

## EQUIPMENT LOAN AGREEMENT

This Equipment Loan Agreement (this “Agreement”) is made by and between DataDirect Networks, Inc. (“DataDirect”), a California corporation having its principal place of business at 9351 Deering Ave., Chatsworth, California, 91311, and \_\_\_\_\_ (“Customer”), a \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (“Location”).

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 (collectively, the “Equipment”) is loaned to Customer for the sole purpose of conducting internal evaluations of the Equipment at the Location in accordance with, and during the term of, this Agreement. Subject to all other terms and conditions herein, DataDirect 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 (as defined below) and will continue until the earlier the following dates (the “Return Date”): (a) the day that is \_\_\_\_\_ following the day on which Customer first receives the Equipment and (b) the day after the day on which DataDirect requests the return of the Equipment. Customer shall return the Equipment to DataDirect on the Return Date. Notwithstanding the foregoing or anything herein to the contrary, Customer acknowledges that DataDirect may, 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.** DATADIRECT 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, ITS DURABILITY, OR ITS FITNESS FOR A PARTICULAR PURPOSE. DATADIRECT SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY CLAIM, LOSS, OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED, DIRECTLY, INDIRECTLY, INCIDENTALY, OR CONSEQUENTIALY 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 DATADIRECT IS NOTIFIED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

**4. Use, Operation, and Maintenance.**

a) Customer shall use the Equipment only 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 with all applicable DataDirect requirements, policies, procedures, and instructions relating to the Equipment and/or the use thereof.

b) Customer is responsible for ensuring that the Equipment, its packaging, and its documentation are preserved in an “as-new” condition. **If the Equipment’s packaging is discarded or not maintained in an “as-new” condition, Customer agrees to contact DataDirect’s Customer Service Department to provide replacement packaging, and Customer agrees to promptly pay DataDirect’s then-current replacement cost for such packaging (which is currently \$200.00).**

**Agreed: \_\_\_\_\_ (Customer Initials)**

c) Customer may not sell, assign, transfer, lease, or license (collectively, “Sell”) the Equipment without the prior written consent of DataDirect.

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

e) Customer acknowledges and agrees that the Equipment is being loaned with all risk of use and operation of the Equipment, and each and every hazard of loss of any kind, however rising, being borne by Customer, and that DataDirect will not be liable to Customer for the use of the Equipment or damages of any kind resulting from any claimed malfunction of the Equipment, defective design of the Equipment, and/or any failure of the Equipment to perform as specified, represented, or advertised.

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) Upon request from DataDirect, Customer shall maintain such records and take such other action with respect to the Equipment as may be required by law or otherwise deemed necessary by DataDirect to protect both the title and ownership interests of DataDirect in and to the Equipment. 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 DataDirect.

**5. Terms of Delivery.** DataDirect 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 incurred in connection with such delivery. Customer shall be solely responsible for the return shipping, insurance, and customs expenses.

**6. Terms of Payment.** In the event that DataDirect allows Customer to Sell any Equipment pursuant to Section 4(c) above, the payment terms for such Equipment shall be “payment in full upon delivery of Equipment to Customer’s customer”. Customer’s anticipated delivery date to its customer must be specified when written consent pursuant to Section 4(c) above is requested from DataDirect.

**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 DataDirect. Customer shall not

have or obtain any right, title, or interest therein except for the limited right to use the Equipment in accordance with the terms expressly set forth in this Agreement. Nothing herein shall be construed as authorizing or permitting the use of any DataDirect trade names or trademarks.

**8. Confidentiality.** Customer agrees that the Equipment is furnished to Customer only for Customer's internal evaluation use during the term of this Agreement. Except as otherwise expressly agreed by DataDirect 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 DataDirect. 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 DataDirect, 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 of Customer who (a) specifically require access to such information for the purpose for which it was disclosed hereunder and (b) who have entered into written agreements with Customer that protect such confidential information at least to the same extent as it is 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 DataDirect in good repair, condition, and working order, ordinary wear and tear resulting from proper use thereof alone excepted. With the sole exception of damages to the Equipment that would ordinarily be covered by DataDirect's then-current standard warranty for such Equipment, Customer assumes responsibility for all damages to the Equipment and missing components. For the avoidance of doubt, nothing in this Section 9 is intended to provide any express or implied warranty with respect to any Equipment.

**Except as otherwise expressly agreed in writing by DataDirect, Customer acknowledges and agrees that, in the event any Equipment is not received by DataDirect within seven (7) days following the Return Date (as define in Section 2 above), Customer shall have purchased (or licensed, as applicable) such Equipment for the prices specified on Exhibit A attached hereto, and shall remit payment in full for such Equipment to DataDirect within ten (10) days from that date.**

**Agreed:** \_\_\_\_\_ **(Customer Initials)**

**10. Insurance.** Customer shall maintain all risk insurance against loss or damage to the Equipment from any cause whatsoever for no less than 100% of the total price, and such insurance shall specify DataDirect as the "loss payee".

**11. Miscellaneous.**

- a) Each party agrees to perform such additional acts and execute such additional documents as are necessary to carry out this Agreement.
- b) This Agreement shall not be changed or modified, in whole or in part, except by a supplemental agreement in writing signed by both parties.
- c) 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.
- d) 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.
- e) 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.
- 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 DataDirect 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 US mail (return receipt requested) at the following respective addresses:

DataDirect:

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

Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Attention: \_\_\_\_\_

- h) This agreement may be executed in counterparts and delivered via facsimile or email.
- i) This Agreement (including but not limited to Exhibit A attached hereto) and any end user software license agreements that accompany the Equipment (each, a "EULA") constitute the entire agreement between Customer and DataDirect 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. In the event of any conflict or inconsistency between this Agreement and any EULA, the terms of this Agreement will

govern. For the avoidance of doubt, the term of any software license grant in any EULA shall be as set forth in Section 2 of this Agreement.

j) Sections 2 through 11 of this Agreement shall survive any expiration or termination of this Agreement and continue in full force and effect.

The parties hereto have executed this Agreement as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date").

**DATADIRECT:**

**CUSTOMER:**

DataDirect Networks, Inc.

\_\_\_\_\_

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

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

Name:\_\_\_\_\_

Name:\_\_\_\_\_

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

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