
TERMS & CONDITIONS

- 1. LEASE; DELIVERY AND ACCEPTANCE.** You agree to lease the equipment described on the front of this lease agreement (collectively "Equipment") on the terms and conditions shown on the front and back of this lease ("Lease"). You will arrange for the delivery of the Equipment to you. When you receive the Equipment, you agree to inspect it to determine if it is in good working order. This Lease will begin on the date when the Equipment is delivered to you. The Equipment will be deemed irrevocably accepted by you upon the earlier of: a) the delivery to us of a signed Delivery and Acceptance Certificate (if requested by us); or b) **10 days** after delivery of the Equipment to you if you previously have not given written notice to us of your non-acceptance. The first Lease Payment is due on or before the date the Equipment is delivered to you. If the Equipment has been accepted by you in accordance with this Section 1, the remaining Lease Payments will be due on the day of each subsequent month (or such other time period stated on the front of this Lease) specified by us. You will make all payments required under this Lease to us at such address as we may specify in writing. You authorize us to adjust the Lease Payment by not more than **15%** if the actual Total Cash Price (which is all amounts we have paid in connection with the purchase, delivery and installation of the Equipment, including any trade-up and buyout amounts) differs from the estimated Total Cash Price. If any Lease Payment or other amount payable to us is not paid within **10 days** of its due date, you will pay us a late charge not to exceed **7%** of each late payment (or such lesser rate as is the maximum rate allowable under applicable law).
- 2. NO WARRANTIES.** We are leasing the Equipment to you "**AS-IS**". **YOU ACKNOWLEDGE YOU HAVE SELECTED THE EQUIPMENT AND BASED UPON YOUR OWN JUDGMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. YOU AGREE THAT REGARDLESS OF CAUSE, WE ARE NOT RESPONSIBLE FOR AND YOU WILL NOT MAKE ANY CLAIM AGAINST US FOR ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL, OR INDIRECT.** We transfer to you for the term of this Lease any and all warranties.
- 3. EQUIPMENT LOCATION; USE AND REPAIR; RETURN.** You will keep and use the Equipment only at the Equipment Location shown on the front of this Lease. You may not move the Equipment without our prior written consent. At your own cost and expense, you will keep the Equipment eligible for any manufacturer's certification, in compliance with all applicable laws and in good condition, except for ordinary wear and tear. You will not make any alterations, additions or replacements to the Equipment without our prior written consent. All alterations, additions and replacements will become part of the Equipment and our property at no cost or expense to us. We may inspect the Equipment at any reasonable time. Unless you purchase the Equipment in accordance with a purchase option granted to you on the first page of this Lease, within **10 days** of the expiration of this Lease, you will immediately deliver the Equipment to us in good condition and repair, except for ordinary wear and tear, to any place in the United States that we tell you, and upon our request, you will provide us with a certification from the manufacturer or its authorized representative as to the Equipment's condition. You will pay for all expenses of deinstalling, crating and shipping, and you will insure the Equipment for its full replacement value during shipping.
- 4. TAXES AND FEES.** You will pay when due, either directly to the applicable taxing authority or to us upon our demand, all taxes, fines and penalties relating to this Lease or the Equipment that are now or in the future assessed or levied by any state, local or other government authority. We will file all personal property, use or other tax returns (unless we notify you otherwise in writing) and you agree to pay us a fee for making such filings. We do not have to contest any taxes, fines or penalties. You will pay estimated property taxes with each Lease Payment or annually, as invoiced.
- 5. LOSS OR DAMAGE.** As between you and us, you are responsible for any loss, theft or destruction of, or damage to the Equipment (collectively "Loss") from any cause at all, whether or not insured, until it is delivered to us at the end of this Lease. You are required to make all Lease Payments even if there is a Loss. You must notify us in writing immediately of any Loss. Then, at our option, you will either (a) repair the Equipment so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) pay us the amounts specified in Section 9(b) below.
- 6. INSURANCE.** You will provide and maintain at your expense standard property insurance against the loss, theft or destruction of, or damage to the Equipment for its full replacement value.
- 7. TITLE; RECORDING.** We are the owner of and will hold title to the Equipment until the equipment is purchased by you at the end of the lease term under the dollar buyout option. You will keep the Equipment free of all liens and encumbrances. **YOU AUTHORIZE US TO FILE A COPY OF THIS LEASE AS A FINANCING STATEMENT AND FILE AT ANY TIME, FINANCING STATEMENTS COVERING THE EQUIPMENT. YOU HEREBY RATIFY AND AUTHORIZE ANY SUCH FILINGS WE MAY MAKE BEFORE YOU SIGN THIS LEASE.**
- 8. DEFAULT.** Each of the following is a "Default" under this Lease: (a) you fail to pay any Lease Payment or any other payment within **10 days** of its due date; (b) you do not perform any of your other obligations under this Lease or in any other agreement with us or with any of our affiliates and this failure continues for **10 days** after we have notified you of it; (c) you become insolvent, you dissolve, you assign your assets for the benefit of your creditors, you sell, transfer or otherwise dispose of all or substantially all of your assets, or you enter (voluntarily or involuntarily) any bankruptcy or reorganization proceeding; (d) without our prior written consent, you merge or consolidate with any other entity and you are not the survivor of such merger or consolidation; (e) any guarantor of this Lease dies, does not perform its obligations under the guaranty, or becomes subject to one of the events listed in clause (c) of this Section 8.
- 9. REMEDIES.** If a Default occurs, we may do one or more of the following: (a) we may cancel or terminate this Lease and any or all other agreements that we have entered into with you; (b) we may require you to immediately pay us, as compensation for loss of our bargain and not as a penalty, a sum equal to (i) the present value of all unpaid Lease Payments for the remainder of the term plus the present value of our anticipated residual interest in the Equipment, each discounted at **5%** per year, compounded monthly, plus (ii) all other amounts due and to become due under this Lease; (c) we may require you to deliver the Equipment to us as set forth in Section 3; (d) we or our agent may peacefully repossess the Equipment without court order and you will not make any claims against us for damages or trespass or any other reason; and (e) we may exercise any other right or remedy available at law or in equity. **You agree to pay all of our costs of enforcing our rights against you, including reasonable attorneys' fees.** If we take possession of the Equipment, we may sell or otherwise dispose of it with or without notice, at a public or private sale, and apply the net proceeds (after we have deducted all costs related to the sale or disposition of the Equipment) to the amounts that you owe us. you agree that if notice of sale is required by law to be given, **10 days'** notice shall constitute reasonable notice. You will remain responsible for any amounts that are due after we have applied such net proceeds.
- 10. FINANCE LEASE STATUS.** You agree that if Article 2A-Leases of the Uniform Commercial Code applies to this Lease, this Lease will be considered a "finance lease" as that term is defined in Article 2A. By signing this Lease, you agree that either (a) you have reviewed, approved, and received a copy of the Supply Contract or (b) that we have informed you of the identity of the Supplier, that you may have rights under the Supply Contract, and that you may contact the supplier for a description of those rights. **TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU WAIVE ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A.**
- 11. ASSIGNMENT. YOU MAY NOT ASSIGN, SELL, TRANSFER OR SUBLEASE THE EQUIPMENT OR YOUR INTEREST IN THIS LEASE.** We may, without notifying you, sell, assign, or transfer this Lease and our rights in the Equipment. You agree that the new owner will have the same rights and benefits that we have now under this Lease but not our obligations. the rights of the new owner will not be subject to any claim, defense or set-off that you may have against us.
- 12. PURCHASE OPTION.** If no Default exists under this Lease, you will have the option at the end of the term to purchase all (but not less than all) of the Equipment at the dollar (\$1.00) buyout option. Unless otherwise stated in writing, you must give us at least **90 days** written notice before the end of the initial lease term if you do not intend to purchase the Equipment. If you do not give us such written notice then it will be assumed that you do intend to purchase the equipment and ownership will be transferred. Upon payment of the Purchase Option price, we shall transfer our interest in the Equipment to you "**AS-IS, WHERE-IS**" without any representation or warranty whatsoever and this Lease will terminate.
- 13. INDEMNIFICATION.** You are responsible for any losses, damages, penalties, claims, suits and actions (collectively "Claims"), whether based on a theory of strict liability or otherwise caused by or related to or in any manner arising from the Equipment. You agree to reimburse us for and if we request, to defend us against, any Claims.
- 14. CREDIT INFORMATION. YOU AUTHORIZE US OR ANY OF OUR AFFILIATES TO OBTAIN CREDIT BUREAU REPORTS, AND MAKE OTHER CREDIT INQUIRIES THAT WE DETERMINE ARE NECESSARY. ON YOUR WRITTEN REQUEST, WE WILL INFORM YOU WHETHER WE HAVE REQUESTED A CONSUMER CREDIT REPORT AND THE NAME AND ADDRESS OF ANY CONSUMER CREDIT REPORTING**

AGENCY THAT FURNISHED A REPORT. YOU ACKNOWLEDGE THAT WITHOUT FURTHER NOTICE WE MAY USE OR REQUEST

ADDITIONAL CREDIT BUREAU REPORTS TO UPDATE OUR INFORMATION SO LONG AS YOUR OBLIGATIONS TO US ARE OUTSTANDING.

15. FAX TRANSMISSION. If you elect to transmit this Lease by facsimile, you agree that, if we elect to do so in our sole discretion, the only version of this Lease that is the original for all purposes is the version containing your facsimile signature and our original signature, and you waive notice of your acceptance of this Lease and receipt of a copy of the originally signed lease.

16. MISCELLANEOUS. You agree that the terms and conditions contained in this Lease make up the entire agreement between you and us regarding the lease of the Equipment. This Lease is not binding on us until we sign it. Any change in any of the terms and conditions of this Lease must be in writing and signed by us. **You agree, however, that we are authorized, without notice to you, to supply missing information or correct obvious errors in this Lease.**

If we delay or fail to enforce any of our rights under this Lease, we will still be entitled to enforce those rights at a later time. All notices shall be given in writing by the party sending the notice and shall be effective when deposited in the U.S. Mail, addressed to the party receiving the notice at its address shown on the front of this Lease (or to any other address specified by that party in writing) with postage prepaid. All of our rights and indemnities will survive the termination of this Lease. It is the express intent of the parties not to violate any applicable usury laws or to exceed the maximum amount of time price differential or interest, as applicable, permitted to be charged or collected by applicable law, and any such excess will be applied to Lease Payments in inverse order of maturity, and any remaining excess will be refunded to you. If you do not perform any of your obligations under this Lease, we have the right, but not the obligation, to take any action or pay any amounts that we believe are necessary to protect our interests. You agree to reimburse us immediately upon our demand for any such amounts that we pay. If more than one Lessee has signed this Lease, each of you agrees that your liability is joint and several.

XROADS NETWORKS



DELIVERY & ACCEPTANCE CERTIFICATE
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By signing this Certificate, you, the Customer identified below, agree:

- A) That all equipment described in the Lease Agreement identified below ("Equipment") has been delivered, inspected, installed and is unconditionally and irrevocably accepted by you as satisfactory for all purposes of the Lease Agreement; and

- B) That we, **XROADS NETWORKS, Inc.**, are authorized to start billing you under the Lease Agreement.

Lease Agreement signed by Customer on	Customer Number
Customer Name	
Authorized Signature X	
Title	Date

(ASSISTANT) SECRETARY'S CERTIFICATE

("Company")	("XROADS NETWORKS")
	XROADS NETWORKS, Inc.
Address	Address 17165 Von Karman, Suite 112
City/State/Zip	City/State/Zip Irvine, CA 92614
Attention	Lease Agreement, signed by Company on , ("Agreement")

I, , CERTIFY that I am the duly qualified and acting (Assistant) Secretary of the Company identified above; that the Company is duly organized, validly existing and in good standing under the laws of the of ; that I have custody of the charter and bylaws of the Company; that based on an examination of the Company's charter, bylaws and other relevant records, and further based on the fact that "Board" of the Company has duly authorized the Company to enter into the Agreement with XROADS NETWORKS, as of the date stated below (and for six months prior thereto) the following persons in the respective capacities indicated have been authorized to execute the Agreement identified above and other attendant documents on behalf of the Company and with full authority to bind the Company by doing so.

<u>Name</u>	<u>Office</u>	<u>Signature</u>