

EQUIPMENT LOAN AGREEMENT

This Equipment Loan Agreement (this “Agreement”) is made ____ day of ____, 20__ (“Effective Date”), by and between DataDirect Networks, Inc. (“DDN”), a California corporation, having a place of business at 9351 Deering Avenue, Chatsworth, California, 91311 USA, and insert company name (“Customer”) having its principal place of business at insert address, insert city, insert state/province, insert postal code, insert country.

In consideration of the mutual covenants and promise set forth herein, the parties agree as follows:

1. Loan. The equipment listed on Exhibit A attached hereto, together with any related software (collectively, the “Equipment”) is loaned to Customer for the sole purpose of insert purpose (“Purpose”) using the Equipment at this location insert address, insert city, insert state/province, insert postal code, insert country (the “Location”) in accordance with, and during the term of, this Agreement. Subject to all other terms and conditions herein, DDN agrees to allow Customer to use the Equipment until the Return Date (as defined below).

2. Term. The term of this Agreement will commence on the Effective Date and will continue until the earlier of the following dates (the “Return Date”): (a) the day that is ____ days following the day on which Customer first receives the Equipment at the Location or (b) within seven (7) days of DDN’s request for return of the Equipment. Notwithstanding the foregoing or anything herein to the contrary, Customer acknowledges that DDN shall have the right, without process of law or without notice or demand upon Customer, take possession of the Equipment at any time and for any reason or no reason whatsoever.

3. No Warranty; Limitations of Liability. DDN HAS NOT MADE AND DOES NOT NOW MAKE ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE DESIGN, OPERATION, OR CONDITION OF THE EQUIPMENT OR ANY PART THEREOF, ITS MERCHANTABILITY, DURABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. DDN SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY CLAIM, LOSS, OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED, DIRECTLY, INDIRECTLY, INCIDENTALLY, OR CONSEQUENTIALLY BY THE EQUIPMENT, BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN, BY ANY INCIDENT WHATSOEVER IN CONNECTION THEREWITH, ARISING IN STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, OR IN ANY WAY RELATED TO OR ARISING OUT OF THIS AGREEMENT, EVEN IF DDN IS NOTIFIED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

4. Use, Operation, and Maintenance.

a) Customer shall use the Equipment only for the Purpose during the term of this Agreement and only in the manner for which it was designed and intended. Customer shall comply with all applicable laws and regulations and, following communication by DDN to Customer thereof, with all applicable DDN requirements, policies, procedures, and instructions relating to the Equipment and/or its use.

b) Customer warrants that the Equipment, its packaging, and its documentation will be preserved in an “as-new” condition, normal wear and tear excepted.

c) Customer agrees to promptly give notice to DDN of any loss or damage to the Equipment. DDN and its agents have the right to inspect, repair, and maintain the Equipment at all times.

- d) Customer acknowledges and agrees that the Equipment is being loaned with all risk of use and operation of the Equipment, however arising, being borne by Customer.
- e) Customer may not sell, assign, transfer, lease, or license (collectively "Sell") the Equipment without the prior written consent of DDN.
- f) Customer shall keep the Equipment free and clear of all liens, charges, encumbrances, security interests, legal processes and claims against the Equipment whatsoever (collectively "Encumbrances"), including but not limited to Encumbrances by landlords or secured creditors.
- g) Customer shall take such actions with respect to the Equipment as may be required to protect both the title and ownership interests of DDN in and to the Equipment.
- h) Customer shall not modify, adjust, or change the Equipment, or add, affix, attach any accessories, parts, or replacements to the Equipment without the express prior written consent of DDN.

5. Terms of Delivery. DDN shall be responsible for the shipping and insurance expenses incurred to deliver the Equipment to the Customer; Customer shall be responsible for all customs expenses, if any, incurred in connection with such delivery. Customer shall be solely responsible for the return shipping, insurance, and, if any, customs expenses.

6. Software License. DDN hereby grants Customer a non-exclusive, non-transferable, revocable, non-assignable limited license (the "**License**") to use the any software products accompanying the Equipment ("Software") on the terms set forth herein. Customer may only use the Software solely within its organization in conjunction with the Equipment. Customer will not (i) reverse engineer, disassemble, decompile or attempt to derive the architecture or design, or any source code contained in the Software, (ii) modify the Software, (iii) otherwise translate or use the Software except as specifically allowed by this Agreement, or allow any person or entity (whether with or without consideration) the right to do any of the foregoing; (iv) sublicense, transfer and/or assign (except as otherwise expressly provided herein) the Software to any third party, whether with or without consideration; (v) render any services to third parties using the Software; (vi) remove or in any manner alter any product identification, proprietary, trademark, copyright or other notices contained in the Software; or (vii) allow any third parties to use the Software (except as otherwise expressly provided herein). Customer may not make any copies of the Software or any portions thereof. For the avoidance of doubt, the term of this Software license shall be as set forth in Section 2 hereof.

7. Ownership. The Equipment and all intellectual property rights therein or related thereto are, and shall at all times remain, the sole and exclusive property of DDN and/or its licensors. Customer shall not have or obtain any right, title, or interest therein except for the limited right to use the Equipment together with the Software in accordance with the terms expressly set forth in this Agreement. Nothing herein shall be construed as authorizing or permitting the use of any DDN trade names or trademarks.

8. Confidentiality. Except as otherwise expressly agreed by DDN in writing, Customer may not display or allow third parties to use the Equipment, and Customer may not demonstrate the performance of the Equipment to third parties. Further, the fact of the conveyance of the Equipment to Customer and any technical or business information pertaining to the Equipment or its installation, performance, reliability, optimization, or integration constitute the confidential and proprietary information of DDN. This confidential and proprietary information (a) shall be treated as highly confidential by Customer, (b) shall not be divulged, directly or indirectly, by Customer to any third party for any purpose whatsoever, and (c) shall not, without the prior written consent of DDN, be used by Customer for any purpose except as otherwise expressly permitted herein. Such confidential and proprietary information may be disclosed only to such employees and contractors of Customer who (a) specifically require access to such information for

the Purpose and (b) who have entered into written agreements with Customer that protect such confidential information no less restrictive than as protected hereunder. Customer shall cause such employees to strictly abide by the terms of those written agreements.

9. Surrender of Equipment. Upon the Return Date, Customer shall return the Equipment to DDN in good repair, condition, and working order, ordinary wear and tear resulting from proper use thereof alone excepted. For the avoidance of doubt, nothing in this Section 8 is intended to provide any express or implied warranty with respect to any Equipment.

10. Miscellaneous.

a) This Agreement shall not be changed or modified, in whole or in part, except by a supplemental agreement in writing signed by both parties.

b) The subject headings of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

c) This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to any conflict of law principles. Customer agrees that any action concerning this Agreement shall be brought and tried in the United States District Court for the Southern District of California in Los Angeles, California.

d) Each Party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, including the Specially Designated Nationals list administered by the Office of Foreign Assets Control and the Entity List, Denied Persons List and Unverified List administered by the Bureau of Industry and Security, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Any Equipment provided and/or Confidential Information disclosed under this Agreement may be subject to U.S. export controls. Customer agrees that it shall not export, re-export, or transfer, directly or indirectly, any Equipment or Confidential Information to any restricted party, to any region subject to U.S. embargo or comprehensive sanctions (currently, Cuba, Iran, North Korea, Sudan, Syria, and Crimea), or for any end use prohibited by Section 744 of the U.S. Export Administration Regulations (e.g., chemical/biological weapons, nuclear, and missiles), without obtaining any required prior authorization from the U.S. government.

e) In the event of any suit, action, or proceeding brought by either party regarding the Equipment or this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to court costs and litigation expenses in said action or proceeding.

f) Any provision of this Agreement which shall prove to be invalid and unenforceable, in whole or in part, shall in no way affect, impair, or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

g) All notices and demands of any kind that either DDN or Customer may be required or permitted to serve to the other party under the terms of this Agreement shall be in writing and shall be served by personal delivery, by a reputable courier (e.g., Federal Express), by fax, or by registered mail (return receipt requested) at the following respective addresses:

DDN:
DataDirect Networks, Inc.
9351 Deering Avenue
Chatsworth, CA 91311
Fax: 818.700.7651
Attention: General Counsel

Customer:

Fax: _____
Attention: _____

- h) Sections 2 through 10 of this Agreement shall survive any expiration or termination of this Agreement and continue in full force and effect.
- i) This Agreement may be executed in counterparts and delivered via facsimile or email.
- j) This Agreement (including but not limited to Exhibit A attached hereto) constitute the entire agreement between Customer and DDN with respect to the subject matter hereof, and supersede all prior or contemporaneous oral or written agreements between the parties with respect to such subject matter.

DDN:

CUSTOMER:

DataDirect Networks, Inc.

By: _____

By: _____

Printed Name: _____

Printed Name:

Name: _____

Name:

Title: _____

Title:

EXHIBIT A

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