

INDIANA FINANCE AUTHORITY

**REQUEST FOR PROPOSAL: FINANCING OF AN
ENERGY COST SAVINGS CONTRACT**

**DUE TO THE INDIANA FINANCE AUTHORITY BY
MARCH 20, 2013
5:00 P.M. EST**

REQUEST FOR PROPOSAL OVERVIEW

This is a Request for Proposal (“RFP”) issued by the Indiana Finance Authority (“IFA”) to finance the costs associated with a new energy cost savings contract, to be entered into by the State’s Department of Correction (“DOC”).

DOC plans to enter into an energy cost savings contract with Johnson Controls, Inc. The equipment provided by Johnson Controls, Inc. will be financed with the proceeds of a Lease to be entered into by and between a financial institution and the IFA. This Lease will originally be issued in the amount of approximately \$12,000,000.

The IFA and the Indiana Department Of Administration (“DOA”) anticipate entering into a use and occupancy agreement, pursuant to which the DOA would make payments to the IFA in amounts sufficient to enable the IFA to pay the future lease rental payments when due, in return for the DOC’s continued use of the energy cost savings equipment. The sole source of the lease rental payments would be the payments made to the IFA by the DOA from operating revenue.

The award of any agreement and/or execution of any lease shall be at the sole discretion of the IFA. Neither this RFP nor any proposal submitted in response hereto is to be construed as a legal offer.

The purpose of this RFP is to seek proposals from financial institutions (“Respondents”) interested in financing the lease described above. No lease will be executed without further discussion and negotiation with the Respondent selected to provide the necessary financing. The IFA will not be responsible for any amount to any Respondent, under any circumstances, including, without limitation, as a result of the termination of the RFP process. Respondents should anticipate executing a lease in substantially the same form attached hereto as Exhibit B, which includes the standard State-related provisions included as required under applicable Indiana law.

I. Confidential Information

Respondents are advised that materials contained in their responses are subject to the Indiana Public Records Act, IC 5-14-3 et seq. (the "APRA"), and after the execution of a related lease, may be viewed and/or copied by any member of the public, including news agencies and competitors. Respondents claiming a statutory exception to the APRA must indicate on their proposal that confidential materials are included, specify which statutory exception provision applies and identify the relevant information to which the Respondent wishes to apply the exception. The IFA reserves the right to make independent determinations of confidentiality. If the IFA does not agree with the information designated confidential pursuant to one of the disclosure exceptions to the APRA, it may either reject the proposal or discuss its interpretation of the allowable exceptions with the Respondent. If agreement can be reached, the proposal will be accepted. If agreement cannot be reached, the IFA will remove the proposal from consideration for award and return the proposal to the Respondent. The IFA will not determine price to be confidential information.

II. Minimum Qualifications of Respondent

Respondents' RFP submission must provide the following:

- a. A Certification that the necessary Underwriting Approval/ Lease Commitment will be provided on or before April 12, 2013 and the express ability to provide the necessary funding by May 3, 2013.
- b. Demonstrated expertise in Energy Cost Savings Contracts
 - o Please list the last three deals completed
- c. Verification of a rating of at least A2 (Moody's), A (S&P), and/or A (Fitch)

III. Information To Be Provided by Respondent

- a. Structure: Please see Exhibit A:
- b. Interest Rate: Please include only a fixed rate that will be locked in on March 15, 2013 with the lock extending through May 17, 2013 (60-day lock).
Fixed Rate: _____
Fixed Rate: _____ (w/ prepay penalty)
- c. Fees (if any):
 - a. Amount and type (e.g. closing vs. annual):_____

IV. Responses

ALL RESPONSES ARE LIMITED TO THREE (3) PAGES OR LESS

Respondents should submit the following:

1. Register their interest
2. One electronic copy of their written response to:

mpascarella@ifa.in.gov

Responses must be received no later than 5:00 p.m. EDST on March 20, 2013. Consideration of responses received after 5:00 p.m. EDST on such date will be at the discretion of the IFA. The Response should be clearly marked:

"RESPONSE TO REQUEST FOR PROPOSAL –FINANCING OF AN ENERGY COST SAVINGS CONTRACT"

No more than one (1) response per Respondent should be submitted. Each response should designate one person as the principal contact for the Respondent. Please provide the contact information for that person including email address. Following a review of the responses, some of the Respondents may be requested to make oral presentations and/or provide additional written information.

Any questions regarding this RFP must be submitted by email to Mark Pascarella at mpascarella@ifa.in.gov no later than 12:00 p.m. EDST on March 20, 2013. Questions received after 12:00 p.m. EDST on such date will not be considered. Depending upon the content and scope of the question, responses to questions will be promptly prepared and provided to each entity that has shown an interest in responding and provided contact information via email (as described above). "Energy Cost Savings Contract" should be included in the subject line of the e-mails.

OTHER THAN AS PROVIDED ABOVE, INQUIRIES ARE NOT TO BE DIRECTED TO ANY STAFF MEMBER OR OTHER MEMBER OF THE IFA OR ANY OTHER STATE-RELATED EMPLOYEE. SUCH ACTION MAY DISQUALIFY THE RESPONDENT FROM FURTHER CONSIDERATION FOR AN AGREEMENT AS A RESULT OF THIS RFP. RESPONDENTS MAY NOT RELY UPON VERBAL RESPONSES TO ANY INQUIRY.

V. Selection Process Overview

The IFA will review all of the responses for the following:

1. Responses offering the best means of satisfying the interests of the State at the lowest possible cost to the State.
2. Completeness of responses.
3. The IFA supports the “Buy Indiana” initiative. It is a strong preference that respondents meet the definition of an Indiana Business. Please refer to the following website to see if you fit within the definition and to learn more about the “Buy Indiana” initiative: <http://www.in.gov/idoa/2467.htm>.

The IFA plans to award winner by March 22nd

The IFA has the right to rebid the RFP for a second round if the IFA so chooses.

VI. Appendices

- Exhibit A: Amortization Schedule
Exhibit B: Substantially final form of Lease

EXHIBIT A
AMORTIZATION SCHEDULE OF ENERGY COST SAVINGS CONTRACT LEASE

Amortization Schedule

Complete the following table on the basis of the assumptions set forth below:

<u>Lease Rental Payment Date</u>	<u>Principal Portion</u>	<u>Interest Portion</u>	<u>Total Lease Rental Payment</u>
1/1/2015			
7/1/2015			
1/1/2016			
7/1/2016			
1/1/2017			
7/1/2017			
1/1/2018			
7/1/2018			
1/1/2019			
7/1/2019			
1/1/2020			
7/1/2020			
1/1/2021			
7/1/2021			
1/1/2022			
7/1/2022			
1/1/2023			
7/1/2023			
1/1/2024			
7/1/2024			

Assumptions

1. The total principal amount to be funded pursuant to the lease will be \$12,000,000. That principal amount may be increased or decreased by up to \$500,000.
2. The entire principal amount will be funded on the date of execution and delivery of the lease and will be held by the lessor on behalf of the IFA, until drawn by the IFA, with all investment earnings thereon accruing to the IFA. Interest will accrue but will not be payable until completion of project and lease payments start on January 1, 2015.
3. Each of the payments shall be approximately level, rounded to the nearest dollar.
4. The amounts to be entered into the table should be based on the fixed interest rate bid.
5. Upon selection of the winning bidder, the IFA will determine the actual principal amount to be funded within the range set forth in the first assumption above and the payments due will be adjusted in accordance with the second, third and fourth assumptions above.
6. This assumes no prepayment penalty. Please include details if you have a prepayment penalty. Also, please clearly display the rate (with applicable rate lock) without prepayment penalty and with prepayment penalty.

EXHIBIT B

MASTER EQUIPMENT LEASE/PURCHASE AGREEMENT

(Qualified Energy Savings Projects benefitting the _____ Prison, the _____ Facility and the _____ Facility)

This Master Equipment Lease/Purchase Agreement (the “*Agreement*”), dated as of _____, 2013, is being entered into between _____, a national banking association (“*Lessor*”), and the INDIANA FINANCE AUTHORITY, a public body corporate and politic of the State of Indiana (the “*State*”) performing essential governmental functions, duly created and existing under and by virtue of Indiana Code 4-4-10.9, as amended, and Indiana Code 4-4-11, as amended (“*Lessee*”).

WITNESSETH:

WHEREAS, Lessee desires to lease and acquire from Lessor certain Equipment described in each Schedule (both, as defined herein), subject to the terms and conditions of and for the purpose set forth in each Lease, and in the event of a conflict, the terms of a Schedule shall prevail; and

WHEREAS, the relationship between the parties shall be a continuing one and items of equipment may be added to the Equipment from time to time by execution of additional Schedules by the parties hereto and as otherwise provided herein; and

WHEREAS, Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the Schedules hereto for the purposes set forth herein;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I

Section 1.01. Definitions. The following terms will have the meanings indicated below, unless the context clearly requires otherwise:

“*Acceptance Certificate*” means, with respect to any Lease, the certificate substantially in the form of Exhibit E attached hereto.

“*Acquisition Amount*” means the amount specified in each Lease and represented by Lessee to be sufficient to acquire the Equipment listed in such Lease.

“*Acquisition Fund*” means, with respect to any Lease, the fund established and held by Deutsche Bank National Trust Company pursuant to the related Acquisition Fund Agreement, if any.

“*Acquisition Fund Agreement*” means, with respect to any Lease, an Acquisition Fund and Account Control Agreement, substantially in the form of Exhibit A attached hereto, in form and substance acceptable to and executed by Deutsche Bank National Trust Company (as custodian), Lessor, Lessee and the Department of Correction, pursuant to which an Acquisition Fund is established and administered.

“*Acquisition Period*” means, with respect to each Lease, that period stated in the Schedule to such Lease during which the Lease Proceeds attributable to such Lease may be expended on Equipment Costs.

“*Agreement*” means this Master Equipment Lease/Purchase Agreement, including the exhibits hereto, together with any amendments and modifications to the Agreement pursuant to Section 13.04.

“*Code*” means the Internal Revenue Code of 1986, as amended. Each reference to a Section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

“*Commencement Date*” means, for each Lease, the date when Lessee’s obligation to pay rent commences under such Lease, which date shall be the earlier of (a) the date on which the Equipment listed in such Lease is accepted by the Department of Correction in the manner described in Section 5.01 and (b) the date on which sufficient moneys to purchase the Equipment listed in such Lease are deposited in an Acquisition Fund for that purpose with the Lessor.

“*Contract Rate*” means the rate identified as such in the applicable Schedule.

“*Default Rate*” means a rate of interest equal to the lesser of (a) the sum of the Contract Rate or the Taxable Rate (whichever is then in effect) *plus* 5% and (b) the maximum rate permitted by law.

“*Department of Administration*” means the Department of Administration of the State and its successors.

“*Department of Correction*” means the Department of Correction of the State and its successors.

“*Energy Cost Savings Contract*” means the Professional/Personal Services Contract EDS_____, dated _____, 20___, as may hereafter be amended and supplemented, between the Department of Correction and the Vendor, pursuant to which the Vendor shall install the Equipment in the Facilities in accordance with the Energy Cost Savings Contract.

“*Equipment*” means the property listed in each of the Leases and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article V. Whenever reference is made in this Agreement to Equipment listed in

a Lease, such reference shall be deemed to include all such replacements, repairs, restorations, modifications and improvements of or to such Equipment.

“*Equipment Costs*” means the total cost of the Equipment listed in each Lease, including soft costs such as freight, installation and taxes paid up front by Lessor and all capitalizable consulting and training fees approved by Lessor, legal fees, financing costs and other costs necessary to vest full, clear legal title to the Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in each Lease, and otherwise incurred in connection with the financing provided by the lease-purchase of the Equipment as provided in each Lease; *provided* that (a) any such soft costs on a cumulative basis shall not exceed a percentage of the Maximum Equipment Cost approved by Lessor and (b) in no event shall capitalizable delivery charges, installation charges, taxes and similar capitalizable soft costs relating to such Equipment be included without Lessor’s prior consent.

“*Event of Default*” means an Event of Default described in Section 12.01.

“*Event of Taxability*” has the meaning ascribed to it in Section 4.06(b).

“*Facilities*” means the Equipment to be installed in the real property located near or in (a) _____, Indiana, in _____ County, which is commonly referred to as the _____ Prison, (b) _____, Indiana, in _____ County, which is commonly referred to as the _____ Facility, and (c) _____, Indiana, in _____ County, which is commonly referred to as the _____ Facility, in each case being more particularly described in Exhibit A attached to the Use and Occupancy Agreement.

“*Gross Revenues*” means all fees, charges, revenues or receipts derived by Lessee from the operation or leasing of the Equipment or any portion thereof pursuant to the Use and Occupancy Agreement or otherwise, or from the sale, transfer or conveyance (whether voluntary or involuntary) of the Equipment or any portion thereof, and shall include any rental payments received with respect to the Equipment or any portion thereof from whatever sources, including, but not limited to, business interruption loss insurance and receipts therefrom.

“*Lease*” means a Schedule and the terms of this Agreement, which are incorporated by reference into such Schedule. Each Schedule shall constitute a separate and independent Lease.

“*Lease Proceeds*” means, with respect to each Lease, the total amount of money to be paid by Lessor for deposit in the Acquisition Fund and application in accordance with such Lease and the Acquisition Fund Agreement.

“*Lease Term*” for each Lease, means the Original Term and all Renewal Terms therein provided, and for this Agreement, means the period from the date hereof until this Agreement is terminated.

“*Lessee*” means the entity referred to as Lessee in the first paragraph of this Agreement.

“*Lessor*” means (a) the entity referred to as Lessor in the first paragraph of this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to Equipment under a Lease or any Lease (including the Rental Payments thereunder) pursuant to Section 11.01, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform under a Lease.

“*Make Whole Amount*” means for any Lease an amount equal to the sum of the differences between (a) each scheduled interest payment which would have been made on the prepaid amount if such prepayment had not occurred and (b) the corresponding fixed-rate interest payment which would be received under an interest rate swap which Lessor shall deemed to have entered into as of the Prepayment Date (the “*Replacement Swap*”) covering its payment obligations under an interest rate swap which Lessor shall deemed to have entered into when the prepaid amount was originally funded, with each such difference discounted to a present value as of the date of prepayment using the fixed interest rate of the Replacement Swap as the applicable discount rate; provided, that Lessee acknowledges that Lessor might not fund or hedge its fixed-rate loan or lease portfolio or any prepayment thereof on a transaction-by-transaction basis at all times, and agrees that the foregoing is a reasonable and appropriate method of calculating liquidated damages for any prepayment irrespective of whether any of the foregoing hedging transactions have in fact occurred or occurred precisely as stated with respect to the financing evidenced by the Lease; provided further, that all calculations and determinations by Lessor of the amounts payable pursuant to the preceding provisions or of any element thereof, if made in accordance with Lessor’s then standard procedures for so calculating or determining such amounts, shall be conclusive, absent manifest arithmetic error.

“*Material Adverse Change*” means (a) prior to the Utilization Period Expiration, a downgrade in the State’s external debt rating of two or more subgrades by either Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Group or any equivalent successor credit rating agency, or any downgrade by either such agency that would cause the State’s credit rating to be below investment grade, and (b) thereafter, any change in the State’s creditworthiness that could have a material adverse effect on (i) the financial condition or operations of the State or (ii) Lessee’s ability to perform its obligations under this Agreement or any Lease.

“*Maximum Equipment Cost*” means the cumulative amount specified in the latest Schedule executed under this Agreement.

“*Net Revenues*” for any period means the Gross Revenues during such period less expenses of operation, maintenance and repair for the Equipment or any portion thereof required to be paid by Lessee pursuant to the Use and Occupancy Agreement or otherwise during such period, all as calculated in accordance with generally accepted accounting principles.

“*Original Term*” means the period of time commencing on the Commencement Date for each Lease through the end of the fiscal year of Lessee in effect at such Commencement Date.

“*Prepayment Price*” means, with respect to the Equipment listed in a Lease, the amount that Lessee shall pay to Lessor to purchase such Equipment in connection with the prepayment of its obligations under such Lease in whole or in part as provided in Section 10.01.

“*Renewal Terms*” means the renewal terms of each Lease, each having a duration of two years and a term coextensive with each Renewal Term as provided in Section 3.02(b) of the Use and Occupancy Agreement.

“*Rental Payment Dates*” means each January 1 and July 1, commencing, with respect to the initial Lease, January 1, 2015, and, with respect to each other Lease, the date specified in the Schedule for such Lease, on which Lessee is required to make a Rental Payment under each Lease as specified in the Schedule for any such Lease.

“*Rental Payments*” means the basic rental payments payable by Lessee under each Lease pursuant to Section 4.01, in each case consisting of a principal component and an interest component, as such rental payment may be adjusted in accordance with Section 4.06.

“*Schedule*” means each separately numbered Schedule of Property substantially in the form of Exhibit B-1 attached hereto, together with a Rental Payment Schedule attached thereto substantially in the form of Exhibit B-2 attached hereto.

“*Service/Performance Agreement Assignment*” means the Service/Performance Agreement Assignment, dated _____, 2013, between the Finance Authority and the Department of Correction, pursuant to which the Department of Correction shall collaterally assign to the Finance Authority all of the Department of Correction’s right, title and interest in and to the Energy Cost Savings Contract.

“*State*” means the State of Indiana.

“*Taxable Rate*” means an interest rate equal to the Contract Rate plus a rate sufficient such that the total interest to be paid on any Rental Payment Date would, after such interest was reduced by the amount of any Federal, state or local income tax (including any interest, penalties or additions to tax) actually imposed thereon as a result of an Event of Taxability, equal the amount of interest otherwise due to Lessor.

“*Use and Occupancy Agreement*” means the Use and Occupancy Agreement, dated as of _____ 1, 2013, between Lessee and the Department of Administration, related to the Equipment to be financed pursuant to this Agreement, and each Supplemental Agreement entered into pursuant thereto.

“*Utilization Period Expiration*” means the date, with respect to each Lease not funded under an Acquisition Fund Agreement, by which the Department of Correction must deliver an Acceptance Certificate for the Equipment under such Lease as indicated in Section 3.04(b).

“*Vendor*” means _____, as the manufacturer, installer or supplier of the Equipment pursuant to the Energy Cost Savings Contract.

ARTICLE II

Section 2.01. Representations and Covenants of Lessee. Lessee represents, covenants and warrants for the benefit of Lessor on the date hereof and as of the Commencement Date of each Lease, as follows:

(a) Lessee is a public body corporate and politic of the State, duly created and existing under the constitution and laws of the State, with full power and authority to enter into this Agreement, each Lease, the Use and Occupancy Agreement and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder.

(b) Lessee has duly authorized the execution and delivery of this Agreement, each Lease and the Use and Occupancy Agreement by proper action of its governing body at a meeting duly called, regularly convened and attended throughout by the requisite quorum of the members thereof or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement, each Lease and the Use and Occupancy Agreement.

(c) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the date hereof.

(d) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and each Lease and the acquisition by Lessee of the Equipment as provided in each Lease.

(e) During the Lease Term, the Equipment will be used by Lessee, the Department of Administration, the Department of Correction or any other person permitted pursuant to and in accordance with the Use and Occupancy Agreement only for the purpose of performing essential governmental or proprietary functions of Lessee, the Department of Administration, the Department of Correction or such person consistent with the permissible scope of the authority of Lessee, the Department of Administration, the Department of Correction or such person. Lessee does not intend to sell or otherwise dispose of the Equipment or any interest therein prior to the last Rental Payment (including all Renewal Terms) scheduled to be paid under each Lease, except as may otherwise be permitted pursuant to Article V of the Use and Occupancy Agreement.

(f) Lessee shall deliver or cause to be delivered to Lessor for purposes of this Agreement: (i) the audited financial statements of the State, as prepared and examined by the Board of Accounts of the State (the "Board of Accounts") for each 12-month period ending June 30, beginning with the 12-month period ended June 30, 2014, together with all notes thereto, within 60 days of receipt by the State from the Board of Accounts; and (ii) upon Lessor's request, the State's annual budget for any prior or current fiscal year or the following fiscal year of the State. The information provided pursuant to the preceding sentence may be disseminated among Lessor and any of its affiliates and any of their respective successors and assigns.

(g) Based solely in reliance on a certificate of the Department of Correction, which is included in the transcript of proceedings of which this Agreement is a part: (i) the Department of Correction has an immediate need for the Equipment listed on each Schedule and expects to

make immediate use of the Equipment listed on each Schedule; (ii) the Department of Correction's need for the Equipment is not temporary; and (iii) the Department of Correction does not expect the need for any item of the Equipment to diminish during the Lease Term.

(h) The payment of the Rental Payments or any portion thereof is not (under the terms of any Lease or any underlying arrangement) directly or indirectly: (i) secured by any interest in property used or to be used in any activity carried on by any person other than a state or local governmental unit or payments in respect of such property; or (ii) on a present value basis, derived from payments (whether or not to Lessee) in respect of property, or borrowed money, used or to be used in any activity carried on by any person other than a state or local governmental unit. Lessee shall not permit the Federal government to guarantee any Rental Payments. The Equipment will not be used, directly or indirectly, in any activity carried on by any person other than a state or local governmental unit. No portion of the Equipment Costs for the Equipment will be used, directly or indirectly, to make or finance loans to any person other than Lessee, the Department of Administration or the Department of Correction. Except as may be provided for in the Energy Cost Savings Contract, none of Lessee, the Department of Administration nor the Department of Correction has entered into any management or other service contract with respect to the use and operation of the Equipment.

(i) There is no pending litigation, tax claim, proceeding or dispute that may adversely affect Lessee's financial condition or impairs its ability to perform its obligations hereunder. Lessee will do any further act and execute, acknowledge, deliver, file, register and record any further documents Lessor may reasonably request in order to protect: (i) Lessor's first priority security interest in the Equipment, subject to the Use and Occupancy Agreement and except as otherwise provided in the Use and Occupancy Agreement; and (ii) Lessor's rights and benefits under this Agreement.

(j) The State is the fee owner of the real estate where the Equipment is and will be located.

(k) No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase, to which Lessee has been a party, at any time has been terminated by Lessee as a result of insufficient funds being appropriated in any fiscal year. No event has occurred which would constitute an event of default under any debt, revenue bond or obligation which Lessee has issued during the past ten (10) years.

(l) So long as the Use and Occupancy Agreement has not been terminated and is in effect, Lessee shall establish and maintain rents under the Use and Occupancy Agreement, which are reasonably expected to yield during each fiscal year in which the Equipment is available for use and occupancy, an amount which is equal to at least the amount of rents required during such fiscal year pursuant to Section 4.04 of the Use and Occupancy Agreement, such that the Net Revenues will at least equal the amount necessary to pay Rental Payments under this Agreement when due. Prior to the onset of each fiscal year, Lessee shall review the rents so established and shall promptly establish or revise such rents as necessary to comply with the foregoing requirements.

ARTICLE III

Section 3.01. Lease of Equipment. Subject to the terms of this Agreement, Lessor agrees to provide the funds specified in each Lease to be provided by it to acquire the Equipment, up to an amount equal to the Maximum Equipment Cost. Upon the execution of each Lease, Lessor hereby demises, leases, transfers and lets to Lessee, and Lessee hereby acquires, rents and leases from Lessor, the Equipment as set forth in such Lease and in accordance with the terms thereof. The Lease Term for each Lease shall be renewed at the end of the Original Term or any Renewal Term for the next succeeding Renewal Term up to the maximum Lease Term as set forth in the Schedule for such Lease so long as the term of the Use and Occupancy Agreement is renewed in accordance with Section 3.02 thereof; *provided, however*, that the Lease Term for each Lease shall be subject to extension to the same extent and for the same period as the Use and Occupancy Agreement is extended pursuant to Section 4.06 thereof. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term for a Lease has been completed, Lessee shall be deemed to have exercised its option to continue such Lease for the next Renewal Term, unless Lessee shall have terminated such Lease or this Agreement pursuant to Section 3.03(a) or Section 10.01. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the applicable Lease.

Section 3.02. Continuation of Lease Term. Lessee intends, subject to Section 3.03(a), to continue the Lease Term of each Lease through the Original Term and all Renewal Terms. Lessee further intends to do all things lawfully within its power to enforce the Use and Occupancy Agreement for the purpose of obtaining any amounts owed to Lessee by the Department of Administration thereunder in order to discharge Lessee's obligation to make Rental Payments due hereunder and to exhaust all available reviews and appeals granted to it under the Use and Occupancy Agreement in the event the Department of Administration does not comply with any such obligation to pay such amounts.

Section 3.03. Sole Source of Rental Payments from Use and Occupancy Agreement; Security Interest in, Negative Pledge of and Covenants with respect to the Use and Occupancy Agreement.

(a) Lessee is obligated to pay Rental Payments solely from the payments owed and paid by the Department of Administration to Lessee pursuant to the Use and Occupancy Agreement. This Agreement shall terminate upon the termination of the Use and Occupancy Agreement for any reason. Lessee agrees to deliver notice to Lessor of such termination promptly after discovering or receiving notice from the Department of Administration that the Use and Occupancy Agreement has been terminated. If this Agreement is terminated in accordance with this Section, Lessee agrees to cause the Department of Administration, the Department of Correction or any other person who is then using the Equipment pursuant to the Use and Occupancy Agreement to cease use of the Equipment and peaceably remove and deliver, at the Department of Administration's expense, the Equipment to Lessor at the location(s) in the continental United States to be specified by Lessor.

(b) As security for the payment and performance of all of Lessee's obligations hereunder, including payment of Rental Payments and all other amounts payable under each Lease, Lessee hereby pledges and grants to Lessor a first priority security interest in the Net Revenues. To perfect and protect Lessor's pledge and first priority security interest in the Net Revenues, Lessee hereby agrees to execute and deliver to Lessor such documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish, perfect and maintain Lessor's pledge and security interest in the Net Revenues.

(c) Lessee shall not, directly or indirectly, create, incur, assume or permit to exist any lien, pledge, security interest or other encumbrance on or with respect to the Use and Occupancy Agreement, except as provided in subsection (b) above.

(d) Lessee hereby covenants and agrees that, without the prior written consent of Lessor in each instance, Lessee will not: (i) exercise any rights or remedies (including its right to terminate) under Section 6.02 of the Use and Occupancy Agreement or any Supplemental Agreement or waive any of its rights and remedies under such Section or otherwise under the Use and Occupancy Agreement or any Supplemental Agreement; (ii) amend or supplement the Use and Occupancy Agreement, except as provided in Sections 4.03, 4.04 and 4.05 thereof and clause (a) of Section 7.01 thereof, or enter into any Supplemental Agreement for the purposes set forth in clause (b) of Section 7.01 of the Use and Occupancy Agreement; or (iii) sublease all or any portion of the Equipment under the Use and Occupancy Agreement, except as provided in Section 5.01 thereof.

(e) Lessee hereby covenants and agrees to deliver to Lessor the following:

(i) written notice no later than the fifteenth day of any month during which the Department of Administration fails to pay the monthly amount that is due by the tenth day of that month pursuant to Section 4.01 of the Use and Occupancy Agreement, which notice shall describe the amount and due date for such payment;

(ii) on or before August 10 of each even-numbered year, a copy of the fully completed and executed Supplemental Agreement entered into by Lessee and the Department of Administration pursuant to Section 4.03 of the Use and Occupancy Agreement;

(iii) on or before August 10 of each odd-numbered year, a copy of any amendment to the Use and Occupancy Agreement or any Supplemental Agreement then in effect pursuant to Section 4.03 of the Use and Occupancy Agreement in connection with any rental rate adjustment;

(iv) no later than the tenth day after its execution and delivery, a copy of any amendment to the Use and Occupancy Agreement or any Supplemental Agreement then in effect pursuant to Section 4.05 of the Use and Occupancy Agreement in connection with a rent adjustment;

(v) no later than the tenth day after Lessee's receipt from the Department of Administration, a copy of any sublease agreement entered into pursuant to Section 5.01 of the Use and Occupancy Agreement;

(vi) promptly after its delivery, a copy of any bond counsel opinion delivered to Lessee pursuant to Section 5.02 of the Use and Occupancy Agreement;

(vii) promptly after its delivery, a copy of any notice delivered by Lessee to the Department of Administration pursuant to Section 6.01(b) of the Use and Occupancy Agreement;

(viii) no later than the tenth day after its delivery to the Lessee, a copy of any certification provided by the Department of Administration pursuant to clause (c) in the definition of "Permitted Encumbrances" in the Use and Occupancy Agreement;

(ix) promptly (but in no event later than five days) after its delivery to Lessee, a copy of any notice provided by the Department of Administration pursuant to Section 3.02(b) or Section 4.06(a) of the Use and Occupancy Agreement; and

(x) no later than the tenth day after its delivery to Lessee, a copy of any determination provided by the Department of Administration pursuant to Section 8.04(a) of the Use and Occupancy Agreement or a copy of any documents provided by the Department of Administration pursuant to Section 8.04(c) of the Use and Occupancy Agreement.

(f) Lessee shall immediately notify Lessor in writing in the event that any determination is made, as provided in Section 6.03 of the Use and Occupancy Agreement, that the terms and conditions of the Use and Occupancy Agreement and the amount to be paid thereunder for the use and occupancy of the Facilities are unjust and unreasonable considering the factors set forth in Indiana Code 4-13.5-4-1.

Section 3.04. Conditions to Lessor's Performance.

(a) As a prerequisite to the performance by Lessor of any of its obligations under pursuant to any Lease, Lessee shall deliver to Lessor the following:

(i) a fully completed Schedule, executed by Lessee;

(ii) an Acquisition Fund Agreement, executed by Lessor, Lessee and the Department of Correction, unless Lessor pays 100% of the Acquisition Amount directly to the Vendor upon execution of the Lease;

(iii) the minutes of the meeting of Lessee held on _____, 2013, including Resolution No. G__-2013, authorizing the execution and delivery of this Agreement and the Use and Occupancy Agreement and performance by Lessee of its obligations hereunder and thereunder;

(iv) an Incumbency and Authorization Certificate executed by the Chairman of Lessee and the Public Finance Director of the State, in substantially the form attached hereto as Exhibit C-1, completed to the satisfaction of Lessor, and a General Certificate executed by the Commissioner and another officer of the Department of Administration, in substantially the form attached hereto as Exhibit C-2;

(v) A Service/Performance Agreement Assignment, executed by the Department of Correction and Lessee;

(vi) an opinion of counsel to Lessee in substantially the form attached hereto as Exhibit D and otherwise satisfactory to Lessor;

(vii) evidence of insurance as required by Section 7.02 and as required by Section 8.06 of the Use and Occupancy Agreement;

(viii) all documents, including financing statements, affidavits, notices, bills of sale and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate at that time for purposes of Section 3.03(b), 6.01 or 6.02;

(ix) a waiver or waivers of interest in the Equipment, satisfactory to Lessor, from any mortgagee or any other party having an interest in the real estate on which the Equipment will be located and/or landlord of the real estate on which the Equipment will be located; *provided* that, no such waiver shall be required if any such mortgagee, other party or landlord is Lessee, the Department of Administration, the Department of Correction or any other party that is set forth under the list of Permitted Encumbrances (as defined in the Use and Occupancy Agreement) in Exhibit B to the Use and Occupancy Agreement;

(x) a copy of a fully completed and executed IRS Form 8038-G;

(xi) evidence of approval by the State Budget Agency, after consultation with the State Budget Committee, of the Use and Occupancy Agreement;

(xii) evidence of the State Budget Committee's recommendation of the Energy Cost Savings Contract; and

(xiii) such other items, if any, as are set forth in such Lease, or are reasonably required by Lessor.

(b) In addition, the performance by Lessor of any of its obligations pursuant to any Lease shall be subject to: (i) no Material Adverse Change in the financial condition of Lessee since the date of this Agreement; (ii) no Event of Default having occurred and continuing; and (iii) if no Acquisition Fund has been established, the Equipment must be accepted by the Department of Correction no later than the date listed as the Utilization Period Expiration in the applicable Schedule, as evidenced by the delivery of an Acceptance Certificate in the form attached hereto as Exhibit E.

(c) Subject to satisfaction of the foregoing, Lessor will pay the Acquisition Amount for Equipment described in a Schedule to the Vendor or will reimburse Lessee for the prior payment of any such Acquisition Amounts by Lessee to the Vendor, upon receipt of the documents described in Sections 5.01(a) and (b), or if an Acquisition Fund has been established pursuant to an Acquisition Fund Agreement, Lessor will deposit the Acquisition Amount in the Acquisition Fund for Equipment described in the Schedule with the Lessor.

(d) This Agreement is not a commitment by Lessor to enter into any Lease not currently in existence, and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Lease, it being understood that whether Lessor enters into any proposed Lease shall be a decision solely within Lessor's discretion.

(e) Lessee will cooperate with Lessor in Lessor's review of any proposed Lease. Without limiting the foregoing, Lessee will provide Lessor with any documentation or information Lessor may request in connection with Lessor's review of any proposed Lease. Such documentation may include, without limitation, documentation concerning the Equipment and its contemplated use and location and documentation or information concerning the financial status of the State and other matters related to Lessee.

ARTICLE IV

Section 4.01. Rental Payments. Subject to Section 3.03(a), Lessee shall promptly pay Rental Payments, in lawful money of the United States of America, to Lessor on the dates and in such amounts as provided in the Schedule. Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the Default Rate from such date until paid. Interest shall be calculated on the basis of a 360-day year for the actual number of days elapsed.

Section 4.02. Interest and Principal Components. A portion of each Rental Payment is paid as, and represents payment of, interest, and the balance of each Rental Payment is paid as, and represents payment of, principal, as set forth in the Schedule.

Section 4.03. Rental Payments to Constitute a Current Expense of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments under each Lease shall constitute a current expense of Lessee payable solely from the payments owed and paid by the Department of Administration to Lessee pursuant to the Use and Occupancy Agreement and shall not in any way constitute an indebtedness of the State within the meaning or application of any constitutional provision or limitation, but that the Rental Payments under each Lease are payable solely as to both the principal components and interest components thereof from the Net Revenues of the Equipment of such Lease, nor shall anything contained herein or in a Lease constitute a pledge of the general tax revenues, funds or moneys of Lessee or the State.

Section 4.04. Rental Payments to be Unconditional. Except as provided in Section 3.03(a), the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in each Lease 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 after it has been accepted by the Department of Correction, any defects, malfunctions, breakdowns or infirmities in the Equipment, disputes with the Vendor of any Equipment or Lessor, failure of the Vendor under the Energy Cost Savings Contract to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor under the Energy Cost Savings Contract, or any accident, condemnation or unforeseen circumstances.

Section 4.05. Tax Covenants. Lessee agrees that it will not take any action that would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission or action would cause the interest component of Rental Payments to be or to become ineligible for the exclusion from gross income of the owner or owners thereof for federal income tax purposes.

Section 4.06. Event of Taxability.

(a) Upon the occurrence of an Event of Taxability, the interest component of Rental Payments and any charge on Rental Payments or other amounts payable based on the Contract Rate shall have accrued and be payable at the Taxable Rate retroactive to the date as of which the interest component is determined by the Internal Revenue Service to be includible in the gross income of the owner or owners thereof for federal income tax purposes, and Lessee will pay such additional amount as will result in the owner receiving the interest component at the Taxable Rate.

(b) For purposes of this Section, “*Event of Taxability*” means a determination that the interest component is includible for federal income tax purposes in the gross income of the owner thereof due to Lessee’s, the Department of Administration’s or the Department of Correction’s action or failure to take any action.

ARTICLE V

Section 5.01. Delivery, Installation and Acceptance of Equipment.

(a) Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement to cause the Department of Correction to order the Equipment, cause the Equipment to be delivered and installed at the location specified in the Leases and pay any and all delivery and installation costs and other Equipment Costs in connection therewith. When the Equipment listed in any Lease has been delivered and installed, Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement to cause the Department of Correction to accept promptly such Equipment, evidence said acceptance by executing and delivering to Lessor and Lessee an Acceptance Certificate in the form attached hereto as Exhibit E and convey the applicable portion or all, respectively, of such Equipment to Lessee pursuant to one or more bills of sale. Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement to the Department of

Correction to enter into the Service/Performance Agreement Assignment in connection with the execution and delivery of the Use and Occupancy Agreement. At the request of Lessor, Lessee shall enforce its rights under the Service/Performance Agreement Assignment.

(b) Lessee shall deliver to Lessor original invoices and bills of sale (if title to such Equipment has passed to Lessee) relating to each item of Equipment accepted by the Department of Correction. With respect to Equipment not purchased through an Acquisition Fund, Lessor shall, upon receipt of an Acceptance Certificate from the Department of Correction, prepare a Schedule of Property and Rental Payment Schedule in the forms attached hereto as Exhibits B-1 and B-2. Lessee shall execute and deliver such Schedules to Lessor within five business days of receipt.

Section 5.02. Quiet Enjoyment of Equipment. So long as Lessee is not in default under the related Lease, neither Lessor nor any entity claiming by, through or under Lessor, shall interfere with Lessee's quiet use and enjoyment of the Equipment during the Lease Term.

Section 5.03. Location; Inspection. Once installed, no item of the Equipment will be moved or relocated from the location specified for it in the Lease on which such item is listed, without Lessor's prior written consent, which consent shall not be unreasonably withheld. As provided in Section 3.03 of the Use and Occupancy Agreement, Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property where the Equipment is located for the purpose of inspecting the Equipment.

Section 5.04. Use and Maintenance of the Equipment.

(a) Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement: (i) to not install, use, operate or maintain the Equipment (or cause the Equipment to be installed, used, operated or maintained) improperly or carelessly, in violation of any applicable law or in a manner contrary to that contemplated by the related Lease; and (ii) to obtain all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; *provided* that, Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under the Lease.

(b) Lessee agrees that it will enforce the obligation of the Department of Administration in the Use and Occupancy Agreement to maintain, preserve and keep the Equipment in good repair and working order, in a condition comparable to that recommended by the manufacturer. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment. In all cases, Lessee agrees to enforce the obligation of the Department of Administration in the Use and Occupancy Agreement to pay any costs necessary for the manufacturer to re-certify the Equipment as eligible for manufacturer's maintenance upon the return of the Equipment to Lessor as provided for herein.

(c) Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement to not alter any item of Equipment or install any accessory, equipment or device on an item of Equipment if that would impair any applicable warranty, the originally intended function or the value of that Equipment. All repairs, parts, accessories, equipment and devices furnished, affixed to or installed on any Equipment, excluding temporary replacements, shall thereupon become subject to the security interest of Lessor.

ARTICLE VI

Section 6.01. Title to the Equipment. During each Lease Term, and so long as Lessee is not in default under Article XII, all right, title and interest in and to each item of the Equipment shall be vested in Lessee immediately upon the Department of Correction's acceptance of each such item of Equipment and conveyance thereof to Lessee. Lessee shall at all times protect and defend, at its own cost and expense, its title in and to the Equipment from and against all claims, liens and legal processes of its creditors and keep all Equipment free and clear of all such claims, liens and processes. Upon the occurrence of an Event of Default or upon termination of a Lease or this Agreement pursuant to Section 3.03(a), full and unencumbered legal title to the Equipment shall pass to Lessor, and Lessee shall have no further interest therein. In addition, upon the occurrence of such an Event of Default or such termination, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein and upon request by Lessor, shall deliver possession of the Equipment to Lessor in accordance with Section 12.02. Upon purchase of the Equipment under a Lease by Lessee pursuant to Section 10.01, Lessor's security interest or other interest in the Equipment shall terminate, and Lessor shall execute and deliver to Lessee such documents as Lessee may request to evidence the termination of Lessor's security interest in the Equipment subject to the related Lease.

Section 6.02. Security Interest; Subordination of the Use and Occupancy Agreement to this Agreement.

(a) As additional security for the payment and performance of all of Lessee's obligations under each Lease, upon the execution of such Lease, Lessee hereby grants to Lessor, subject to the Use and Occupancy Agreement and except as otherwise provided in the Use and Occupancy Agreement, a first priority security interest constituting a first lien on (a) the Equipment subject to such Lease, (b) moneys and investments held from time in the Acquisition Fund and (c) any and all proceeds of any of the foregoing. Lessee authorizes Lessor to file (and Lessee agrees to execute, if applicable) such notices of assignment, chattel mortgages, financing statements and other documents, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain Lessor's security interest in the Equipment, the Acquisition Fund and the proceeds thereof.

(b) As provided in Section 10.02 of the Use and Occupancy Agreement, the Use and Occupancy Agreement and Lessee's interest in the Facilities thereunder shall at all times be subordinate and inferior to the lien on the Facilities granted by Lessee to Lessor pursuant to this Section; *provided, however*, that so long as an Event of Default has not occurred and is then continuing and the Use and Occupancy Agreement has not been terminated as provided in

Section 3.02 or Section 8.05 thereof, the Use and Occupancy Agreement shall remain in full force and effect notwithstanding such subordination, and the Department of Administration and the Department of Correction shall not be disturbed by Lessor or Lessee in their use and occupancy of the Facilities during the term of the Use and Occupancy Agreement or in the enjoyment of their rights hereunder.

Section 6.03. Personal Property; No Encumbrances. Lessee agrees that the Equipment is deemed to be and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Except for the Use and Occupancy Agreement and as otherwise provided in the Use and Occupancy Agreement, Lessee shall not create, incur, assume or permit to exist any mortgage, pledge, lien, security interest, charge or other encumbrance of any nature whatsoever on any of the real estate where the Equipment is or will be located or enter into any agreement to sell or assign or enter into any sale/leaseback arrangement of such real estate without the prior written consent of Lessor; *provided* that if Lessor or its assigns is furnished with a waiver of interest in the Equipment acceptable to Lessor or its assigns in its discretion from any party taking an interest in any such real estate prior to such interest taking effect, such consent shall not be unreasonably withheld.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all levies, liens and encumbrances except those created by each Lease. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee or the Department of Correction, and that the Equipment will therefore be exempt from all property taxes. If the use, possession or acquisition of any Equipment is nevertheless determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to such Equipment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Equipment. Lessee shall pay such taxes or charges as the same may become due; *provided* that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during each Lease Term.

Section 7.02. Insurance.

(a) Lessee shall maintain or cause to be maintained: (i) casualty insurance naming Lessor and its assigns as loss payee and additional insured and insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor, in an amount at least equal to the aggregate unpaid principal component of rental payments under this Agreement; (ii) liability insurance in form and amount satisfactory to Lessor; and (iii) business interruption insurance naming Lessor as loss payee, with coverage equal to the maximum total rental payments payable by the Department of Administration under the Use and Occupancy Agreement for any consecutive 24-month period and insuring against abatement of rental

payments payable by the Department of Administration resulting from the Department of Administration's or the Department of Correction's loss of use and occupancy of the Facilities or any substantial portion thereof under the Use and Occupancy Agreement and caused by any and all perils insured under the casualty insurance described in clause (i) above; *provided* that the Department of Administration or the Department of Correction may self-insure against the risks described in clause (ii) above.

(b) In the event the Department of Administration or the Department of Correction is permitted, at Lessor's sole discretion, to self-insure as provided in this Section, Lessee shall cause the Department of Administration or the Department of Correction to provide to Lessor evidence of self-insurance in form and content acceptable to Lessor. Lessee shall cause the Department of Administration or the Department of Correction to furnish to Lessor evidence of such insurance or self-insurance coverage throughout the Lease Term. The Department of Administration or the Department of Correction shall not cancel or modify such self-insurance coverage in any way that would affect the interests of Lessor without Lessee first giving written notice thereof to Lessor at least 30 days in advance of such cancellation or modification.

Section 7.03. Risk of Loss. Whether or not covered by insurance or self-insurance, Lessee hereby assumes all risk of loss of, or damage to and liability related to injury or damage to any persons or property arising from the Equipment from any cause whatsoever, and no such loss of or damage to or liability arising from the Equipment shall relieve Lessee of the obligation to make the Rental Payments or to perform any other obligation under this Agreement. Whether or not covered by insurance or self-insurance, Lessee hereby agrees to reimburse Lessor (to the fullest extent permitted by applicable law, but solely from any proceeds of insurance described in Section 7.02 and the payments owed and paid by the Department of Administration to Lessee pursuant to the Use and Occupancy Agreement) for any and all liabilities, obligations, losses, costs, claims, taxes or damages suffered or incurred by Lessor, regardless of the cause thereof and all expenses incurred in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) entering into this Agreement or any of the transactions contemplated hereby, (b) the ordering, acquisition, ownership, use, operation, condition, purchase, delivery, acceptance, rejection, storage or return of any item of the Equipment, (c) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (d) the breach of any covenant of Lessee under or in connection with a Lease or any material misrepresentation provided by Lessee under or in connection with a Lease. The provisions of this Section shall continue in full force and effect, notwithstanding the full payment of all obligations under all Leases or the termination of the Lease Term under any Lease for any reason.

Section 7.04. Advances. In the event Lessee shall fail to keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the then current Original Term or Renewal Term and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the due date until paid at a rate equal to the Default Rate.

ARTICLE VIII

Section 8.01. Damage, Destruction and Condemnation.

(a) If, prior to the termination of this Agreement, (i) the Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or (ii) title to, or the temporary use of, the Equipment or any portion thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement to engage an independent registered architect or registered engineer to determine whether: (y) the cost of the repair, replacement or reconstruction of such Equipment will exceed the amount of the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be received by reason of such damage, destruction, condemnation award or sale, together with other amounts available therefor; and (z) such repair, replacement or reconstruction can be completed within the period covered by any business interruption insurance proceeds or other amounts available therefor.

(b) If such engineer or architect determines that (i) such cost does not exceed such Net Proceeds and (ii) such repair, replacement or reconstruction can be completed within such period, Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement to cause such Net Proceeds to be applied to the prompt replacement, repair, restoration, modification or improvement of such Equipment. Any balance of the Net Proceeds remaining after such replacement has been completed, shall be paid to the Department of Administration.

(c) (i) If the Department elects to replace any item of the Equipment (the "*Replaced Equipment*") pursuant to the Use and Occupancy Agreement, Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement that the replacement Equipment (the "*Replacement Equipment*") be new or of a quality, type, utility and condition at least as good as the Replaced Equipment, be of equal or greater value than the Replaced Equipment and provide at least the same level of energy and/or operational savings expected in the aggregate from the Replaced Equipment prior to such casualty, destruction or condemnation. Lessee shall grant to Lessor, subject to the Use and Occupancy Agreement and except as otherwise provided in the Use and Occupancy Agreement, a first priority security interest in any such Replacement Equipment. Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement that it represent, warrant and covenant to Lessee that each item of the Replacement Equipment is free and clear of all claims, liens, security interests and encumbrances, excepting only Permitted Encumbrances, and that the Department of Administration provide to Lessee any and all documents as Lessee may reasonably request in connection with the replacement, including, but not limited to, documentation in form and substance satisfactory to Lessee evidencing Lessee's right, title and interest in the Replacement Equipment.

(ii) Lessor and Lessee hereby acknowledge and agree that any Replacement Equipment acquired pursuant to this subsection shall constitute "Equipment" for purposes of this

Agreement and the related Lease. Lessee shall complete the documentation of Replacement Equipment on or before the next Rental Payment date after the occurrence of a casualty event.

(d) For purposes of this Article, the term “*Net Proceeds*” shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award or sale under threat of condemnation paid with respect to the Equipment after deducting all expenses, including attorneys’ fees, incurred in the collection thereof.

Section 8.02. Insufficiency of Net Proceeds.

(a) If the engineer or architect engaged pursuant to Section 8.04 of the Use and Occupancy Agreement determines that (i) the cost of the repair, replacement or reconstruction of such Equipment will exceed the amount of the Net Proceeds of any insurance claim or condemnation award or sale under threat of condemnation to be received by reason of such damage, destruction, condemnation award or sale, together with amounts available therefor, or (ii) such repair, replacement or reconstruction can not be completed within the period covered by any business interruption insurance proceeds or other amounts available therefor, Lessee shall enforce the obligation of the Department of Administration in the Use and Occupancy Agreement either: (y) to complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds from funds appropriated and legally available for such purpose and, during such period, to pay or cause to be paid to Lessor the Rental Payments then due and payable by Lessee to Lessor pursuant to this Agreement from business interruption insurance proceeds; or (z) to provide the Net Proceeds to Lessee, which shall use the Net Proceeds to pay, to the extent available: (A) the Rental Payments then due and payable by Lessee to Lessor pursuant to this Agreement; (B) the amount of the then applicable Prepayment Price for the Equipment under Section 10.01; (C) the Make Whole Amount, if any; (D) all other necessary payments owed by Lessee to Lessor pursuant to this Agreement, which are then required to terminate this Agreement; and (E) all expenses of Lessee attributable to such Equipment.

(b) Upon the receipt of any such Net Proceeds pursuant to subsection (a)(z) above, Lessee covenants that it will use such amount, as described in such clause, provided, that, Lessee shall apply such Net Proceeds: (i) pursuant to subsection (a)(z)(B) above, only to the extent that the outstanding obligation is allocable to the Equipment so damaged, destroyed or condemned in the same proportion that the portion of such Equipment that are so damaged, destroyed or condemned bears to the Equipment as a whole; and (ii) pursuant to subsection (a)(z)(C) above, only in the event all the Equipment is damaged, destroyed or condemned. Any balance of the Net Proceeds remaining after Lessee makes such payments, shall be paid to the Department of Administration, subject to the Use and Occupancy Agreement. If Lessee shall make any payments pursuant to subsection (a)(y) above, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. **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 any other warranty or representation, express or implied, with respect thereto and, as to Lessor, Lessee's acquisition of the Equipment shall be on an "as is" basis.** In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, any Lease, the Equipment or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement or any Lease.

Section 9.02. Vendor's Agreements; Warranties. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during each Lease Term, so long as Lessee shall not be in default under the related Lease, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against the Vendor. The sole remedy of Lessee, the Department of Administration or the Department of Correction for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to any Lease, including the right to receive full and timely Rental Payments. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Equipment.

ARTICLE X

Section 10.01. Prepayment Option.

(a) Lessee shall have the option to purchase all of the Equipment listed in a Lease and to prepay or satisfy all, but not less than all, of its obligations under such Lease, at the following times and upon the following terms:

(i) on any Rental Payment Date, upon not less than 30 days' prior written notice to Lessor and upon payment in full to Lessor of the Rental Payments then due and all other amounts then owing under such Lease, plus the then applicable Prepayment Price set forth on the Schedule relating to the Rental Payment Date and the Make Whole Amount, if any;

(ii) in the event of substantial damage to or destruction or condemnation of substantially all of the Equipment listed in a Lease, on the day specified in Lessee's notice to Lessor of its exercise of the prepayment option (which shall be the earlier of the next Rental Payment Date or 60 days after the casualty event), upon payment in full to Lessor of the Rental Payments then due under such Lease, plus the then applicable Prepayment Price set forth on the Schedule relating to the Rental Payment Date and the Make Whole Amount, if any (or in the event such prepayment occurs on a date other than a Rental Payment Date, the sum of: (A) the Prepayment Price set forth on the Schedule relating to the Rental Payment Date immediately prior to the date of such prepayment; (B) accrued interest on the outstanding balance set forth on the Schedule relating to the Rental Payment immediately prior to the date of such prepayment;

(C) the Make Whole Amount, if any; and (D) all other amounts then owing hereunder; or

(iii) upon the expiration of the Lease Term, upon payment in full of all Rental Payments then due and all other amounts then owing under the Lease.

(b) After payment of the Prepayment Price set forth on the Schedule relating to the applicable Rental Payment Date and all other amounts owing hereunder, including the Make Whole Amount, if any, Lessor's security interests in and to such Equipment will be terminated, and Lessee will own the Equipment free and clear of Lessor's security interest in the Equipment.

(c) Lessee shall have the option to prepay a portion of the unpaid principal component of Rental Payments under any Lease, which shall not exceed \$_____ in the aggregate during any fiscal year of the State, on any Rental Payment Date upon not less than 30 days' prior written notice to Lessor identifying the prepayment date, the applicable Lease or Leases and the amount to be prepaid with respect to each such Lease. The amount so prepaid shall equal the principal component of Rental Payments to be prepaid, plus the Make Whole Amount, if any, applicable thereto. The principal component of such amount shall be applied to reduce the principal component of Rental Payments to be paid in inverse order of Rental Payment Dates with respect to each such Lease. Upon any such prepayment, Lessor shall provide to Lessee a revised Schedule based on the application of such prepaid amount in inverse order of Rental Payment Dates.

ARTICLE XI

Section 11.01. Assignment by Lessor.

(a) Lessor's right, title and interest in and to the Rental Payments and any other amounts payable by Lessee under any and all of the Leases, its security interest in the Equipment subject to each such Lease, the Net Proceeds and all proceeds therefrom (collectively, the "Leasehold Interests") may be assigned, sold, transferred and otherwise conveyed by Lessor (including its successors and assigns) in whole or in part, at any time and from time to time, to one or more assignees or transferees, without obtaining the prior written consent of Lessee; *provided*, that any such assignment, sale, transfer or conveyance (i) shall be made only to investors, each of whom Lessor reasonably believes is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, and is purchasing any such Leasehold Interests (or any interest therein) for its own account with no present intention to resell or distribute such Leasehold Interests (or any interest therein), subject to each investor's right at any time to dispose of such Leasehold Interests (or any interest therein) as it determines to be in its best interests, (ii) shall not result in more than 35 owners of Lessor's rights and interests under any Leasehold Interests (or any interest therein) or the creation of any interest in any such Leasehold Interests in an aggregate principal component that is less than \$100,000 and (iii) shall not require Lessee to make Rental Payments, send notices or otherwise deal with respect to matters arising under a Lease with or to more than one individual or entity.

(b) Lessor and Lessee hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section shall apply to the first and subsequent

assignees and sub-assignees of any of Lessor's right, title and interest in, to and under any such Leasehold Interests (or any interest therein). Lessor acknowledges and agrees that any assignment under this Section shall not, and shall not purport to, alter or modify in any respect Lessee's obligations to perform in accordance with the terms of any such Lease or this Agreement in accordance with its terms as originally executed.

(c) Unless to an affiliate controlling, controlled by or under common control with Lessor, no assignment, transfer or conveyance permitted by this Section shall be effective until Lessee shall have received a written notice of assignment that discloses the name and address of each such assignee; *provided* that, if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under a Lease, it shall thereafter be sufficient that Lessee receives notice of the name and address of the bank or trust company as trustee or paying agent. During each Lease Term, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right Lessee may have against a prior assignor or the Vendor. Assignments in part may include, without limitation, assignment of all of Lessor's security interest in and to the Equipment listed in a particular Lease, and all rights in, to and under the Lease related to such Equipment. The option granted in this Section may be separately exercised from time to time with respect to the Equipment listed in each Lease, but such option does not permit the assignment of less than all of Lessor's interests in the Equipment listed in a single Lease.

(d) If Lessor notifies Lessee of its intent to assign a Lease, Lessee agrees that it shall execute and deliver to Lessor a Notice and Acknowledgement of Assignment substantially in the form of Exhibit F attached hereto within five (5) business days after its receipt of such request.

Section 11.02. Assignment and Subleasing by Lessee. Except for the Use and Occupancy Agreement and as otherwise provided in the Use and Occupancy Agreement, none of Lessee's right, title and interest in, to and under any Lease or any portion of the Equipment may be assigned, encumbered or subleased by Lessee for any reason, and any purported assignment, encumbrance or sublease without Lessor's prior written consent shall be null and void.

ARTICLE XII

Section 12.01. Events of Default Defined. Any of the following events shall constitute an "Event of Default" under a Lease:

(a) failure by Lessee to pay any Rental Payment or other payment required to be paid under any Lease within 10 days after the date when due as specified herein;

(b) failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subsection (a) above, for a period of 30 days after written notice specifying such failure and requesting that it be remedied is

given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; *provided* that, if the failure stated in the notice cannot be corrected within the applicable period, 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;

(c) any statement, representation or warranty made by Lessee in or pursuant to such Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(d) an event of default shall occur and be continuing under the Use and Occupancy Agreement; or

(e) upon termination of the Use and Occupancy Agreement pursuant to Section 3.02(a)(i) or (ii) thereof.

Section 12.02. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments payable by Lessee pursuant to such Lease and other amounts payable by Lessee under such Lease to the date of such notice (the "*Date of the Event of Default Notice*") to be due;

(b) With or without terminating the Lease Term under such Lease, Lessor may, subject to the Use and Occupancy Agreement, enter the premises where the Equipment listed in such Lease is located and retake possession of such Equipment or require Lessee at Lessee's expense to promptly return any or all of such Equipment to the possession of Lessor at such location(s) within the continental United States as Lessor shall specify, and sell or lease such Equipment or, for the account of Lessee, sublease such Equipment, continuing to hold Lessee liable, but solely from the payments owed and paid by the Department of Administration to Lessee pursuant to the Use and Occupancy Agreement, for the difference between (i) the Rental Payments payable by Lessee pursuant to such Lease and other amounts related to such Lease or the Equipment listed therein that are payable by Lessee to the Date of the Event of Default Notice and (ii) the net proceeds of any such sale, leasing or subleasing (after deducting all expenses of Lessor in exercising its remedies under such Lease, including, without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing such Equipment and all brokerage, auctioneer's and attorney's fees), subject, however, to the provisions of Section 3.03(a). The exercise of any such remedies respecting any such Event of Default shall not relieve Lessee of any other liabilities under any other Lease or for the Equipment listed therein; and

(c) Lessor may take whatever action at law or in equity may appear necessary or desirable to enforce its rights under such Lease or as a secured party with respect to any or all of the Equipment subject to such Lease and with respect to the Use and Occupancy Agreement.

Section 12.03. No Remedy Exclusive. 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 a Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or 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. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice other than such notice as may be required in this Article.

Section 12.04. Application of Moneys. Any net proceeds from the exercise of any remedy under this Agreement, including the application specified in Section 12.02(b)(ii) (after deducting all expenses of Lessor in exercising such remedies, including, without limitation, all expenses of taking possession, storing, reconditioning and selling or leasing Equipment and all brokerage, auctioneer's or attorney's fees), shall be applied as follows:

(a) if such remedy is exercised solely with respect to a single Lease, Equipment listed in such Lease or rights thereunder, then to amounts due pursuant to such Lease, including the outstanding principal and accrued interest under such Lease, and other amounts related to such Lease or such Equipment; or

(b) if such remedy is exercised with respect to more than one Lease, Equipment listed in more than one Lease or rights under more than one Lease, then to amounts due pursuant to such Leases (including the outstanding principal and accrued interest under such Leases) pro rata.

ARTICLE XIII

Section 13.01. Notices. All notices, certificates or other communications under any Lease shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, delivered by overnight courier or sent by facsimile transmission (with electronic confirmation) to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party) and to any assignee at its address as it appears on the registration books maintained by Lessee.

Section 13.02. Binding Effect. Each Lease and this Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.04. Amendments, Changes and Modifications. This Agreement and each Lease may only be amended by Lessor and Lessee in writing.

Section 13.05. Execution in Counterparts. This Agreement and each Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.06. Applicable Law. This Agreement and each Lease shall be governed by and construed in accordance with the laws of the State.

Section 13.07. Captions. The captions or headings in this Agreement and each Lease are for convenience only and in no way define, limit or describe the scope or intent of any provision or section of this Agreement or any Lease.

Section 13.08. Compliance with Telephone Solicitations Act. As required by Indiana Code 5-22-3-7:

(a) Lessor and any principals of Lessor certify that (i) Lessor, except for de minimis and nonsystematic violations, has not violated the terms of (A) Indiana Code 24-4.7 [Telephone Solicitation Of Consumers], (B) Indiana Code 24-5-12 [Telephone Solicitations], or (C) Indiana Code 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if Indiana Code 24-4.7 is preempted by federal law; and (ii) Lessor will not violate the terms of Indiana Code 24-4.7 for the duration of this Agreement, even if Indiana Code 24-4.7 is preempted by federal law.

(b) Lessor and any principals of Lessor certify that an affiliate or principal of Lessor and any agent acting on behalf of Lessor or on behalf of an affiliate or principal of Lessor: (i) except for de minimis and nonsystematic violations, has not violated the terms of Indiana Code 24-4.7 in the previous three hundred sixty-five (365) days, even if Indiana Code 24-4.7 is preempted by federal law; and (ii) will not violate the terms of Indiana Code 24-4.7 for the duration of this Agreement, even if Indiana Code 24-4.7 is preempted by federal law.

Section 13.09. Non Collusion. The undersigned attests, subject to the penalties for perjury, that he/she is a properly authorized representative, agent, member or officer of Lessor, that he/she has not, nor has any other member, employee, representative, agent or officer of Lessor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement, other than that which appears upon the face hereof.

Section 13.10. Access to Records. Lessor shall maintain all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this Agreement. Lessor shall make such materials available at its offices, at all reasonable times during the Lease Term and for three (3) years from the date of final payment under this Agreement, for inspection by Lessee or its authorized designees. Copies shall be furnished, at Lessee's expense, to Lessee if requested.

Section 13.11. Authority to Bind Financial Institution. The signatory for Lessor represents that he/she has been duly authorized to execute this Agreement on behalf of Lessor

and has obtained all necessary or applicable approvals to make this Agreement fully binding upon Lessor when his/her signature is affixed and this Agreement is accepted by Lessee.

Section 13.12. Compliance with Laws.

(a) Lessor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with Lessee or the State, as set forth in Indiana Code 4-2-6, Indiana Code 4-2-7, the regulations promulgated thereunder or Executive Order 04-08, dated April 27, 2004. If Lessor is not familiar with these ethical requirements, Lessor should refer any questions to the Indiana State Ethics Commission or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If Lessor or its agents violate any applicable ethical standards, Lessor may be subject to penalties under Indiana Code 4-2-6, Indiana Code 4-2-7 and Indiana Code 35-44-1-3 and under any other applicable laws.

(b) To the best of the knowledge and belief of the individual officer of Lessor who executes this Agreement, Lessor is not presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to Lessee or the State (collectively “*State Payments*”), except for State Payments that are being contested in good faith by appropriate proceedings.

Section 13.13. Confidentiality of Lessee Information. Lessor understands and agrees that data, materials and information disclosed to Lessor may contain confidential and protected information (“*Confidential Information*”). Confidential Information does not include information that (a) was independently developed by Lessor or its affiliates and its and their respective directors, officers, employees, agents or advisors (“*Representatives*”), (b) was in Lessor’s possession or in the possession of its Representatives prior to its disclosure hereunder, (c) is or becomes a part of the public domain through no breach by Lessor of this Section or (d) comes into Lessor’s possession from a third party who is not known to Lessor to be bound by any obligations of confidentiality to Lessee. Lessor covenants that the Confidential Information will not be disclosed to or discussed with third parties without the prior written consent of Lessee, except as otherwise provided in this Agreement, including (but not limited to) within such exception any information disclosed to Lessor in connection with the original execution and delivery of this Agreement. Notwithstanding the foregoing, Lessor may disclose Confidential Information without Lessee’s prior written consent (i) to its Representatives who need to know such information for the purposes of servicing the Leases or this Agreement or (ii) as required by law or order or requested by any governmental agency or requested by any regulator having jurisdiction over Lessor or to defend or prosecute a claim brought by or against Lessor.

Section 13.14. Conflict of Interest.

(a) As used in this Section:

(i) “*Immediate family*” means the spouse and the unemancipated children of an individual.

(ii) “*Interested party,*” means:

(A) the individual executing this Agreement;

(B) an individual who has an interest of three percent (3%) or more of Lessor, if Lessor is not an individual; or

(C) any member of the immediate family of an individual specified under clause (A) or (B) above.

(iii) “*Commission*” means the State Ethics Commission.

(b) Lessor has an affirmative obligation under this Agreement to disclose to the Department of Administration when an interested party is or becomes an employee of Lessee or the State. The obligation under this Section extends only to those facts that Lessor knows or reasonably could know.

Section 13.15. Debarment and Suspension. Lessor certifies to the best of its knowledge, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. The term “*principal*” for purposes of this Agreement means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities or a person who has a critical influence on or substantive control over the operations of Lessor.

Section 13.16. Independent Contractor. Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party, except as otherwise provided in this Agreement. Lessor shall be responsible for providing all necessary unemployment and workers’ compensation insurance for Lessor’s employees.

Section 13.17. Merger and Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No understandings, agreements or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented or amended, in any manner, except by written agreement signed by all the parties hereto.

Section 13.18. Nondiscrimination.

(a) The covenant set forth in subsection (b) below is required pursuant to the Indiana Civil Rights Law, specifically Indiana Code 22-9-1-10, and in keeping with the Civil Rights Act of 1964, the Age Discrimination in Employment Act and the Americans with Disabilities Act.

(b) Pursuant to the Indiana Civil Rights Law, specifically Indiana Code 22-9-1-10, and in keeping with the Civil Rights Act of 1964, the Age Discrimination in Employment Act and the Americans with Disabilities Act, Lessor shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran or any other characteristic protected by federal, state or local law ("*Protected Characteristics*"). Furthermore, Lessor certifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination based on Protected Characteristics in the provision of services.

Section 13.19. Penalties/Interest/Attorney's Fees. Lessee will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, Indiana Code 5-17-5, Indiana Code 34-54-8 and Indiana Code 34-13-1. Notwithstanding the provisions contained in Indiana Code 5-17-5, any liability resulting from Lessee's failure to make prompt payment shall be based solely on the amount of funding originating from Lessee and shall not be based on funding from federal or other sources.

Section 13.20. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither Lessee's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or any cause of action arising out of the performance of this Agreement, and Lessor shall be and remain liable to Lessee in accordance with applicable law for all damages to Lessee caused by Lessor's negligent performance of any services furnished under this Agreement.

Section 13.21. Waiver of Right to Trial by Jury. Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Agreement. Each party (a) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (b) acknowledges that it and the other party have been induced to enter into this Agreement, by, among other things, the mutual waivers and certifications in this Section.

Section 13.22. No Immunity. Lessee is not entitled to claim immunity under this Agreement on the grounds of sovereignty or other similar grounds with respect to any resolution of a dispute between Lessee and Lessor regarding any failure of performance or other breach under this Agreement, except with respect to any cause of action arising *ex delicto*.

[Remainder of Page Intentionally Left Blank]

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:

Attention:
Fax No.:

By: _____

Name: _____

Title: _____

LESSEE:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204
Fax No.: (317) 232-6786
Attention: General Counsel

By: _____

Christopher D. Atkins, Chairman

Attest:

Kendra W. York, Public Finance Director
of the State of Indiana

Counterpart No. ____ of ____ manually executed and serially numbered counterparts. To the extent that this Agreement constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart, other than Counterpart No. 1.

[Signature page to the Master Equipment Lease/Purchase Agreement for the 2013 DOC
Qualified Energy Savings Projects]

LIST OF EXHIBITS

- Exhibit A -- Acquisition Fund and Account Control Agreement
- Exhibit B-1 -- Schedule of Property No. ____
- Exhibit B-2 -- Rental Payment Schedule
- Exhibit C-1 -- Form of Incumbency and Authorization Certificate
- Exhibit C-2 -- Form of General Certificate of the Indiana Department of Administration
- Exhibit D -- Form of Opinion of Counsel to Lessee
- Exhibit E -- Acceptance Certificate
- Exhibit F -- Form of Notice and Acknowledgement of Assignment

EXHIBIT A

ACQUISITION FUND AND ACCOUNT CONTROL AGREEMENT

EXHIBIT B-1

SCHEDULE OF PROPERTY NO. _____

Dated as of _____, 20__

Re: Master Equipment Lease/Purchase Agreement, dated as of _____, 2013
(the “*Agreement*”), between _____, as lessor (the
“*Lessor*”), and the Indiana Finance Authority, as lessee (the “*Lessee*”)

1. Defined Terms. All terms used herein have the meanings ascribed to them in the Agreement.

2. Equipment. The items of Equipment being acquired by the Lessee, which is being installed in certain facilities of the Indiana Department of Correction (the “*Department*”) pursuant to the Professional/Personal Services Contract EDS# _____, dated _____, 20__, as may hereafter be amended and supplemented, between the Department of Correction and _____, are hereby included under this Schedule of the Agreement (the “*Equipment*”).

3. Rental Payment Schedule.

(a) Rental Payments. The Rental Payments shall be in such amounts and payable on such dates as set forth in the Rental Payment Schedule attached to this Schedule as Exhibit A (the “*Rental Payment Schedule*”). Rental Payments shall commence on the date on which the Equipment is accepted by the Department of Correction, as indicated in an Acceptance Certificate substantially in the form of Exhibit E to the Agreement or the date on which sufficient moneys to purchase the Equipment are deposited for that purpose with Lessor pursuant to an Acquisition Fund Agreement, whichever is earlier.

(b) Prepayment Price Schedule. The Prepayment Price on each Rental Payment date for the Equipment shall be the amount set forth for such Rental Payment date in the “Prepayment Price” column of the Rental Payment Schedule. The Prepayment Price is in addition to all Rental Payments then due under this Schedule (including the Rental Payment shown on the same line in the Rental Payment Schedule) and the Make Whole Amount, if any, due on such Rental Payment Date.

4. Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of commencement of Rental Payments on this Schedule. Lessee further represents and warrants that (a) no material adverse change in the financial condition of the State of Indiana (the “*State*”) has occurred since the date of the Agreement; (b) the Lessee has duly authorized the execution and delivery of this Schedule; (c) the Equipment is essential to the functions of the Department or to the services the State provides its citizens; and (d) the Department has an immediate need for, and expects to make immediate use of, substantially all such Equipment, which will be used by the Department only for the

purpose of performing one or more of the State's governmental or proprietary functions consistent with the permissible scope of its authority.

5. The Agreement. The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

[OPTION: IF ACQUISITION FUND AGREEMENT IS USED:

6. Lease Proceeds. The Lease Proceeds which Lessor shall pay to the Lessor pursuant to an Acquisition Fund Agreement in connection with this Schedule is \$_____, all of which is for deposit to the Acquisition Fund. It is expected that by [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Schedule No. _____, the Department will have taken possession of all items of Equipment and that an Acceptance Certificate, or Acceptance Certificates, will be signed by the Department and delivered to Lessor and Lessee on or before [six (6)] [twelve (12)] [eighteen (18)] months from the date of this Schedule No. _____.

OR IF VENDOR PAID DIRECTLY, USE:

6. Acquisition Amount. The Acquisition Amount for the Equipment to be paid to the Vendor is \$ _____.]

[OPTION: IF ACQUISITION FUND AGREEMENT IS USED:

7. Acquisition Period. The Acquisition Period applicable to this Schedule shall end on _____ 1, 20__.

[7][8]. Lease Term. The Lease Term shall consist of the Original Term and _____ consecutive Renewal Terms, with the final Renewal Term ending on _____.

[OPTION: IF NO ACQUISITION FUND AGREEMENT IS USED:

[8][9]. Utilization Period Expiration. The Utilization Period Expiration is _____.]

[9][10]. Maximum Equipment Cost. The Maximum Equipment Cost approved on a cumulative basis under the Lease for this Schedule and all previous Schedules is \$_____.

[10][11]. Contract Rate. The Contract Rate for this Schedule is _____%.

LESSOR:

Attention:
Fax No.:

By: _____

Name: _____

Title: _____

LESSEE:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204
Fax No.: (317) 232-6786
Attention: General Counsel

By: _____

Christopher D. Atkins, Chairman

Attest:

Kendra W. York, Public Finance Director
of the State of Indiana

Counterpart No. _____ of _____ manually executed and serially numbered counterparts.
To the extent that this Lease constitutes chattel paper (as defined in the Uniform Commercial Code), no security interest herein may be created through the transfer or possession of any Counterpart other than Counterpart No. 1.

[Signature page to Schedule of Property No. 1 of the Master Equipment Lease/Purchase Agreement for the 2013 DOC Qualified Energy Savings Projects]

EXHIBIT B-2

RENTAL PAYMENT SCHEDULE

Dated: _____, 2013

LESSOR:

Attention:
Fax No.:

By: _____

Name: _____

Title: _____

LESSEE:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204
Fax No.: (317) 232-6786
Attention: General Counsel

By: _____

Christopher D. Atkins, Chairman

Attest:

Kendra W. York, Public Finance Director
of the State of Indiana

[Signature page to the Rental Payment Schedule of the Master Equipment Lease/Purchase Agreement for the 2013 DOC Qualified Energy Savings Projects]

EXHIBIT C-1

FORM OF INCUMBENCY AND AUTHORIZATION CERTIFICATE

The undersigned, the duly appointed and acting General Counsel of the Indiana Finance Authority (“*Lessee*”), certifies as follows:

1. The following listed persons are duly appointed and acting officials of Lessee and the State of Indiana (the “*Officials*”) in the capacities set forth opposite their respective names below, and their facsimile signatures are true and correct as of the date hereof.

2. The Officials are duly authorized, on behalf of Lessee, to negotiate, execute and deliver the Master Equipment Lease/Purchase Agreement, dated as of _____, 2013, between Lessee and _____, the Schedules thereunder, the Use and Occupancy Agreement, dated as of _____ 1, 2013, between Lessee and the Indiana Department of Administration, and all documents related thereto and delivered in connection therewith (collectively, the “*Agreements*”), and the Agreements are the binding and authorized Agreements of Lessee, enforceable in all respects in accordance with their terms.

<u>Name of Official</u>	<u>Title</u>	<u>Signature</u>
Christopher D. Atkins	Chairman	_____
Kendra W. York	Public Finance Director of the State of Indiana	_____

Dated: _____, 2013.

By: _____
Name: James P. McGoff
Title: General Counsel

(The signer of this Certificate cannot be listed above as authorized to execute the Agreements.)

EXHIBIT C-2

**FORM OF GENERAL CERTIFICATE OF THE INDIANA DEPARTMENT OF
ADMINISTRATION**

I, the duly appointed Commissioner of the Indiana Department of Administration (the “*Department*”), hereby certify on behalf of the Department that:

1. The Department is an agency of the State, organized and existing under Indiana Code 4-13, as amended (the “*Act*”). The Department has complied in all respects with the laws of the State, including particularly the Act, in connection with its execution and delivery of the Use and Occupancy Agreement, dated as of _____ 1, 2013 (the “*Agreement*”), between the Indiana Finance Authority and the Department. The Department has full power and authority to enter into the Agreement and the transactions contemplated thereby and to perform all of its obligations thereunder.

2. The Department has duly authorized the execution and delivery of the Agreement by proper official action, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Agreement.

3. The Indiana Department of Correction (the “*Department of Correction*”) has sufficient funds legally available and appropriated for the purpose of paying rental amounts when due and payable in accordance with Sections 4.01 and 4.02 of the Agreement during the Initial Term under the Agreement.

4. The rental amounts that are due and payable under the Agreement and, upon execution and delivery thereof pursuant to the Agreement, will be due and payable under the Supplemental Agreements entered into pursuant to the Agreement in consideration for the Department of Correction’s use and occupancy of the Facilities (as such term is defined in the Agreement) under the Agreement, are and, upon execution and delivery of successive Supplemental Agreements pursuant to the Agreement, will be a just and reasonable lease rental considering the value of the services and the Facilities thereby afforded, including the uses and purposes served by the Facilities and the benefits therefrom that will accrue to the Department and the Department of Correction by reason of the Agreement and to the general public by reason of the Department of Correction’s use and occupancy of the Facilities under the Agreement.

5. There is no pending litigation, tax claim, proceeding or dispute that may adversely affect the State’s financial condition or impairs the ability of the Department to perform its obligations under the Agreement.

6. No lease, rental agreement, lease-purchase agreement, payment agreement or contract for purchase, to which the State acting through the Department or the Department of Correction has been a party, at any time has been terminated by the Department or the Department of Correction as a result of insufficient funds being appropriated in any fiscal year of the State. No event has occurred, which would constitute an event of default under any debt, revenue bond or obligation, which the State has issued during the past ten (10) years.

Dated: _____, 2013.

DEPARTMENT OF ADMINISTRATION

By: _____

Name: _____

Title: _____

Attest:

Name: _____

Title: _____

[Signature page to Form of General Certificate of the Indiana Department of Administration,
which is Exhibit C-2 to the Master Equipment Lease/Purchase Agreement, dated as of
_____, 2013, between the IFA and _____]

EXHIBIT D

FORM OF OPINION OF COUNSEL TO LESSEE

(to be typed on letterhead of counsel)

_____, 2013

Indiana Finance Authority
One North Capitol, Suite 900
Indianapolis, IN46204

Attention:

Re: Indiana Finance Authority
Master Equipment Lease/Purchase Agreement, related to the Qualified Energy Savings Projects, dated as of _____, 2013, between _____, as Lessor, and the Indiana Finance Authority, as Lessee

Ladies and Gentlemen:

We have acted as bond counsel to the Indiana Finance Authority (the "*Lessee*"), in connection with the execution and delivery by the Lessee of: (1) the Master Equipment Lease/Purchase Agreement, related to the Qualified Energy Savings Projects (as defined herein), dated as of _____, 2013 (the "*Lease Agreement*"), between _____ (the "*Lessor*"), and the Lessee, with a Maximum Equipment Cost of \$_____, pursuant to Indiana Code 4-4-10.9, as amended, and Indiana Code 4-4-11, as amended; and (2) the Use and Occupancy Agreement, related to the Qualified Energy Savings Projects, dated as of _____ 1, 2013 (the "*Use and Occupancy Agreement*"), between the Lessee and the Indiana Department of Administration (the "*Department*"), pursuant to Indiana Code 4-13.5-1.5, as amended, and Indiana Code 4-13.5-4, as amended. The "*Qualified Energy Savings Projects*" consist of the equipment to be installed at certain facilities of the Indiana Department of Correction (the "*Department of Correction*") by _____ ("*_____*"), pursuant to the Professional/Personal Services Contract EDS# _____, dated _____, 20__ the "*Energy Cost Savings Contract*"), as may hereafter be amended and supplemented, between the Department of Correction and _____.

In such capacity, we have examined such law and such certified proceedings, certifications and other documents as we have deemed necessary to render this opinion, including, without limitation: (1) executed counterparts of the Lease Agreement; (2) executed counterparts of Schedule of Property No. 1 and Rental Payment Schedule, dated the date hereof (the "*Schedule*"), between the Lessor and the Lessee, which, among other things, provides for the lease of the Qualified Energy Savings Projects and the rental payment schedule under the

Lease Agreement; (3) executed counterparts of the Acquisition Fund and Account Control Agreement, dated as of the date hereof (the “*Acquisition Fund Agreement*”), among the Lessor, the Lessee, the Department of Correction and Deutsche Bank National Trust Company; (4) executed counterparts of the Use and Occupancy Agreement; (5) a copy of Resolution No. G__-20__, adopted by the Lessee on _____, 2013, authorizing the execution and delivery of the Lease Agreement and the Use and Occupancy Agreement; (6) a copy of the minutes of the meeting of the State Budget Committee held on _____, 20__, at which it recommended the Energy Cost Savings Contract; and (7) a copy of the approval of the State Budget Agency of the State of the Use and Occupancy Agreement.

The Schedule, including the Rental Payment Schedule, and the terms and provisions of the Lease Agreement incorporated therein by reference are herein referred to as the “*Lease*,” and the Lease, the Acquisition Fund Agreement and the Use and Occupancy Agreement are herein referred to collectively as the “*Transaction Documents*.” All capitalized terms herein shall have the same meanings as in the Transaction Documents, unless otherwise provided herein.

Regarding questions of fact material to our opinion, we have relied on representations of the Lessee and the Department contained in the Lease and the Use and Occupancy Agreement, the certified proceedings and other certifications of public officials furnished to us, and certifications, representations and other information furnished to us by or on behalf of the Lessee, the Department and others, including, without limitation, certifications contained in the tax and arbitrage certificate of the Lessee, dated the date hereof, without undertaking to verify the same by independent investigation.

Based on the foregoing, we are of the opinion that, under existing law:

1. The Lessee is a body politic and corporate, not a State agency, but an independent instrumentality of the State exercising essential public functions, validly existing under the laws of the State.
2. The Lessee has the requisite power and authority to lease and acquire the Equipment, to execute and deliver the Transaction Documents and to perform its obligations under the Transaction Documents.
3. The Transaction Documents have been duly authorized, approved, executed and delivered by and on behalf of the Lessee, and the Transaction Documents are legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their terms.
4. The authorization, approval, execution and delivery of the Transaction Documents and all other proceedings of the Lessee relating to the transactions contemplated thereby have been performed in accordance with public bidding laws and all other applicable State or federal laws.
5. The Department is an agency of the State, validly existing under the laws of the State.

6. The Department has the requisite power and authority to execute and deliver the Use and Occupancy Agreement and to perform its obligations under the Use and Occupancy Agreement.

7. The Use and Occupancy Agreement has been duly authorized, approved, executed and delivered by and on behalf of the Department, and the Use and Occupancy Agreement is a legal, valid and binding obligation of the Department enforceable against the Department in accordance with its terms.

8. The authorization, approval, execution and delivery of the Use and Occupancy Agreement and all other proceedings of the Department relating to the transactions contemplated thereby have been performed in accordance with public bidding laws and all other applicable State or federal laws.

9. The Department of Correction is an agency of the State, validly existing under the laws of the State.

10. The Department of Correction has the requisite power and authority to execute and deliver the Acquisition Fund Agreement and to perform its obligations under the Acquisition Fund Agreement.

11. The Acquisition Fund Agreement has been duly authorized, approved, executed and delivered by and on behalf of the Department of Correction, and the Acquisition Fund Agreement is a legal, valid and binding obligation of the Department of Correction enforceable against the Department of Correction in accordance with its terms.

12. The authorization, approval, execution and delivery of the Acquisition Fund Agreement and all other proceedings of the Department of Correction relating to the transactions contemplated thereby have been performed in accordance with public bidding laws and all other applicable State or federal laws.

13. Under Section 103 of the Internal Revenue Code of 1986, as amended and in effect on this date (the "*Code*"), the portion of rentals designated as and constituting interest paid by the Lessee (the "*Interest Component*") and received by the owners of the right to receive payment of the Interest Component pursuant to the Lease is excludable from gross income for federal income tax purposes. The opinion set forth in this paragraph is subject to the condition that the Lessee, the Department and the Department of Correction comply with all requirements of the Code that must be satisfied subsequent to the execution and delivery of the Lease in order that the Interest Component be, or continue to be, excludable from gross income for federal income tax purposes. The Lessee has covenanted or represented that it will comply with such requirements. Failure to comply with certain of such requirements may cause the Interest Component to be included in gross income for federal income tax purposes retroactively to the date of execution and delivery of the Lease.

14. The Interest Component is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; however, the Interest

Component is taken into account in determining adjusted current earnings for the purpose of computing the alternative minimum tax imposed on certain corporations.

We have not been engaged or undertaken to review the accuracy, completeness or sufficiency of any offering material relating to the Lease, and we express no opinion relating thereto.

We express no opinion regarding any tax consequences arising with respect to the Lease, other than as expressly set forth herein.

We hereby confirm to you that, to our knowledge, there are no actions or proceedings against the Lessee, the Department or the Department of Correction, pending or overtly threatened in writing, before any court, governmental authority, arbitration board or tribunal, which, if adversely determined, would adversely affect the transactions contemplated by the Transaction Documents or the security interest of the Lessor or its assigns, as the case may be, in the Equipment, the Use and Occupancy Agreement or other collateral thereunder.

As used herein, “*our knowledge*” or any similar phrase means only the conscious awareness of facts or other information by only the following lawyers, without our undertaking any canvass of all lawyers in this firm, any search of this firm’s files or any other investigation within this firm: (1) the lawyer in this firm who signs this letter; (2) any lawyer in this firm who has active involvement in negotiating the transaction, preparing the Transaction Documents or preparing this letter; or (3) solely as to information relevant to a particular opinion issue or confirmation regarding a particular factual matter (*e.g.*, pending or threatened legal proceedings), any lawyer in this firm who is primarily responsible for providing the response concerning that particular opinion issue or confirmation.

With respect to the enforceability of any document or instrument, this opinion is subject to the qualifications that: (i) the enforceability of such document or instrument may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium, fraudulent conveyance and similar laws relating to or affecting the enforcement of creditors’ rights; (ii) the enforceability of equitable rights and remedies provided for in such document or instrument is subject to judicial discretion, and the enforceability of such document or instrument may be limited by general principles of equity; (iii) the enforceability of such document or instrument may be limited by public policy; and (iv) certain remedial, waiver and other provisions of such document or instrument may be unenforceable, *provided*, however, that, in our opinion, the unenforceability of those provisions would not, subject to the other qualifications set forth herein, affect the validity of such document or instrument or prevent the practical realization of the benefits thereof.

This opinion is given only as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention or any changes in law that may hereafter occur.

Very truly yours,

EXHIBIT E

ACCEPTANCE CERTIFICATE

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, IN 46204
Attention: General Counsel

Re: Schedule of Property No. _____, dated _____ 20__ (the
“*Schedule*”), to Master Equipment Lease/Purchase Agreement, dated as of
_____, 2013 (the “*Agreement*”), between _____, as
lessor (the “*Lessor*”), and the Indiana Finance Authority, as lessee (the
“*Lessee*”)

Ladies and Gentlemen:

In accordance with the Agreement, the undersigned Indiana Department of Correction (the “*Department*”) hereby certifies and represents to, and agrees with, Lessor and Lessee as follows:

1. All of the Equipment (as such term is defined in the Agreement) listed in the Schedule has been delivered, installed and accepted on the date hereof.

2. The Department has conducted such inspection and/or testing of the Equipment listed in the Schedule as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.

Date: _____

INDIANA DEPARTMENT OF CORRECTION

By: _____

Name: _____

Title: _____

Attest:

Name: _____

Title: _____

[Signature page to Acceptance Certificate with respect to the Master Lease Equipment/Purchase Agreement for the 2013 DOC Qualified Energy Savings Projects]

EXHIBIT F

FORM OF NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT

Dated: _____

_____ (“Assignor”), hereby gives notice that it has assigned and sold to _____ (“Assignee”) all of Assignor’s right, title and interest in, to and under [Schedule of Property No. _____, dated _____, 20__ ([collectively,] the “Lease”) to] the Master Equipment Lease/Purchase Agreement, dated as of _____, 2013 (the “Agreement”), between Assignor and the Indiana Finance Authority (“Lessee”), together with all exhibits, schedules, addenda and attachments related thereto, all certifications and other documents delivered in connection therewith, the Rental Payments and other amounts due thereunder and all of Assignor’s right, title and interest in the Equipment subject to the Lease (collectively, the “Assigned Property”). [The term “Lease” specifically excludes all other Schedules of Property entered into under the Agreement and rental payments other than with respect to the Schedules of Property identified above.] Each capitalized term used but not defined herein has the meaning set forth in the Agreement.

1. Pursuant to the authority of Resolution No. G__-2013, adopted by the Lessee on _____ 20__, Lessee hereby acknowledges the effect of the assignment of the Assigned Property and absolutely and unconditionally agrees to deliver to Assignee all Rental Payments and other amounts coming due under the [Lease] [Agreement] in accordance with the terms of the Agreement on and after the date of this Notice and Acknowledgment of Assignment.

2. Lessee hereby agrees that: (a) Assignee shall have all the rights of Lessor under the [Lease] [Agreement] and all related documents, including, but not limited to, the rights to issue or receive all notices and reports, to give all consents or agreements to modifications thereto, to receive title to the Equipment in accordance with the terms of the [Lease] [Agreement], to declare a default and to exercise all remedies thereunder; and (b) except as provided in Section 3.03 of the Agreement, the obligations of Lessee to make Rental Payments and to perform and observe the other covenants and agreements contained in the Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense.

3. Lessee agrees that, as of the date of this Notice and Acknowledgment of Assignment (this “Acknowledgement”), the following information about the [Lease] [Agreement] is true, accurate and complete:

Number of Rental Payments Remaining	–	_____
Amount of Each Rental Payment	–	\$_____
Total Amount of Rents Remaining	–	\$_____

Frequency of Rental Payments – _____

Next Rental Payment Due – _____

Funds Remaining in Escrow Fund – _____

4. The [Lease] [Agreement] remains in full force and effect, has not been amended and no nonappropriation or Event of Default (or event, which with the passage of time or the giving of notice or both, would constitute a default) has occurred thereunder or under the Use and Occupancy Agreement.

5. Any inquiries of Lessee related to the [Lease] [Agreement] and any requests for escrow disbursements, if applicable, and all Rental Payments and other amounts coming due pursuant to the [Lease] [Agreement] on and after the date of this Acknowledgment should be remitted to Assignee at the following address (or such other address as provided to Lessee in writing from time to time by Assignee):

ACKNOWLEDGED AND AGREED:

LESSEE: INDIANA FINANCE AUTHORITY

By: _____

Name: _____

Title: Chairman

Attest:

Name: _____

Title: Public Finance Director of the State of
Indiana

ASSIGNOR: _____

By: _____

Name: _____

Title: _____