor on the statewide contract for Microsoft Software Licensing. At this time we expect the financing required in total to be somewhat less than \$12 million but certainly would not exceed \$12 million. Payments to the winning vendor for this financing contract would be made by the State of WV to the financing company in quarterly installments each year on the amount funded each year. In our example we would draw \$4 million on June 26, 2008 and payback that \$4 million plus any interest by June 26, 2009 when we would make the next \$4 million draw and do so in this manner for 3 years. This contract is not guaranteed to be \$12 million but would be some amount less than this and is dependent upon quantities of licenses and amounts that we purchase from the vendor next week.

3. Question: Will this financing be tax exempt and considered Non Bank Qualified?

Answered in first addendum related to tax exempt non bank qualified.

4. Question: This is a 100% software deal. We need to know if it's "canned" or "developed" software and it's intended use.

The software purchase is not of a development nature. The financing would be used solely to purchase Microsoft Enterprise Licenses for Office Professional, Exchange client licenses, Windows client Licenses, Windows server licenses and various other core client access licenses.

5. Question: When is the expected funding of the loan/installment purchase to take place and how long des the interest rate commitment need to be?

The interest rate commitment would need to be 3 years.

6. The RFP indicates the Bid Opening will be 06/19/2008 @ 1:30 pm. Do you have an estimate on the award?

See Question 1

7. The RFP indicates "the vendor will be required to use the attached State Financing Agreements." Where can we find these documents?

See attached

**STATE OF WEST VIRGINIA**  
**LEASE PURCHASE AGREEMENT**

THIS LEASE PURCHASE AGREEMENT, Made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_, a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, ("Lessor"), and \_\_\_\_\_ OF THE DEPARTMENT OF \_\_\_\_\_, STATE OF WEST VIRGINIA ("Lessee").

The parties hereto do mutually covenant and agree as follows:

1. **Lease:** Pursuant to the provisions of Chapter 5A of the West Virginia Code, the Purchasing Division of the Department of Administration of the State of West Virginia, on behalf of the Lessee, a body politic duly organized and existing under the laws of the State of West Virginia, agrees to lease from Lessor the items of equipment specified in Exhibit A attached hereto ("Equipment"), and Lessor, as specified above, agrees to lease to Lessee the Equipment in accordance with the terms and conditions of this Lease Purchase Agreement ("Lease"). Upon execution, this Lease is binding on and enforceable against Lessor and Lessee in accordance with its terms.
2. **Covenants of Lessor:** Lessor, and any assignee of Lessor, shall allow Lessee to quietly have, hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor during the term of this Lease, except as expressly set forth in this Lease.
3. **Covenants of Lessee:** Lessee is authorized under the Constitution and laws of the State of West Virginia to enter into this Lease. No approval, consent or withholding of objection is required from any governmental authority not a signatory to this Lease with respect to the performance or obligations of Lessee under this Lease. This Lease will not violate any judgment, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien or encumbrance upon the assets of the Lessee or on the Equipment pursuant to, any other instrument to which Lessee is a party.
4. **Equipment Delivery and Acceptance:** Lessee shall accept the Equipment when and if delivered and placed in good working order in accordance with the Purchase Order for such item of Equipment and hereby authorize the Lessor to add to this Lease the serial number of each item of Equipment so delivered. Lessee shall have sixty (60) days from date of delivery to accept the Equipment and deliver an Equipment Acceptance Certificate, as shown in Exhibit C, or to have the Equipment returned. Notice of any Equipment defects shall be given to Lessor within thirty (30) days of delivery, unless not discovered at that time by reasonable efforts.  
  
Lessor agrees to pay the invoices for the accepted Equipment within seven (7) days of receipt of the Equipment Acceptance Certificate, but shall not be liable for the specific performance of the Lease or for damages, if for any reason, the supplier delays or fails to fill the order. Any delay in such delivery shall not affect the validity of this Lease.  
  
In the event any portion of the Equipment is not accepted or the cost of the Equipment is less than the funding under this Lease, then the amount of the funding remaining shall be applied as a partial prepayment.
5. **Term:** The term of this Lease shall commence on the date of execution of this Lease and shall terminate upon the first to occur:
  - (a) the payment of the purchase option price;
  - (b) the payment of all lease payments;
  - (c) an event of non-appropriation; or
  - (d) an event of default.
6. **Event of Non-Appropriation:** An event of non-appropriation shall be deemed to have occurred if:
  - (a) sufficient funds are not appropriated for lease payments in any fiscal year; and
  - (b) a Lessee shall have at such time no funds duly authorized or otherwise available for the lease payments.

Upon the occurrence of an event of non-appropriation, this Lease shall terminate without penalty at the end of the then current fiscal year and the lease and other payments shall be canceled. Lessee agrees to return the Equipment to Lessor, together with a release of Lessee's title and interest therein. It is the intention of the parties that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee agrees, nevertheless, to execute and deliver any such instruments as Lessor may reasonably request to evidence such transfer. Lessee agrees to provide written notice of an event of non-appropriation to Lessor as soon as Lessee determines that such an event exists.

7. Warranties/Guarantees: Lessee acknowledges that it has selected the Equipment financed under this Lease and that Lessor is not the manufacturer or dealer in the Equipment herein leased. As Lessor is not the manufacturer or dealer in the Equipment, Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of warranties by the vendor of any item(s) of Equipment. Lessor hereby assigns to each Lessee for and during the lease term all manufacturers' warranties or guarantees, expressed or implied, issued on or applicable to the Equipment acquired by that Lessee, if any.

LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR WARRANTY WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEES' USE OF ANY ITEM(S) OF EQUIPMENT PROVIDED IN THIS LEASE. HOWEVER, LESSOR AGREES TO BE LIABLE FOR ANY LOSS TO PERSONAL PROPERTY OR INJURY TO PERSONS CAUSED BY THE NEGLIGENCE OF LESSOR.

8. Lease Payments: Lessee agrees to pay to Lessor lease payments, comprised of the principal and interest, in the amounts set forth in the payment schedule attached hereto as Exhibit B.

All payments shall be made in arrears for the preceding period, and shall be absolute and unconditional in all events, without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, except as expressly provided in Section 6 of this Lease, provided with respect to any item of Equipment Lessor has provided the funds to finance such item of Equipment and no payment with respect to such item of Equipment has been withheld from a vendor. Lessor shall provide invoices to Lessee in a timely manner. Interest for late payments shall be in accordance with West Virginia law.

The obligation of Lessee to pay lease payments hereunder is a current expense of that Lessee and not a debt in contravention of any applicable constitutional or statutory limitation or requirement, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies.

Lessee reasonably believes that sufficient funds can be obtained to make all lease payments during the term of this Lease and hereby covenants that it will use its best efforts to obtain, maintain and properly request funds from which the lease payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved. Lessee intends to make lease payments for the full term of this Lease and represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to their proper, efficient and economic operation.

9. Use and Maintenance: Lessee agrees to comply with all federal, state and local laws, ordinances, and regulations applicable to the possession, use or maintenance of the Equipment.

Lessee will not use, operate or maintain the Equipment improperly, carelessly, or in violation of any applicable law. Lessee will, at its expense, maintain, preserve and keep the Equipment in good repair, working order and condition.

Material alterations, modifications, additions or attachments to the Equipment must have the written approval of the Lessor, which consent shall not be unreasonably withheld, and such action shall be performed at the sole expense of Lessee. All alterations, modifications, additions or attachments shall not reduce the value or usefulness of the Equipment.

During the term of this Lease, Lessor and its officers, employees or agents shall have the right at all reasonable times during business hours of Lessee to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

10. Insurance and Loss of Equipment: Lessee is self-insured through the West Virginia Board of Risk and Insurance Management and will protect the interests of the Lessor and Lessee against Equipment losses or damage. Lessee is also self-insured against liability related to the Equipment. In the event of any loss, damage, injury or accident involving the Equipment, Lessee shall promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation thereof.

If any Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or if title to, or the temporary use of, the Equipment or any part thereof is taken under the exercise of the power of eminent domain, Lessee and Lessor will cause the net proceeds of any insurance claim or condemnation award to be applied either to the prompt repair, restoration, modification or replacement of the Equipment or, at Lessee's option, to the payment of the appropriate portion of the purchase option price.

Any balance of the net proceeds remaining after such work or purchase has been completed shall be paid to the Lessee. Net proceeds shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses incurred in the collection of such claims or award. If the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, Lessee shall either (a) complete the work and pay any cost in excess of the amount of net proceeds, or (b) Lessee shall pay to Lessor the purchase option price. The amount of the net proceeds in excess of the then applicable purchase option price, if any, may be retained by Lessee.

In the event the purchase option payment for any item(s) of Equipment is paid in accordance with this section, Lessor agrees to release any security interest on that item(s) of Equipment.

11. Title to Leased Equipment: During the term of this Lease, title to the Equipment shall vest in the Lessee so long as Lessee shall not be in default or this Lease shall not have been terminated as to such Equipment. To secure all obligations hereunder, Lessee hereby grants to Lessor a security interest in any and all right, title and interest of Lessee in the Equipment. Lessee shall promptly discharge any mechanics', materialmen's or other liens placed on the Equipment.

Lessor shall convey all of the Lessor's right and interest in and to the Equipment to Lessee upon payment of all the lease payments required in accordance with the payment schedule through the maximum lease term for such Equipment or the purchase option price set forth in the payment schedule, if the Lessee is not on such date in default as to any terms of this Lease.

12. Taxes and Other Charges: Lessee represents that it is exempt from federal, state and local taxation, and as such, shall not be liable or responsible for the payment or reimbursement of any tax of any type incurred in connection with this Lease, nor will it file any tax returns or reports on behalf of Lessor or its assignees.

As title to the Equipment shall vest in the Lessee during the term of this Lease, Lessee represents that, to the best of its knowledge, no personal property taxes nor licensing or titling fees based upon the use, possession or acquisition of the Equipment are due under the current laws of West Virginia. In the event the use, possession or acquisition of the Equipment should become subject to taxation, Lessee agrees to provide reasonable assistance to Lessor in its endeavors to have such taxes waived or decreased.

It is the intention of the Lessor and Lessee that the interest portion of the lease payments made under this Lease be and remain exempt from federal income taxation. Lessee covenants that it will take any and all action reasonably necessary to maintain the exemption from federal income taxation of the interest portion of the lease payments, and that it will not perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall have the effect of terminating or denying the exemption from federal income taxation of the interest portion of the lease payments, including, without limitation, leasing all or any portion of the Equipment or contracting with a third party for the use or operation of all or any portion of the Equipment if entering into such lease or contract would have such effect.

13. Assignment: This Lease, and the obligation of Lessee to make payments hereunder, may be sold, assigned or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees or subassignees by Lessor only upon the written consent of Lessee. Upon any sale, disposition, assignment or reassignment, Lessee shall be provided with an executed, duplicate original counterpart of the document(s) by which the same is made and shall be informed of the effective date of and modifications to such sale, disposition, assignment or reassignment. During the term of this Lease, Lessee and the Escrow Agent, if any, shall each keep a complete and accurate register of all such assignments in form necessary to comply with Section 148(a) of the Internal Revenue Code of 1986, as amended.

Lessee agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, set-off or counterclaim whatsoever, whether arising from a breach of this Lease or otherwise (except a breach by Lessor), that Lessee may from time to time have against Lessor or any provider of the Equipment. Lessee agrees to execute all documents, including notices of assignment, chattel mortgages or financing statements, which may be reasonably requested by Lessor or assignee to protect its interests in the Equipment and in this Lease.

Lessor hereby covenants not to sell or offer to sell this Lease through, nor shall this Lease be sold through, (1) a certificate of participation program, whereby one or more interests are created in the Lease, the Equipment or the lease payments; or (2) other similar instruments, agreements, securitizations and obligations through a pool, trust, limited partnership, or other entity.

Lessor shall be the initial registrar and, as such, shall maintain the books for the registration and transfer of this Lease. Each transferee of Lessor, by acceptance of this Lease, agrees to act as the successor registrar if so appointed in writing by the Lessee. The transfer of this Lease may be registered, upon presentation and surrender of this Lease at the office of the registrar designated for such purpose, together with the assignment. The registrar shall maintain a book-entry system by which a record of the names and addresses of all holders of this Lease, or interests therein, is kept. The Lessee or the registrar may require the person requesting any transfer to reimburse it for any tax or other governmental charge payable in connection therewith.

This Lease and the interest of the Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor, except that Lessee shall have the right to assign or lease the Equipment, in whole or in part, to other agencies of the State of West Virginia for governmental use only.

During the term of this Lease, Lessee shall keep a complete and accurate record of all assignments and other transfers in form and substance necessary to comply with Section 148(a) of the Internal Revenue Code of 1986, as amended. Prior to assignment of Lessor's interest herein, Lessor will cause written notice of such requested assignment to be sent to the Lessee, requesting approval. Upon receipt of an approved notice of assignment, Lessee shall (i) acknowledge the same in writing to Lessor, and (ii) record the assignment in Lessee's book entry system as that term is defined in Section 148(a) of the Internal Revenue Code. Upon assignment of Lessee's interest herein, Lessee will cause written notice of such assignment to be sent to Lessor disclosing the name and address of assignee. Lessee shall initiate any required change order to effectuate an approved assignment.

14. Indemnification: The laws and Constitution of West Virginia prohibit Lessee from protecting, holding harmless or indemnifying Lessor from and against any liability, obligations, losses, claims or damages whatsoever. Therefore, Lessee only agrees to be responsible for its own actions under this Lease.
15. Personal Property: The Equipment is and shall at all times during the lease term be and remain, personal property.
16. Option to Purchase: Lessee shall be entitled to purchase the Equipment as follows:
- (a) upon payment of all lease and other payments required under this Lease; or
  - (b) upon written notice delivered to Lessor by Lessee at least thirty (30) days before the proposed date for payment, and upon the payment on such date of the purchase option price.

As used herein, purchase option price means the amount equal to the outstanding principal, as set forth in the payment schedule, plus any unpaid interest that has accrued on such principal to the date of payment of the purchase option price, provided that any other sum due under this Lease has or is being paid, payable at the option of Lessee for the purpose of purchasing the Equipment.

Lessee may, at Lessee's option, make partial prepayments of a portion of the purchase option price upon written notice delivered at least thirty (30) days in advance of the proposed date for payment and upon payment on such date of the partial prepayment, being an amount equal to a portion of the outstanding principal set forth in the payment schedule and any unpaid interest that has accrued on such portion of the outstanding principal to the date of payment of the partial prepayment. As provided herein, if any portion of the Equipment is not accepted or the cost of the Equipment is less than the funding under this Lease, then the amount of the funding remaining shall be applied as a partial prepayment.

A revised payment schedule reflecting all partial prepayments, consistent with the financing structure contemplated herein, to reflect such partial prepayment shall be attached to this Lease as a change order. Partial prepayments shall entitle Lessee to a release of any security interest on the item(s) of Equipment prepaid in full.

17. Event of Default: The following constitute an "Event of Default" under this Lease:
- (a) failure by Lessee to pay any lease payment or other payment required to be paid within forty-five (45) days of when due; or
  - (b) failure by Lessee to maintain insurance on the Equipment in accordance with this Lease; or
  - (c) failure by Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of thirty (30) days after written notice is given to the Lessee by Lessor, specifying such failure and requesting that it be remedied, provided that if the failure stated in such notice cannot be corrected within such thirty (30) day period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected; or
  - (d) initiation by or against Lessee of a proceeding under any federal or state bankruptcy or insolvency laws.

An event of non-appropriation shall not be deemed an event of default.

18. Remedies on Default: Upon the occurrence of an event of default as specified in this Lease, Lessor shall provide written notification of default which Lessee must remedy within thirty (30) days from the date of notice of default, or Lessor shall have the right, at its option, without any further demand or notice, to pursue any one or more of the following remedial steps:
- (a) Terminate this agreement and retake possession of the Equipment and sell, lease, sublease or make other disposition of the Equipment in a reasonable and commercial manner.
  - (b) Declare an amount equal to all payments due during the fiscal year in which the default occurred to be immediately due and payable, whereupon the same shall become immediately due and payable; or



- (c) Proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this Lease or to recover for the breach thereof.

All of Lessee's right, title and interest in any Equipment the possession of which is retaken by Lessor upon the occurrence of an event of default shall terminate immediately upon such repossession. Lessee agrees to return the Equipment to Lessor, together with a release of all Lessee's title and interest therein. It is the intent of the parties hereto that any transfer of title to Lessor shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee agrees, nevertheless, to execute and deliver any such instruments as Lessor may reasonably request to evidence such transfer.

No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now hereafter existing at law or in equity.

- 19. **Force Majeure:** If by reason of force majeure, Lessor or Lessee is unable, in whole or in part, to carry out its obligations under this Lease, Lessor or Lessee, as the case may be, shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State of West Virginia or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.
- 20. **Notices:** All notices to be given under this Lease shall be made in writing and mailed to the other party at its address set forth in Exhibit D or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five (5) days subsequent to mailing.
- 21. **Binding Effect:** This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.
- 22. **Severability:** In the event any provision of this Lease shall be held invalid, prohibited or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 23. **Amendments:** All amendments, modifications, alterations or changes to this Lease shall be in writing and signed by both parties.
- 24. **Execution in Counterparts:** This Lease may be executed in several counterparts. The parties hereto agree that multiple originals of this Lease have been executed.
- 25. **Section Headings:** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
- 26. **Governing Law:** This Lease shall be governed by and construed in accordance with the laws of the State of West Virginia.
- 27. **Delivery of Related Documents:** Upon the request of one party, the other party will provide all documentation reasonably requested. In the event an Internal Revenue Service Form 8038-G or 8038-GC needs to be filed in connection with this transaction, Lessee will execute and file the form.
- 28. **Entire Agreement; Waiver:** This Lease, together with any request for quotation, Purchase Order(s) and other attachments hereto, and other documents or instruments executed by Lessor, Purchasing and Lessee in connection herewith, constitute the entire agreement between the parties with respect to the Equipment. The waiver by one party of any breach of any term, covenant or condition hereto must be in writing and shall not operate as a waiver of any subsequent breach thereof.

WITNESS THE FOLLOWING SIGNATURES:

LESSOR: \_\_\_\_\_

LESSEE: \_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

APPROVED AS TO FORM THIS

\_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

Darrell V. McGraw, Jr.  
Attorney General

BY: \_\_\_\_\_  
Assistant Attorney General

A:m'lpk.wpd (18Jun08 14:44PM)

**EXHIBIT A**

**EQUIPMENT**