**EQUIPMENT LEASE AGREEMENT**

**Lessee:** The University of Texas Medical Branch at Galveston

**Lessor:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

301 University Boulevard

Galveston, Texas 775555

**Definitions:**

Whenever the following terms are used in these Equipment Lease Special Terms and

Conditions the following meaning shall apply.

**(a)** Property: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_as described in the attached Exhibit A (Property Schedule)

**(b)** Lessor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ or its assignee

**(c)** Lessee: The University of Texas Medical Branch at Galveston (“Lessee”)

1. **Lease Agreement and Term:**

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Property described in the attached Exhibit A (Property Schedule) for an initial period of \_\_\_\_\_\_\_ (\_\_) months commencing on the date the Property is accepted by Lessee as evidenced by Lessee’s execution of Certificates of Acceptance unless earlier terminated by Lessee pursuant to paragraph 16, below.

1. **Rent:**

* Lessee agrees to pay Lessor the rental payments set forth per the Payment Schedule incorporated herein as Exhibit B for the Property for the full term of the Lease.
* The first rental payment shall become due and payable upon Property acceptance. Acceptance shall be documented in a written Acceptance Certificate signed by the Lessee’s authorized signatory. Each subsequent rental payment will be due and payable on the same day each successive month thereafter throughout the Lease Term.
* Lessor shall invoice Lessee monthly in advance no less than thirty (30) days prior to the rental payment due date. Invoices must reference Lessee’s Purchase Order Number and be submitted to:

UTMB – Accounts Payable

301 University Boulevard – Rt. 0907

Galveston, Texas 77555-0907

1. **Taxes:**

The parties in this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Lessee and, therefore, the Property will be exempt from all taxes presently assessed and levied with respect to personal property. However, in the event the use, possession, or acquisition of the Property is found to be subject to taxation in any form (except for income taxes of Lessor) Lessor will pay during the Lease term, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property.

1. **Permits:**

Lessee shall obtain all permits and licenses necessary for the installation, operation, possession, and use of the Property. Lessee shall comply with all laws, rules, regulations, and ordinances applicable to the installation, use, operation of the Property, and if compliance with any such law, rule, regulation, ordinance, permit, or license requires changes or additions to be made to the Property, such changes or additions shall be made by Lessee at its own expense.

1. **Utility Charges:**

Lessee shall pay all charges for gas, water, steam, electricity, light, heat, or power, telephone, or other utility service to be used on or in connection with the Property, including charges for installation of such services during the term of this Lease. There shall be no abatement or diminution of rent due to the interruption of any such services.

1. **Insurance:**

Lessee shall maintain in effect from the date of Property Acceptance until its return of the Property to Lessor insurance against all risk or physical loss or damage to the Property in an amount not less than one hundred percent (100%) of the replacement value of the Property set forth per Exhibit A. Such insurance policy or policies will name Lessee and Lessor as their respective interest will appear, and such policy or policies may not be altered, amended, or canceled without thirty (30) days prior written notice to Lessor.

1. **Use:**

Lessee will exercise due care in the installation, use, operation, and maintenance of the Property and will not install, use, operate, or maintain the Property improperly, carelessly, in violation of any applicable law, or for a purpose or in a manner contrary to that contemplated by this Lease.

1. **Maintenance:**

Lessee shall provide for the service, repair, and maintenance or the Property, at its own expense, so as to keep the Property in as good condition, repair, appearance, and working order as when delivered to Lessee hereunder, ordinary wear and tear excepted. Lessee shall, at its own expense, replace any and all parts and devices which may from time to time become worn out, lost, stolen, destroyed, damaged beyond repair, or rendered unfit for use for any reason whatsoever. All such replacement parts, mechanisms, and devices shall be free and clear of liens, encumbrances, and rights of others and shall become the Property of Lessor and shall be covered by this Lease to the same extent as the Property originally covered by this Lease.

1. **Supplemental Equipment; Alterations:**

Lessee may install such miscellaneous equipment as may be necessary to use the Property for its intended purposes. All such equipment integrated with the Property may be removed by Lessee upon termination of this Lease, provided that removal will not damage the Property. Lessee shall not make any other alterations, changes, modifications, additions, or improvements to the Property without the prior written consent of Lessor except those needed to comply with Lessee’s obligations under Paragraph 8 and those permitted by this Paragraph. Any alterations, changes, modifications, additions, and improvements made to the Property itself shall immediately become the Property of Lessor.

1. **Liens:**

Lessee shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or claim on or with respect to the Property, or any interest therein, except the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, or claim not excepted above if the same shall arise at any time.

1. **Damage to or Destruction of Property:**

Lessee shall be responsible for any loss of the Property from any cause at all, whether or not insured, from the date of Property Acceptance. If the Property is lost, stolen, or damaged, Lessee will promptly notify Lessor of such event. In no event shall such loss or damage relieve Lessee of its obligations under these Terms and Conditions. In the event of such loss or damage, Lessee at its option shall: (a) promptly repair the Property to return it to good working order; or (b) Replace the Property with like Property of the same or later model, in good condition and working order, free and clear of all liens and encumbrances and grant Lessor the right to perfect its security interest in the replacement Property and such replacement shall be substituted in this lease by appropriate endorsement; or (c) Pay Lessor the replacement value per Exhibit A, less any rental payments previously paid. On such payment Lessee may mutually agree with Lessor that Lessee will be entitled to the Property as is, without warranties, express or implied, including warranties of merchantability or fitness for any particular purpose, except that such Property shall not be subject to any lien or encumbrance created by or arising through Lessor. Notwithstanding anything to the contrary above contained in this Section 11, Lessee shall have no responsibility or obligations if such loss or damage to the Property is caused by Lessor, its employees, or agents.

1. **12. Liability; Indemnification:**

**(a)** To the fullest extent permitted by law, Lessor shall and does hereby agree to indemnify, protect, defend with counsel approved by Lessee, and hold harmless Lessee and The University of Texas System, and their respective affiliated enterprises, regents, officers, directors, attorneys, employees, representatives and agents (collectively “Indemnitees”) from and against all damages, losses, liens, causes of action, suits, judgments, expenses (including reasonable attorneys’ fees), and other claims of any nature, kind, or description (collectively “Claims”) by any person or entity, arising out of, caused by, or resulting from Lessor’s performance under this Purchase Order and which are caused in whole or in part by any negligent act, negligent omission or willful misconduct of Lessor, anyone directly or indirectly employed by Lessor or anyone for whose acts Lessor may be liable. The provisions of this Section shall not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law.

**(b)** In addition, Lessor shall and does hereby agree to indemnify, protect, defend with counsel approved by Lessee, and hold harmless Indemnitees from and against all claims arising from infringement or alleged infringement of any patent, copyright, trademark or other proprietary interest arising by or out of the performance of services or the provision of goods by Lessor pursuant to this Purchase Order, or the use by Lessor, or by Indemnitees at the direction of Lessor, of any article or material; provided, that, upon becoming aware of a suit or threat of suit for such infringement, Lessee shall promptly notify Lessor and Lessor shall be given full opportunity to negotiate a settlement. Lessor does not warrant against infringement by reason of Lessee’s design of articles or the use thereof in combination with other materials or in the operation of any process. In the event of litigation, Lessee agrees to cooperate reasonably with Lessor and all parties shall be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

**(c)** To the extent authorized by the laws and constitution of the State of Texas, Lessee shall and does hereby agree to indemnify and hold harmless Lessor and its officers, directors, attorneys, employees, representatives and agents (collectively, the “Lessor Indemnitees”) from and against all damages, losses, liens, causes of action, suits, judgments, expenses (including, to the extent authorized by the laws and constitution of the State of Texas, reasonable attorneys’ fees), and other claims of any nature, kind, or description by any person or entity, arising out of, caused by, or resulting from Lessee’s performance under this Purchase Order and which are caused in whole or in part by any negligent act or negligent omission of Lessee or its employees for which Lessee's sovereign immunity from liability has been waived under Section 101.021 of the Texas Civil Practice and Remedies Code, as it may be amended from time to time.

**(d)** The indemnities contained herein shall survive the termination of this Purchase Order for any reason whatsoever.

1. **13. Delivery; Warranties; Limitation of Warranties and Remedies; Indemnification:**

**(a)** The Property has been selected by Lessee, and Lessor shall have no responsibility in connection with the selection of said Property, its suitability for the use intended by Lessee, the acceptance by the manufacturer or its sales representative of the order submitted, or any delay or failure by the manufacturer or its sales representative to deliver (or install) the Property in accordance with this paragraph. Lessee authorizes Lessor to add the serial number of the Property to Exhibit “A”;

**(b)** Lessor hereby assigns to Lessee, for and during the term of this Lease, all warranties and guaranties, express or implied, issued on or applicable to the Property, and Lessor hereby authorizes Lessee to obtain the customary services furnished in connection with such warranties and guaranties at Lessee’s expense.

**(c)** The Property has been or will be purchased by Lessor in accordance with Lessee’s specifications from a vendor selected by Lessee, and said Property is delivered without warranties of the Lessor, express or implied, including warranties of merchantability or fitness for any particular purpose.

1. **Authority:**

Lessee represents and warrants that it has the power to enter into this Lease Agreement; that all procedures required for the authorization and execution of this Lease Agreement, including competitive bidding, if applicable, have been taken or complied with; that all rentals will be paid out of funds which are legally available for such purposes; and that Lessee has appropriated funds, or has encumbered funds which have been appropriated to it, for payment of rentals due under this Agreement subject to Paragraph 16 below.

1. **Purchase Decision:**

At any time during the last six months of the Least term, but not later than the date fixed for the expiration of the term of this Lease, if Lessee has duly made all payments required under this Lease, Lessee will have the right to request to purchase such item at its market price at the end of the Lease period. For purposes of this purchase decision, within a reasonable time after Lessee’s request but before the expiration of the term of the Lease, Lessor shall communicate to Lessee its decision whether or not to sell the item. If affirmative, the market price shall be established as a then agreed upon price determined mutually by Lessor and Lessee. If both parties mutually agree upon the terms of the purchase, Lessor will execute and deliver to Lessee all documents necessary and proper to effect transfer of ownership of the Property to Lessee, free and clear of all encumbrances, security interest, and liens. If Lessee pays the full agreed purchase price in cash, company, or certified check, this Lease is terminated as to any Property so purchased by Lessee, and no further rents will be due for any such Property.

1. **Cancellation for Non-Appropriation of Funds:**

Lessee shall have the right to cancel this Agreement at the end of the then current fiscal period, if the Texas Legislature does not appropriate funds for the next fiscal period to continue the leasing of the Property. The Lessee may effect such cancellation by giving Lessor written notice of its intention to cancel not less than thirty (30) days prior to the end of the then current fiscal period, stating its reasons for cancellation; upon Lessor’s request giving Lessor documentation supporting its reasons for cancellation; and within ten (10) days of the end of the fiscal period paying to Lessor any rents due through the end of the fiscal period and delivering a possession of the Property to Lessor. Upon cancellation of this agreement as provided in this paragraph, Lessee shall not be responsible for the payment of any additional rent in accordance with Paragraph 2. Upon such cancellation, Lessee gives up all right, title, and interest in Property leased under this agreement.

1. **Default:**

If Lessee either fails to pay rent or any other amount herein provided when due and payable or fails to perform promptly any of the other obligations or covenants herein, and such default continues for a period of thirty (30) days after Lessor gives Lessee written notice thereof, then in any such event Lessor may pursue any one or more of the following remedies (which shall be cumulative and exercisable concurrently or separately as Lessor, in its sole discretion, may determine):

**(a)** Lessor may repossess the Property by giving Lessee written notice to deliver the Property to Lessor, whereupon Lessee shall do so in the manner provided in Paragraph 18 of this Lease, or in the event Lessee fails to do so within the ten (10) days after receipt of such notice, Lessor may enter upon Lessee’s premises where the Property is kept and take possession of the Property. Unless and until this Lease is cancelled pursuant to Paragraph 16, Lessee shall continue to be responsible for the payment of rent until the default is cured, at which time Lessor shall return the property to Lessee at Lessee’s expense.

**(b)** Lessor may terminate this Lease and repossess the Property in accordance with paragraph (a), and shall make reasonable attempts to sell the Property, or any portion thereof, in a commercially reasonable manner at public or private sale and apply the proceeds of such sale to pay the following items in the following order:

**(1)** costs incurred in repossessing the Property from Lessee.

**(2)** reasonable expenses of sale.

**(3)** the balance of any rents or interest owed by Lessee for the current fiscal period; and

**(4)** all remaining rentals due and or to become due under the term of this Lease from the date of default, discounted at a discount rate of six percent (6%). Any balance remaining after the payment of all such items shall be paid to Lessee. If the proceeds of sale are not sufficient to pay items (1) through (4) in full, the Lessee shall make an additional rental payment to Lessor equal to the amount of the deficiency. Lessee shall provide for such additional rental payments in its next budget and upon receipt of monies appropriated in the budget for this purpose, shall pay such amount to Lessor together with interest at the maximum rate permitted by law or ten percent (10%) per annum, whichever is the lesser, from the first day of the next fiscal period to the date or dates of payment.

**(c)** Lessor may take any other remedy available at law or in equity.

1. **End of Lease Property Return:**

Upon expiration or termination of this Agreement, Lessee shall return the Property to Lessor in the condition, repair, appearance, and working order required in Paragraph 8 hereof (unless Lessee has paid Lessor the purchase value for such Property in accordance with Paragraph 15 above), in the following manner as may be specified by Lessor; (a) by delivering the Property at Lessee’s cost and expense to such place as Lessor shall specify within Lessee’s state; or (b) by loading such portions of the Property as are considered movable, at Lessee’s cost and expense, on board such carrier as Lessor shall specify and shipping same, freight prepaid, to the place specified by Lessor in the Lessee’s state, unless Lessor and Lessee agree to another place of delivery. If Lessee refuses to return the Property in the manner designated, Lessor may repossess such Property and charge to Lessee the costs of such repossession or pursue any remedy described in Paragraph 17.

1. **Assignment and Sublease:**

**(a)** Without prior written consent of Lessor, which will not be unreasonable withheld, Lessee shall not (1) assign, transfer, pledge, or hypothecate this Lease, sublet the Property, or any part thereof, or any interest therein; or (2) sublet the Property, or any part thereof, or permit the Property to be used for any purpose not permitted by this Lease.

**(b)** Lessor may assign this Lease, and any assignee of Lessor may assign the same provided, such assignment shall in no way encumber Lessee with any additional obligations other than those set forth in these Terms and Conditions or limit any rights provided Lessee hereunder including its right to peaceful possession and use of the Property, nor shall Lessee be required to execute any additional documents except a UCC-financing statement to perfect such assignees’ or new owners’ security interest in the Property. All rights of Lessor hereunder may be assigned, pledged, transferred, or otherwise disposed of, in whole or in part, upon providing Lessee with prompt written notice thereof.

**(c)** If **L**essor assigns this Lease, or if it is reassigned by any assignee, Lessee’s duty to make payments hereunder will by fully discharged by directing such payments to the last assignee of which it has been given written notice at the address to be included in said notice, and Lessor hereby agrees to indemnify Lessee against any claims which may arise, over and above those obligations undertaken by Lessee in this Lease because of the failure of Lessor to promptly or properly accomplish any assignment (or sub-assignment) of its rights hereunder, or to promptly or properly notify Lessee thereof.

1. **Personal Property:**

The Property is and shall at all times be and remain personal property, notwithstanding that the Property, or any part thereof, may now be or hereafter become in any manner affixed or attached to or embedded in or permanently rested upon real Property or any building thereon or attached in any manner to what is permanent by any means of cement, plaster, nails, bolts, screws, or otherwise.

1. **Lessor’s Rights to Perform for Lessee:**

If Lessee fails to make any payment or fails to perform or comply with any of its covenants or obligations, Lessor may at its election make such payment or perform or comply with such covenants and obligations, and the amount of such payment and the expenses incurred by Lessor in performing or complying with such covenants and obligations, as the case may be, together with interest thereon at the maximum rate permitted by law or the rate of ten percent (10%) per annum, whichever is the lesser, shall be deemed additional rent payable by Lessee upon demand. No election to perform or pay by Lessor shall constitute waiver of any covenant or obligation of Lessee or of any future default.

1. **Interest:**

If Lessee fails to pay part of the rent herein reserved within thirty (30) days after the due date thereof, Lessee shall pay to Lessor interest on such delinquent rental payment from the due date until paid at the rate authorized under the Texas Prompt Payment Act.

1. **Location of Property:**

Lessee agrees not to move the Property from its original location to another location without prior written notice and agreement thereto by Lessor. Such approval shall not be unreasonably withheld by Lessor.

1. **Notices:**

Any notices required or permitted to be given shall be in writing and effective upon receipt and shall be sent by certified mail, return receipt requested, postage pre-paid, addressed as follows:

If to Lessor, to the Lessor’s last known mailing address.

If to UTMB (Lessee):

The University of Texas Medical Branch at Galveston

Attn.: Chief Purchasing Agent

301 University Blvd., Mail Route 0905

Galveston, Texas 77555-0905

With copy to:

The University of Texas Medical Branch at Galveston

Attn.: Director, Legal Services

301 University Blvd., Mail Route 0171

Galveston, Texas 77555-0171

1. **Texas Public Information Act:**

Lessee considers all information, documentation, and other materials pertaining to Lessee’s Lease of the Property to be of a non-confidential and/or non-proprietary nature and therefore shall be subject to public disclosure under the Texas Public Information Act (Texas Government Code, Chapter 552). Lessor is hereby notified that Lessee strictly adheres to all Statutes, court decisions and the opinions of the Texas Attorney General regarding the disclosure of contract information.

1. **Publicity:**

Lessor agrees that it shall not publicize Lessee’s Lease of the Property or disclose, confirm, or deny any details thereof to third parties or use any photographs or video recordings of Lessee’s employees or patients or use Lessee’s name in connection with any sales promotion or publicity event without the prior express written approval of Lessee.

1. **Undocumented Workers:**

The *Immigration and Nationality Act* (8 *United States Code* 1324a) (“Immigration Act”) makes it unlawful for an employer to hire or continue employment of undocumented workers. The United States Immigration and Customs Enforcement Service has established the Form I-9 Employment Eligibility Verification Form (“I-9 Form”) as the document to be used for employment eligibility verification (8 *Code of Federal Regulations* 274a). Among other things, Lessor is required to:

**(1)** have all employees complete and sign the I-9 Form certifying that they are eligible for employment.

**(2)** examine verification documents required by the I-9 Form to be presented by the employee and ensure the documents appear to be genuine and related to the individual.

**(3)** record information about the documents on the I-9 Form, and complete the certification portion of the I-9 Form; and

**(4)** retain the I-9 Form as required by law. It is illegal to discriminate against any individual (other than a citizen of another country who is not authorized to work in the United States) in hiring, discharging, or recruiting because of that individual’s national origin or citizenship status. If Lessor employs unauthorized workers during performance of this Agreement in violation of the Immigration Act then, in addition to other remedies or penalties prescribed by law, Lessee may terminate this Agreement in accordance with Section VIII. Lessor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Act.

1. **Breach of Contract Claims**

**A.** To the extent that Chapter 2260, *Texas Government Code*, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 will be used, as further described herein, by Lessee and Lessor to attempt to resolve any claim for breach of contract made by Lessor:

**1.** Lessor’s claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business will be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Lessor will submit written notice, as required by subchapter B of Chapter 2260, to Lessee in accordance with the notice provisions in this Agreement. Lessor's notice will specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific Agreement provision that Lessee allegedly breached, the amount of damages Lessor seeks, and the method used to calculate the damages. Compliance by Lessor with subchapter B of Chapter 2260 is a required prerequisite to Lessor's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of Lessee, or another officer of Lessee as may be designated from time to time by Lessee by written notice to Lessor in accordance with the notice provisions in this Agreement, will examine Lessor's claim and any counterclaim and negotiate with Lessor in an effort to resolve the claims.

**2.** If the parties are unable to resolve their disputes under subsection (A)(1), the contested case process provided in subchapter C of Chapter 2260 is Lessor’s sole and exclusive process for seeking a remedy for any and all of Lessor's claims for breach of this Agreement by Lessee.

**3.** Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107, *Texas Civil Practices and Remedies Code*. The parties hereto specifically agree that (i) neither the execution of this Agreement by Lessee nor any other conduct, action or inaction of any representative of Lessee relating to this Agreement constitutes or is intended to constitute a waiver of Lessee's or the state's sovereign immunity to suit and (ii) Lessee has not waived its right to seek redress in the courts.

**B.** The submission, processing and resolution of Lessor’s claim is governed by the published rules adopted by the Texas Attorney General pursuant to Chapter 2260, as currently effective, thereafter enacted or subsequently amended.

**C.** Lessee and Lessor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived.

1. **Agreement Amendments:**

This Agreement may be amended within the Agreement period by mutual consent of the parties. No modification or amendment to this Agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to this Agreement must be forwarded to the Lessee Purchasing Department for prior review and approval.

1. **Independent Contractor Status:**

For all purposes of this Agreement and notwithstanding any provision of this Agreement to the contrary, Lessor is an independent contractor and is not a state employee, partner, joint ventures, or agent of Lessee. Lessor will not bind nor attempt to bind Lessee to any agreement or contract. As an independent contractor, Lessor is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including but not limited to workers’ compensation insurance.

1. **Compliance with Law:**

Lessor is aware of, is fully informed about, and in full compliance with its obligations under existing applicable law and regulations, including Title VI of the Civil Rights Act of 1964, as amended (42 USC 2000(D)), Executive Order 11246, as amended (41 CFR 60-1 and 60-2), Vietnam Era Veterans Readjustment Act of 1974, as amended (41 CFR 60-250), Rehabilitation Act of 1973, as amended (41 CFR 60-741), Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1), Omnibus Budget Reconciliation Provision, Section 952, Fair Labor Standards Act of 1938, Sections 6, 7, and 12, as amended, Immigration Reform and Control Act of 1986, and Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals (PL 96-507), the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.), the Civil Rights Act of 1991, University of Texas System Administration Policy UTS165, and all laws and regulations and executive orders as are applicable.

1. **Access to Documents****:**

To the extent applicable to this Agreement, in accordance with Section 1861(v)(I)(i) of the Social Security Act (42 U.S.C. 1395x) as amended, and the provisions of 42 CFR Section 420.300, et seq., Lessor will allow, during and for a period of not less than four (4) years after the expiration or termination of this Agreement, access to this Agreement and its books, documents, and records; and contracts between Lessor and its subcontractors or related organizations, including books, documents and records relating to same, by the Comptroller General of the United States, the U.S. Department of Health and Human Services, the Federal Emergency Management Agency (FEMA), Texas State Auditor's Office, Lessee, and their duly authorized representatives.

1. **Force Majeure:**

Neither Lessee nor the Lessor shall be required to perform any term, condition, or covenant of this Agreement so long as such performance is delayed or prevented by acts of God, material or labor restriction by any governmental authority, civil riot, floods, hurricanes, or other natural disasters, or any other cause not reasonably within the control of Lessee or Lessor, and which by the exercise of due diligence Lessee or the Lessor is unable, wholly or in part, to prevent or overcome.

1. **Other Benefits:**

It is understood and agreed that no benefits, payments or considerations received by Lessor for the performance of services associated with and pertinent to this Agreement shall accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or any other person identified as agents of, or who are by definition an employee of, the State.

1. **Non-Disclosure:**

Lessor and Lessee acknowledge that they or their employees may, in the performance of this Agreement, come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, whether or not directly or indirectly affiliated with Lessor or Lessee, unless required by law. Each party shall also sign any non-disclosure agreements reasonably required by the other party and obtain such agreements from their representatives and/or employees as necessary.

1. **36. Severability:**

If one or more provisions of this Agreement, or the application of any provision to any party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of this Agreement and the application of the provision to other parties or circumstances shall remain valid and in full force and effect.

1. **37. Non-Waiver of Defaults:**

Any failure of Lessee at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms and conditions of this Agreement, or to exercise a right hereunder, shall not constitute a waiver of such terms, conditions, or rights, and shall not affect or impair same, or the right of Lessee at any time to avail itself of same.

1. **38. Assignment of Overcharge Claims:**

Lessor hereby assigns to Lessee any and all claims for overcharges associated with this Agreement arising under the antitrust laws of the United States, 15 U.S.C.A., Sec. 1 et seq. (1973), or arising under the antitrust laws of the State of Texas, Texas Business and Commerce Code Annotated, Sec. 15.01, et seq. (1967).

1. **39. Ethics Matters; No Financial Interest:**

Lessor and its employees, agents, representatives and subcontractors have read and understand Lessee’s Conflicts of Interest Policy available at <http://research.utmb.edu/coi/default.shtm>, Lessee’s Standards of Conduct Guide available at <http://intranet.utmb.edu/compliance/SOCG_2005_3rdEd/SOC_Guide2005.pdf>, and applicable state ethics laws and rules available at www.utsystem.edu/ogc/ethics. Neither Lessor nor its employees, agents, representatives or subcontractors will assist or cause Lessee employees to violate Lessee’s Conflicts of Interest Policy, provisions described by Lessee’s Standards of Conduct Guide, or applicable state ethics laws or rules. Lessor represents and warrants that no member of the Board has a direct or indirect financial interest in the transaction that is the subject of this Agreement.

1. **40. Recall Notice:**

Lessor shall, immediately upon discovery of same, advise Lessee of any or all required replacement/modifications to equipment or component part thereof or withdrawal of product by reason of safety hazard or recall regardless of the nature of same. Any verbal notification must be confirmed in writing within twenty-four (24) hours of such verbal notification. All such formal notices will be submitted to the following addresses:

The University of Texas Medical Branch at Galveston

Attn.: Chief Purchasing Agent

301 University Blvd.

Galveston, TX 77555-0905

Tel.: (409) 747-8000 Fax: (281) 554-5368

The University of Texas Medical Branch at Galveston

Attn.: Risk Management

301 University Blvd.

Galveston, TX 77555-0495

Tel.: (409) 742-4775 Fax: (409) 742-6897

1. **41. Other Liabilities:**

The individuals signing on behalf of Lessee and Lessor shall not be personally liable for the performance of any of the terms of this Agreement, provided however, that they warrant their authority to sign on behalf of Lessee and Lessor. No member, individually or collectively, of Lessee or the Board of Regents of the University of Texas System (“UT System”), and no officer or director of Lessor incurs or assumes any individual or personal liability by the execution of this Agreement or by reason of default in the performance of any of the terms hereof. All such liability of the employees of UT System and officers and directors of Lessor, as such, is released as a condition of and in consideration of the execution of this Agreement.

1. **42. Section Headings:**

All section headings are for convenience of reference only and are not intended to define or limit the scope of any provisions of this Agreement.

1. **43. Execution:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Agreement. It is also agreed that separate counterparts of this Agreement may separately be executed by the parties all with the same force and effect as if the same counterpart had been executed by all parties.
2. **Anti-discrimination:**

Lessor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or physical defect or disability with regard to but not limited to employment upgrading, promotion or transfer, recruitment or recruitment advertising, layoffs or termination, or selection for training. It is further understood that any lessor in violation of this clause shall be barred forthwith from receiving awards of any Lease order from the Lessee unless a satisfactory showing is made that the discriminatory practices have been terminated and that a recurrence of such acts is unlikely.

1. **Governing Law & Venue:**

Galveston County, Texas, shall be the proper place of venue for suit on or in respect of this Agreement. This Agreement and all of the rights and obligations of the parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of Texas.

1. **Miscellaneous:**
2. Lessor, or its authorized representative, may inspect the Property during regular business hours.
3. No covenant or obligation to be performed by either party may be waived except by the written consent of both parties.
4. This Lease constitutes the entire agreement between the parties, and this Lease shall not be modified, amended, altered, or changed except by a written document signed by both parties.
5. Any provisions of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder thereof.
6. Subject to the provisions of Paragraph 19, this Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.
7. The headings of the various sections and paragraphs hereof are for reference only and are not a part of this agreement.
8. **Affirmations:**

By signature hereon, Lessor represents and warrants the following:

* Lessor is a reputable company that is lawfully and regularly engaged in performing the services.
* Lessor has the necessary experience, knowledge, abilities, skills, and resources to provide perform the services.
* Lessor is aware of, is fully informed about, and is in full compliance with all applicable federal, state and local laws, rules, regulations and ordinances.
* Lessor will not delegate any of its duties or responsibilities under this Agreement to any subcontractor, except as expressly provided in the Agreement.
* Lessor will maintain any insurance coverage as required by the Agreement during the term thereof.
* Lessor will defend, indemnify, and hold harmless Lessee, The University of Texas System, the State of Texas, and all of their regents, officers, agents and employees, from and against all claims, actions, suits, demands, costs (including, but not limited to reasonable attorneys' fees), damages, and liabilities, arising out of, connected with, or resulting from any negligent acts or omissions or willful misconduct of Lessor or any agent, employee, subcontractor, or supplier of Lessor in the performance of this Agreement.
* Pursuant to Sections 2107.008 and 2252.903, *Government Code*, any payments owing to Lessor under this Agreement may be applied directly to any debt or delinquency that Lessor owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is paid in full.
* Lessor affirms that it has not given or offered to give, nor does Lessor intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.
* A corporate Lessor certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171, *Tax Code*, or that the corporate Lessor is exempt from the payment of such taxes, or that the corporate Lessor is an out-of-state corporation that is not subject to the Texas Franchise Tax, whichever is applicable. A false certification will be deemed a material breach of contract and, at Lessee's option, may result in termination of this Agreement.
* Lessor hereby certifies that neither Lessor nor any firm, corporation, partnership or institution represented by Lessor, or anyone acting for such firm, corporation or institution, has violated the antitrust laws of the State of Texas, codified in Section 15.01, et seq., *Business and Commerce Code*, or the Federal antitrust laws, nor communicated directly or indirectly the proposal made to any competitor or any other person engaged in such line of business.
* Lessor certifies that the individual signing this Agreement and the documents made a part of this Agreement, is authorized to sign such documents on behalf of Lessor.
* "Under Section 231.006, *Family Code,* relating to child support, Lessor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated if this certification is inaccurate."
* Lessor certifies that (i) no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between the owner of any Lessor that is a sole proprietorship, the officers or directors of any Lessor that is a corporation, the partners of any Lessor that is a partnership, the joint venturers of any Lessor that is a joint venture or the members or managers of any Lessor that is a limited liability company, on one hand, and an employee of any component of The University of Texas System, on the other hand, other than the relationships which have been previously disclosed to Lessee in writing and (ii) Lessor has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline.
* Lessor certifies that in accordance with Section 2155.004, *Government Code*, no compensation has been received for its participation in the preparation of the requirements or specifications for this Agreement. In addition, Lessor certifies that an award of a contract to Lessor will not violate Section 2155.006, *Government Code*, prohibiting Lessee from entering into a contract that involves financial participation by a person who, during the previous five years, has been convicted of violating federal law or assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Pursuant to Sections 2155.004 and 2155.006, *Government Code*, Lessor certifies that Lessor is not ineligible to receive the award of or payments under the Agreement and acknowledges that the Agreement may be terminated, and payment withheld if these certifications are inaccurate.
* Lessor certifies its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
* Lessor represents and warrants that all products and services offered to Lessee in this Agreement meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-596) and the *Texas Hazard Communication Act*, Chapter 502, *Health and Safety Code*, and all related regulations in effect or proposed as of the date of this Agreement.
* That, except for restrooms and washrooms and one (1) or more lactation rooms each of which is segregated on the basis of sex:
* That neither Lessor nor its principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from State of Texas or United States (“**U.S.**”) federal government procurement or non-procurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs (http://www.epls.gov/) issued by the U.S. General Services Administration. “**Principals**” means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). Lessor will provide immediate written notification to Lessee if, at any time prior to award, Lessor learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when Lessee executes this Agreement. If it is later determined that Lessor knowingly rendered an erroneous certification, in addition to the other remedies available to Lessee, Lessee may terminate this Agreement for default by Lessor.
* Lessor acknowledges that Lessee is prohibited by federal regulations from allowing any employee, representative, agent or subcontractor of Lessor to work on site at Lessee’s premises or facilities if that individual is not eligible to work on federal healthcare programs including Medicare, Medicaid, or other similar federal programs. Therefore, Lessor will not assign any employee, representative, agent or subcontractor that appears on the List of Excluded Individuals issued by the United States Office of the Inspector General (“**OIG**”) to work on site at Lessee’s premises or facilities. Lessor will perform OIG sanctions check quarterly on each of its employees, representatives, agents, and subcontractors during the time the employees, representatives, agents, or subcontractors are assigned to work on site at Lessee’s premises or facilities. Lessor acknowledges that Lessee will require immediate removal of any employee, representative, agent, or subcontractor of Lessor assigned to work at Lessee’s premises or facilities if the employee, representative, agent, or subcontractor is found to be on the OIG’s List of Excluded Individuals. The OIG’s List of Excluded Individuals may be accessed through the following Internet website: http://www.dhhs.gov/progorg/oig/cumsan/index.htm
* Lessor covenants and agrees that as required by Section 2155.4441, *Texas Government Code*, in performing its duties and obligations under this Agreement, Lessor shall purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

1. it does not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.
2. it will not maintain or provide for its employees any segregated facilities at any of its establishments; and
3. it will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. A breach of this certification is a violation of the Equal Opportunity clause. The term “segregated facilities” means any waiting rooms, work areas, rest rooms and washrooms, entertainment areas, and transportation or housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin, because of habit, local custom, or otherwise. Lessor further agrees that, except where it has contracts prior to the award with subcontractors exceeding $10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, Lessor will retain the certifications for each one of its subcontractors in Lessor’s files, and that it will forward the following notice to all proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

**notice to prospective subcontractors of requirements for certifications of nonsegregated facilities - A Certification on Nonsegregated Facilities must be submitted prior to the award of any subcontract exceeding $10,000.00 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).**

**Lessor understands that the penalty for making false statements regarding the subject matters of this Section is prescribed in 18 U.S.C. 1001.**

Lessee agrees to all the terms and conditions shown above, and that those terms and conditions are a complete and exclusive statement of the agreement between Lessee and Lessor, and that they may be modified only by a written agreement signed by both Lessee and Lessor and not by course of performance. The terms and conditions on any purchase order issued in conjunction with this Equipment Lease Agreement shall be for reference purposes only and shall not become a part of this Equipment Lease Agreement.

**By signing this Equipment Lease Agreement, Lessee and Lessor represent that it has the authority to bind the respective parties to this Equipment Lease Agreement.**

**Accepted by:**

**Lessor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Lessee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Lessor: THE UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON

|  |  |  |
| --- | --- | --- |
| Signature |  | Signature |

|  |  |  |
| --- | --- | --- |
| Print Name |  | Print Name |

|  |  |  |
| --- | --- | --- |
| Title |  | Title |

### EXHIBIT A

# PROPERTY SCHEDULE

Property Schedule forming part of the Equipment Lease Agreement and Support Services Agreement, Agreement No. \_\_\_\_\_, between the University of Texas Medical Branch at Galveston (hereinafter referred to as “Lessee”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “Lessor”).

Valuation of Equipment is for Property Insurance reasons only.

|  |  |  |
| --- | --- | --- |
| **Qty.** | **Part #** | **Description of Equipment** |
|  |  |  |
|  |  |  |
|  |  |  |

**Valuation of Equipment: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**EXHIBIT B**

# PAYMENT SCHEDULE

Payment Schedule forming part of the Equipment Lease Agreement and Support Services Agreement, Agreement No. \_\_\_\_\_\_\_, between the University of Texas Medical Branch at Galveston (hereinafter referred to as “Lessee”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “Lessor”).

|  |
| --- |
| **Term:** |
| **Number Of Monthly Payments:** |
| **Monthly Rental Payment Amount:** |