

## City and County of San Francisco Technology Marketplace

### Equipment Lease Term Sheet

This Equipment Lease Term Sheet (“Term Sheet”) is attached, and incorporated as though fully set forth therein, to each Purchase Order for equipment lease hereby issued by the City and County of San Francisco (“City”) under Contractor’s OCA Technology Marketplace Master Agreement (“Agreement”) to which this Term Sheet is attached. The terms and conditions of the Agreement apply to this Term Sheet. Capitalized terms used in this Term Sheet that are not otherwise defined have the meanings given them in the Agreement.

Now, THEREFORE, the parties agree as follows:

**1. Definitions.** Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Term Sheet, it shall have the meaning herein set forth.

a. “Agreement” means the Agreement to which this Term Sheet is attached and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements, which are specifically incorporated into this Term Sheet by reference as provided herein.

b. “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and the requesting department.

c. “Contractor” or “Lessor” means Lessor. In required or standard City contracting terms, the word “Contractor” may appear, and it is to be construed as meaning the Lessor.

d. “Term Sheet” shall mean this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Agreement that are specifically incorporated into this Term Sheet by reference, as provided herein.

e. “Purchase Order” means the accompanying Purchase Order and any other corresponding documents submitted by Contractor to City (“Corresponding Documents”) in response to a request for quote by City for the equipment lease Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to the Agreement, which is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

**2. Term.** The term of this Term Sheet shall reflect the term of the equipment lease Services set forth in the accompanying Purchase Order and corresponding documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Agreement.

**3. City's Payment Obligation.** In no event will the City make an advance payment. In the event any payment of any amount of monies is required by any vendor or manufacturer prior to acceptance of the equipment by the City, Lessor is to advance such amounts. The City will make a good faith effort to pay all invoices within thirty days of billing. In no event will the City pay any late fees or charges for payments made after the thirty (30) day period. Lessor and the City understand and intend that the obligations of the City to pay rental payments hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, or monies of the City. The City shall pay rental payments, exclusively from legally available funds, to Lessor or, in the event of an authorized assignment by Lessor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Lessor in a form acceptable to the Controller. Each invoice must have a unique identifying number. Payments will be made in United States Dollars by warrant drawn on the Treasurer of City and County of San Francisco. Rental payments shall be in consideration for the City's use of the equipment during the applicable fiscal year in which such payments are due. In no event shall the amount of this Term Sheet exceed the amount stated in the Agreement. The breakdown of costs associated with this Term Sheet appears in the Agreement between City and Contractor, to which this Term Sheet is attached.

**4. Maintenance.** Unless otherwise specified by the Purchase Order or its Corresponding Documents, the City shall be responsible for all service, repair, and maintenance of the equipment. If the City is responsible for service, repair, and maintenance, the City, at its sole cost and expense, shall keep the equipment in good operating order, repair, condition, and appearance and shall furnish any and all parts, mechanisms, or devices required to keep the equipment in good mechanical and working order. If the City deems it necessary, the City shall enter into an appropriate maintenance service agreement covering all items of equipment and shall maintain maintenance service on the equipment for the term of this Term Sheet, for which payment shall be due and payable by the City.

**5. Use, Licenses.** The City will not use or operate the equipment leased under this Term Sheet and the Agreement improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by this Term Sheet or the Agreement.

**6. Delivery of Equipment; Transportation.** It is the responsibility of the Lessor to arrange with the manufacturer and/or vendor for the delivery and any installation of the equipment. Charges for delivery and installation are the responsibility of the Lessor. However, the City will reimburse Lessor for reasonable delivery and installation charges after the equipment leased under this Term Sheet and the Agreement is accepted and upon proper presentation of invoices unless such charges are included in the cost of the equipment. The equipment to be provided under this Term Sheet and the Agreement is to be delivered to a location as designated by the City and installed and made ready for operation.

**7. Installation.** If Installation is applicable, the Lessor will arrange with the manufacturer and/or vendor to prepare site, obtain all permits and licenses, if any, necessary for the installation and operation of the equipment, furnish, assemble and install the equipment as necessary at the

location as designated by the City. Manufacturer and/or vendor must comply with all State laws and local ordinances in installing the equipment.

**8. Relocation of Equipment.** Lessor agrees that the City may upon reasonable notice to Lessor, relocate the equipment or any item or items thereof to any location or locations within the geographical boundaries of the City where the City has offices at the City's sole discretion and cost. Prior to any such relocation the City agrees to execute or obtain and to deliver to Lessor such documents, which Lessor reasonably requests to protect Lessor's right, title, and interest in the equipment.

**9. Lessor's Removal and the City's Surrender of the Equipment.** At the end of the term of this Term Sheet or the Agreement, or unless sooner terminated, the City agrees to surrender the equipment in as good a condition as when furnished, reasonable wear and tear excepted. Lessor agrees, at Lessor's cost to accept and remove the equipment as provided in this Term Sheet and the Agreement. Lessor's failure to accept and remove the equipment shall entitle the City to remove the equipment and place it in any storage facility in San Francisco at Lessor's sole expense, and Lessor shall hold the City free and harmless from any expense or damages of any kind occasioned thereby and arising therefrom.

**10. Force Majeure.** Lessor shall not be liable for failure to furnish equipment ready for use on the date specified or to remove in accordance with the terms of this Term Sheet and the Agreement, nor shall City be liable for delay in installation or removal when such failures are due to causes beyond the reasonable control of either such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event the party under obligations to perform shall perform as soon as such cause is removed.

**11. The City's Right to Use Other Equipment Simultaneously with the Equipment.** The City does not grant Lessor an exclusive right during the term of this Term Sheet and the Agreement to supply the City with any other equipment. The City reserves the right to lease or purchase similar or different equipment from any other supplier or lessors, which may be used contemporaneously with any item of equipment leased hereunder.

**12. Disclaimer of Warranties.** Lessor hereby assigns to the City for and during the term of this Term Sheet and the Agreement, to the extent permitted by law, all manufacturer's or vendor's warranties or guaranties, express or implied, issued on or applicable to the equipment leased under this Term Sheet and the Agreement, and Lessor authorizes the City to obtain the customary services furnished in connection with such warranties or guaranties at the City's expense. Lessor authorizes the City, to the extent permitted by law, to enforce in its own name any warranty, representation, or other claim enforceable against the manufacturer or vendor. The City acknowledges that the equipment has been purchased by Lessor on behalf of the City in accordance with the City's specifications. The City shall look directly to the manufacturer or vendor for any warranties or any service for the equipment.

**13. Enjoyment of the Equipment.** Provided that and so long as the City is not in default under this Lease, Lessor hereby covenants to provide the City during the term of this Term Sheet

and the Agreement with quiet use and enjoyment of the equipment, and the City shall during the term of this Term Sheet and the Agreement peaceably and quietly have and hold and enjoy the equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Term Sheet and the Agreement. Any assignee of Lessor shall not interfere with the City's quiet use and enjoyment during the term of this Term Sheet and the Agreement so long as the City is not in default pursuant to this Term Sheet and the Agreement.

**14. Title to the Equipment.** Title to the equipment and any and all additions, repairs, replacements, or modifications thereto shall be held in the name of Lessor, and the City shall have no right, title, or interest in the equipment or any additions, repairs, replacements, or modifications thereto except as expressly set forth in this Term Sheet and the Agreement.

**15. Liability for Damage to Equipment.** It is understood and agreed that the City is responsible for loss of or damage to any Lessor owned equipment involved, only as caused by the negligent or wrongful actions of City's officers, agents, and employees.

**16. Taxes.** The City will only pay California sales and use taxes. The Lessor is to add California sales and use taxes to the monthly payment and the tax must be properly identified on each monthly invoice. Any other taxes presently in effect that may be levied upon this Term Sheet, a Technology Marketplace Transaction, or the equipment or Services delivered pursuant hereto shall be borne by the Lessor. The Lessor will be responsible for all property taxes. In the event any taxes or charges are enacted after the date of execution of this Term Sheet and the accompanying Purchase Order, those taxes or charges shall be borne as mutually agreed. The Lessor will indemnify and hold City harmless from any fines, penalties, or interest thereon imposed during the term of this Term Sheet and the accompanying Purchase Order, or in connection with termination of this Term and the accompanying Purchase Order by any federal, State, or local government or taxing authority. The taxes covered by this Section shall only include those attributable to the equipment. Under no circumstances will the City pay any taxes imposed on, based on, or measured by the net income of the Lessor.

**17. Assignment.** Notwithstanding any other provision in this Term Sheet, in no event shall all or any portion of this Term Sheet or the accompanying Purchase Order be assigned without the prior written approval of Purchasing and the City Attorney. Furthermore, in no event shall Lessor effect a public offering of certificates of participation, municipal securities, or other debt instruments presenting fractionalized interests in this Term Sheet and the accompanying Purchase Order. For purposes of this Section, a public offering shall occur when the certificates of participation, municipal securities, or other debt instruments are either: (a) offered or sold to more than twenty investors; or (b) offered or sold in denominations of less than \$10,000.