

**EQUIPMENT LEASE AGREEMENT**

<b>Lessee</b> Full Legal Name - Include DBA if Applicable				
Billing Address		City	State	Zip
SUPPLIER (Name and Address)		Quantity	Full Description of Equipment, Including Make, Model and Serial Number	
See attached Schedule A			See attached Schedule A	
Term (From Equipment Acceptance)  Months _____	Frequency of Payments <input type="checkbox"/> Monthly <input type="checkbox"/> Other _____	Rent  \$ _____	Initial Payment ( to accompany lease) \$ _____  <input type="checkbox"/> First \$ _____ <input type="checkbox"/> Deposit \$ _____  <input type="checkbox"/> Last \$ _____ <input type="checkbox"/> Other \$ _____	Total Cost \$ _____  Residual Value _____
Equipment Location: ( if differs from Lessee billing address)				

Lessor will lease to Lessee and Lessee will lease from Lessor the above-described personal property (collectively and including replacements the "Equipment" and individually an "Item") under the terms of this equipment lease agreement ("lease") which are set forth here and on page 2 of this lease.

- LESSEE'S OBLIGATIONS.** Lessee's obligations as to an Item (other than as set forth in paragraph 2) commence when Lessor has any right or obligation as to the Item and end when the Item is returned to Lessor in accordance with paragraph 9 except as otherwise provided.
- PAYMENTS.** The rent shown above is based on the Total Cost. Actual rent will be calculated in the proportion that the actual cost paid by Lessor for the Equipment bears to the Total Cost. Applicable sales and use taxes will be added to the rent. If this transaction is not consummated, any initial rent payment may be retained by Lessor as partial compensation for Lessor's costs and expenses incurred. Any excess or deficiency between the initial rent payment and the rent payment as finally determined will be payable with or credited to the second rent payment. The second rent payment will be due on the 1st day of the month, or other period set forth above, following Lessee's execution of the Certificate of Acceptance for the Equipment if execution occurs on or before the 15th of the month and otherwise on the 15th of the following month, or other period set forth above. Subsequent rent will be due on the same day of each period set forth above, thereafter during the term, whether or not an invoice is rendered or received. Other amounts due hereunder are payable upon Lessee's receipt of an invoice therefor. Lessee will pay Lessor amounts due under this lease at Lessor's address shown above or as Lessor may otherwise notify Lessee. Amounts to be applied to the last rent payment(s) will be applied in inverse order until exhausted provided there has been no default under the lease. If there is a default, payments may be applied to Lessee's obligations as Lessor chooses.
- LESSOR TERMINATION.** If the Certificate of Acceptance has not been executed and delivered to Lessor, Lessor may terminate this Lease on notice to Lessee, in which case Lessee will assume all obligations and duties with respect to the Equipment, (a) subsequent to 60 days from the Lease date, (b) upon a material adverse change in Lessee's financial condition, (c) if the Equipment's actual cost would exceed the Total Cost or (d) if the lease is in default.
- SOFTWARE.** If any of the Equipment includes computer software, Lessor will only finance Lessee's cost to purchase or license the software. Lessor will not be a party to any related license agreement. In all other respects the software will be treated as an Item.
- DELIVERY; ACCEPTANCE.** Lessee will either (a) execute and deliver the Certificate of Acceptance or (b) give Lessor notice specifying any proper objection to any Item within 14 days of completion of Equipment delivery. If the certificate of Acceptance is not furnished within this period, Lessor may terminate the lease as contemplated in paragraph 3. Upon direction by Lessor, Lessee will pay directly to the appropriate party any invoice applicable to an Item which may be furnished Lessor subsequent to the acceptance of the Equipment.
- LOCATION; INSPECTION; USE.** Lessee will keep, or permanently garage and not remove from such location for more than 30 days or from the United States for any period, each Item in Lessee's possession and control at the Equipment Location or such other location to which Lessor may consent in writing. Upon request, Lessee will advise Lessor as to the exact location of an Item. Lessor may inspect an Item during normal business hours, and Lessee will ensure Lessor's access for such purpose. Each Item will be operated carefully and properly in compliance with all applicable governmental, insurance and manufacturer's warranty requirements and all manufacturer's instructions.
- MAINTENANCE; ALTERATIONS.** Lessee will maintain each Item in good condition and repair and as specified in such requirements. Lessee will cause each Item of a type generally covered by a service contract to be covered under a contract providing sufficient coverage issued by a competent servicing entity. Lessee will not make any alterations or additions to an Item which detract from its economic value or functional utility except as stated in the second preceding sentence. Alterations or additions not readily removable or made to comply with governmental requirements will be deemed accessions and will be returned to Lessor with the Item.
- LOSS AND DAMAGE; STIPULATED VALUE.** Lessee will bear all risk of loss, theft, destruction or requisition of or damage to an Item ("Casualty Occurrence"). Lessee will give Lessor prompt notice of a Casualty Occurrence and will then repair the Item; provided, if Lessor decides the Item is lost, stolen, destroyed or damaged beyond repair or is requisitioned or suffers a constructive loss under an insurance policy carried hereunder, Lessee will pay Lessor the "Stipulated Value" equal to (a) any amounts due Lessor from Lessee at the time of the payment, (b) the remaining rents as to the Item with each discounted to present value at 5% per annum from the date due to the date of payment and (c) the percentage of the actual cost to Lessor of the Item indicated under "Residual Value" above similarly discounted. Upon such payment this lease will terminate as to the Item, with Lessee becoming entitled to Lessor's interest therein AS-IS, WHERE-IS without any warranty.
- SURRENDER.** Upon the expiration or earlier termination of this lease, Lessee will promptly return each Item, properly packed and crated with freight prepaid, to Lessor at a location Lessor specifies in the same condition and repair as at the commencement of the term hereof, reasonable wear and tear excepted; provided that at Lessor's request, Lessee will store an Item for up to 90 days after lease expiration. During the storage period Lessee will remain liable for all Lessee's lease obligations as to the Item except that no rent will be due. Lessee has no right to retain a Unit after lease expiration or the end of the storage period and Lessee will be liable for an additional rent for each period or portion of a period the Item is retained thereafter in addition to any other amounts contemplated herein.
- TITLING; REGISTRATION.** Except as Lessor may effect titling or registration, each Item subject to title registration laws will at all times be titled and/or registered by Lessee on behalf of Lessor in such a manner and jurisdiction as Lessor directs. Lessee will promptly notify Lessor of any necessary or advisable retitling and/or re-registration of an Item in a different jurisdiction.
- TAXES.** Lessee will pay as directed by Lessor or reimburse Lessor for all taxes and other governmental assessments (exclusive of federal and state taxes based on Lessor's net income) relative to the Equipment or this lease. Returns in connection with such obligations will, at Lessor's option, be prepared and filed by Lessor or by Lessee as Lessor directs.
- INSURANCE.** Lessee will maintain (a) all risk insurance on the Equipment for not less than its full replacement value naming Lessor as Loss Payee and (b) combined public liability and property damage insurance with a single limit of not less than \$500,000 per occurrence, or such other amount as Lessor may require on notice to Lessee, naming Lessor as an Additional Insured. This insurance must be in a form and with companies approved by Lessor, must name Lessee as a Named Insured, must provide at least ten (10) days advance written notice to Lessor of change or cancellation, must provide breach of warranty protection, where relevant, and must provide that the coverage is "primary". Insurance proceeds, at Lessor's option, will be applied to (a) the repair of applicable Items, (b) payment of the Stipulated Value and/or (c) payment of other obligations to Lessor. Any excess will belong to Lessee. Lessee appoints Lessor as Lessee's attorney-in-fact to do all things necessary or advisable to secure payments under any policy contemplated hereby on account of a Casualty Occurrence. Lessee will cause Lessor to receive evidence reasonably requested by Lessor of the coverage required above.
- LESSOR'S PAYMENT.** If Lessee fails to perform any lease obligation, Lessor may perform the obligation, and Lessee will reimburse Lessor's related costs. However, before Lessor purchases insurance because Lessee has failed to comply with paragraph 12, Lessor will give Lessee notice and an opportunity to obtain the required coverage. If Lessee does not do so and Lessor places coverage, the charge for the replacement insurance Lessor obtains, which will be billed and be payable with the rent payments, will include a fee plus interest on Lessor's premium as well as the allocable premium. Also, any insurance Lessor obtains will insure Lessor only, may not include liability coverage and if it includes such coverage, because it protects only Lessor, will not provide Lessee any liability coverage whatsoever, and will not relieve Lessee from Lessee's liability for the difference between the insurance proceeds to Lessor and Lessee's responsibility for the amount set forth in paragraph 8 if the lease must be paid off as to any Equipment after a casualty loss or cover any excess value of the Equipment. No further insurance charges will be due once and for so long as Lessee complies with paragraph 12.
- INDEMNITY.** Lessee will indemnify, defend and hold harmless Lessor against any liabilities, losses, claims, actions and expenses, including court costs and legal expenses, incurred by Lessor relating to this lease or the Equipment, including claims of latent or other defects, strict liability claims (whether in either case relating to an event within the lease term) and claims for patent, trademark or copyright infringement. Each party will give the other notice of any covered event promptly after learning thereof.

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15. DEFAULT. This lease will be in default if (a) Lessee fails to pay any amount hereunder when due; (b) Lessee fails to perform any other obligation hereunder or under any other agreement between Lessor and Lessee; (c) Lessee dies or is declared legally incompetent, if an individual; (d) a petition is filed by or against Lessee under the Bankruptcy Act or under any other law providing relief for debtors; (e) Lessee makes an assignment for the benefit of creditors, a receiver or trustee is appointed for Lessee, a proceeding contemplating winding up of Lessee's affairs is instituted, Lessee ceases business affairs or Lessee makes an abnormal transfer of a material portion of Lessee's assets; (f) an event described in (c), (d) or (e) occurs as to a guarantor of Lessee's obligations hereunder; or (g) there is a material misrepresentation to Lessor by Lessee or a guarantor in connection with this Lease or a default occurs under a real estate lease or mortgage covering property where an Item is located allowing exercise of default remedies thereunder.

16. REMEDIES. If the Lease is in default, Lessor may, at its option, do any one or more of the following: (a) use self-help and other lawful remedies to take possession of any Items; (b) sell or otherwise dispose of any Items in a manner which is commercially reasonable; (c) terminate this lease as to any Items on notice to Lessee; (d) recover from Lessee all amounts then due and owing hereunder, plus as reasonable liquidated damages, at Lessor's election (i) the Stipulated Value of the Equipment, upon the payment of which Lessee will become entitled to Lessor's interest in the Equipment AS-IS, WHERE-IS without any warranty whatsoever; (ii) if Lessor has sold an Item, the difference between the Stipulated Value of the Item and the net sales price (net of all Lessor's costs and expenses of sale) or (iii) if Lessor has not sold an Item (and has not exercised the remedy in clause (i)), the amount set by law using an five (5%) discount rate or (e) utilize any other remedy available to Lessor at law or in equity.

All remedies are cumulative and may be exercised concurrently or separately from time to time. Lessee will also pay Lessor all costs and expenses not offset against the proceeds of sale of any Equipment incurred by Lessor in enforcing the lease, including those incurred by using Lessor's salaried employees and those prior to filing of an action or in connection with a dismissed action. Any waiver by Lessor of a provision of this lease must be in writing, and forbearance by Lessor will not constitute a waiver. Post-default amounts will bear interest of 18% per annum or at such lesser default rate as set by law until paid.

17. ASSIGNMENT. Without the prior written consent of Lessor, Lessee will not sublet, transfer an interest in or allow a lien against any Item or transfer an interest in or allow a lien against this lease except a lien in an Item or this lease created by Lessor. Lessee's interest is not assignable by operation of law. All Lessor's rights under this lease and to the Equipment may be disposed of without notice to Lessee, but subject to the rights of Lessee hereunder. Lessee will acknowledge receipt of any notice of assignment in writing and will pay any assigned amounts as directed in the notice. If Lessor assigns this lease or any interest herein, Lessee will not assert against the assignee any claim or defense it may have against Lessor, and Lessee will pursue any rights on account thereof solely against Lessor personally, including if Lessor rejects the lease in a bankruptcy proceeding or Lessor interferes with Lessee's quiet enjoyment of any Equipment. No assignee will be obligated to perform any obligation of Lessor under this lease unless assumed by the assignee. Subject to the foregoing, this lease is for the benefit of, and binds, the heirs, legatees, personal representatives, successors and assigns of the parties.

18. OWNERSHIP, PERSONAL PROPERTY. This is a lease, and Lessee's rights to the Equipment are those solely of a lessee notwithstanding any trade-in or downpayment Lessee may make. Lessee will mark the Equipment or Equipment Location at Lessor's request to indicate Lessor's ownership of the Equipment. Each Item will remain personalty despite attachment to realty. Lessee will obtain and deliver to Lessor, upon Lessor's request, real property waivers in form satisfactory to Lessor from all persons claiming an interest in the real property on which an Item is or is to be located.

19. ADDITIONAL DOCUMENTS. Lessee will obtain and deliver to Lessor such documents as Lessor requests to protect its interest in this lease and the Equipment, including precautionary financing statements and fixture filings, both of which Lessee hereby alternatively authorizes Lessor to sign on Lessee's behalf. Lessee will reimburse Lessor for all Lessor's search, filing and appraisal fees and other costs paid third parties in connection with this lease. Lessee will furnish Lessor such financial data or information relative to this lease or the Equipment as Lessor may from time to time reasonably request. If this lease is found to be a financing, Lessee will be deemed to have granted Lessor a security interest in the Equipment.

20. LATE PAYMENT. If Lessee fails to pay an amount hereunder within 10 days of when due, Lessee will pay Lessor (a) a 5% late charge, (b) amounts Lessor pays others in connection with collection of the amount and (c) Lessor's standard returned check charge, if relevant.

21. DEPOSIT. Any deposit Lessee furnishes in connection with this lease will not bear interest and may be applied by Lessor to any obligations of Lessee to Lessor which are in default. When Lessee has satisfied all Lessee's obligations hereunder, Lessor will return any remaining balance of the deposit to Lessee.

22. GENERAL. This lease contains the entire agreement between Lessor and Lessee concerning the lease of the Equipment and may be amended only by a written agreement signed by the party to be charged. Notices hereunder must be in writing and mailed with appropriate U.S. First Class Mail postage prepaid to the party involved at its respective address set forth above or at such other address as such party may provide the other on notice. Notices to Lessee will be effective upon deposit and to Lessor upon receipt. Each party will promptly notify the other of any change in address. The singular includes the plural and the word "Lessor" includes all assignees of Lessor. The liability of co-lessees is joint and several. Paragraph titles are not an aid in interpretation. A copy of a facsimile copy of this lease, the Certificate of Acceptance or a related document may be entered into evidence as an original.

23. GOVERNING LAW; VENUE. THIS LEASE WILL BE GOVERNED BY THE INTERNAL LAWS OF CALIFORNIA. VENUE FOR ANY RELATED ACTION WILL BE IN AN APPROPRIATE COURT IN CONTRA COSTA COUNTY, CALIFORNIA SELECTED BY LESSOR TO WHICH LESSEE CONSENTS OR IN ANOTHER COURT LESSOR SELECTS HAVING JURISDICTION OVER THE PARTIES.  
24. NET LEASE; NO OFFSET. THIS IS A NET LEASE TERMINABLE BY LESSOR ONLY AS EXPRESSLY PROVIDED HEREIN AND NOT TERMINABLE BY LESSEE FOR ANY REASON INCLUDING THE FAILURE OF THE EQUIPMENT TO OPERATE PROPERLY. LESSEE'S OBLIGATION TO MAKE ALL PAYMENTS UNDER THIS LEASE IS ABSOLUTE AND UNCONDITIONAL AND WILL NOT BE SUBJECT TO ANY ABATEMENT, COUNTERCLAIM, RECOUPMENT, OFFSET OR DEFENSE. LESSEE'S OBLIGATIONS UNDER THIS LEASE, SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THE LEASE.  
25. NO AGENCY. LESSEE ACKNOWLEDGES THAT NEITHER THE SUPPLIER NOR ANY FINANCIAL INTERMEDIARY NOR ANY AGENT OF EITHER IS AN AGENT OF LESSOR, THAT NONE OF SUCH PARTIES IS AUTHORIZED TO WAIVE OR ALTER ANY TERM OR CONDITION OF THIS LEASE AND THAT NO REPRESENTATION AS TO THE EQUIPMENT OR ANY OTHER MATTER BY ANY SUCH PARTY IS BINDING UPON LESSOR.  
26. DISCLAIMER OF WARRANTIES. LESSEE ACKNOWLEDGES THAT THE EQUIPMENT AND THE SUPPLIER HAVE BEEN SELECTED BY LESSEE, THAT LESSOR MAKES NO WARRANTY AS TO LESSOR'S TITLE, THAT LESSEE LEASES THE EQUIPMENT "AS-IS" AND THUS THAT LESSOR SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY AS TO THE EQUIPMENT. IF AN ITEM DOES NOT FUNCTION PROPERLY, LESSEE WILL MAKE ANY RESULTANT CLAIMS AGAINST THE SUPPLIER OR MANUFACTURER.  
27. FINANCE LEASE; DIVISION 10 AND SIMILAR RIGHTS WAIVER. LESSEE AGREES THAT THIS LEASE WILL BE TREATED AS A "FINANCE LEASE" WITHIN DIVISION 10 OF THE CALIFORNIA COMMERCIAL CODE ("DIVISION 10"). THUS LESSEE WILL BE ENTITLED TO THE PROMISES AND WARRANTIES LESSOR RECEIVES UNDER EACH CONTRACT EVIDENCING LESSOR'S PURCHASE OF THE EQUIPMENT, INCLUDING ANY MANUFACTURER OR THIRD-PARTY WARRANTIES. LESSEE ACKNOWLEDGES THAT LESSOR HAS ADVISED LESSEE TO CONTACT THE EQUIPMENT SUPPLIER FOR A DESCRIPTION OF THOSE PROMISES AND WARRANTIES, INCLUDING ANY RELATED DISCLAIMERS OR LIMITATIONS, INCLUDING OF REMEDIES. CONSISTENT WITH LESSEE'S ASSUMPTION OF ALL EQUIPMENT RELATED RISKS AND THE TREATMENT OF THIS LEASE AS A "FINANCE LEASE," LESSEE WAIVES ANY RIGHTS, DEFENSES AND CLAIMS AGAINST LESSOR WHICH RELATE TO THE EQUIPMENT ARISING UNDER DIVISION 10 OR OTHER APPLICABLE LAW.

By execution hereof Lessee requests Lessor to order the Equipment from the Supplier and to lease the Equipment to Lessee hereunder. Execution hereof by a duly authorized officer of Lessor indicates Lessor's acceptance of such offer. Lessee warrants that Lessee will use the Equipment solely for commercial or business purposes. Lessee recognizes that Lessor will check Lessee's credit references and history and advise others as to Lessor's experience with Lessee and consents thereto. Lessee certifies and warrants that the financial data and other information which Lessee has submitted or will submit to Lessor is or will be a true and complete statement of the matters covered. Lessee authorizes Lessor to insert Equipment identification above or on the related exhibit and to correct patent errors, including omissions and clerical errors, such as incorrect Lessee name or Equipment description and missing or incorrect dates, in this lease or any related document.

Dated as of \_\_\_\_\_

Lessor: \_\_\_\_\_  
PRINT LEGAL NAME OF LESSEE ABOVE

By: \_\_\_\_\_ Title \_\_\_\_\_

By: \_\_\_\_\_ Title \_\_\_\_\_