

**C. DAVIS SYSTEMS & SOFTWARE, L.L.C. – STANDARD TERMS & CONDITIONS FOR LOAN OF DEMO EQUIPMENT**

**I. LOAN OF EQUIPMENT**

C. Davis Systems & Software, L.L.C. (CDSS) hereby loans to recipient company (Recipient), and Recipient hereby receives subject to the terms of this Agreement, for the applicable Term defined below, the equipment described in the Equipment Schedule attached as Exhibit A which may consist of hardware, software and documentation or specified on the packing lists or other CDSS documentation provided hereunder, ("Equipment"). CDSS may, from time to time, add, upgrade, or remove Equipment from Recipient's site during the term. Recipient agrees, by its receipt of Equipment, that all Equipment is subject to the provisions of this Agreement.

Recipient has indicated to CDSS their desire to evaluate the Equipment in good faith as part of their potential purchase decision-making process.

**II. OWNERSHIP**

CDSS retains all right, title and ownership to the Equipment, unless at any point CDSS offers to Sell and Recipient chooses to Purchase any such Equipment. I.I.b Recipient hereby nominates and appoints CDSS as its attorney-in-fact for the sole purpose of executing and filing, on Recipient's behalf, UCC-1 financing statements (and any appropriate amendments thereto), or fixture filings, other legal documentation, including this agreement, as required by CDSS for protective purposes to evidence CDSS's continuing right, title and ownership of the Equipment. If requested by CDSS, Recipient will affix any label or marking supplied by CDSS evidencing CDSS's ownership of the Equipment. CDSS may, from time to time, inspect the Equipment. Recipient may not sell, transfer, assign, pledge or in any way encumber or convey the Equipment or any portion or component thereof. Recipient understands and agrees that certain information relating to the Equipment is confidential and will not disclose any information regarding the Equipment to any third party without CDSS's prior written consent.

**III. USE**

Recipient shall use the Equipment only for the purposes of product evaluation. Recipient shall only use the Equipment at Recipient's site shown on CDSS's shipping documents, and may not move the Equipment without CDSS's prior written consent. If the Equipment is located at a site not under Recipient's ownership or control, then Recipient shall advise CDSS of that fact and obtain written assurances satisfactory to CDSS that CDSS shall have access to the Equipment and the ability to inspect, maintain, and remove the Equipment at CDSS's option.

**IV. TERM**

This Agreement shall begin as of the Effective Date and run for a period of \_\_\_\_\_ days ("Term") unless terminated earlier due to early termination for cause or upon ten (10) days written notice by CDSS or Recipient to the other party without cause.

CDSS may, in writing, extend the term or establish a separate term for particular items of Equipment. Upon expiration of any term, the terms of this Agreement shall be extended month to month until terminated by ten (10) days written notice by either party to the other.

**V. RETURN OF EQUIPMENT AND RISK OF LOSS**

Within ten (10) business days, upon expiration or early termination of the Term, Recipient shall return to CDSS, or make available for pick-up by CDSS, at CDSS's direction and in accordance with CDSS's packing and shipping instructions to the CDSS location specified by CDSS, the Equipment loaned under this Agreement.

Unless otherwise agreed to in writing by CDSS, Recipient shall be responsible for and shall pay for all logistical arrangements, delivery, freight, de-installation, packing, taxes, duties and all other associated expenses with respect to both initial shipment to Recipient and the return to CDSS of the Equipment.

Recipient will bear all risk of loss with respect to the Equipment from receipt until such Equipment is returned to CDSS. All Equipment returned to CDSS must include the same components as received by Recipient, and must be in good operating order and condition. Charges may be imposed by CDSS if Recipient fails to return the Equipment in such condition or within the return timeframe set forth herein.

Failure by recipient to return equipment at the conclusion of the Term will be constituted as Recipients agreement to Purchase the Equipment for the price specified as the value in the Equipment Schedule attached as Exhibit A. In this event CDSS will Invoice Recipient for the specified value of Equipment, and Recipient agrees by its receipt of Equipment to pay this invoice on NET 10 Terms.

In the event that Recipient returns Equipment to CDSS which is damaged, incomplete, or otherwise not in the condition in which it was loaned to Recipient, CDSS will invoice Recipient for reasonable repair costs at CDSS standard hourly rate for Service and Repair Work, with costs not to exceed the total replacement value of the loaned Equipment. Recipient agrees by its receipt of Equipment to pay this Invoice on NET 10 Terms.

**VI. WARRANTY, DISCLOSURE AND LIMITATION OF LIABILITY**

All Loaned Demo Equipment is provided "as is" without warranty of any kind, written or oral, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose. Recipient understands that Demonstration Equipment is used equipment in good working order at time of shipment to recipient.

Recipient hereby agrees to defend, indemnify and hold CDSS harmless from any claims or suits against CDSS arising from Recipient's use of the Equipment, including use by its employees, agents, or subcontractors. Recipient will pay all costs; damages, losses and expenses (including reasonable attorneys' fees) incurred by CDSS and will pay any award with respect to any such claim or agreed to in any settlement. CDSS will not be liable for any direct, indirect, special, incidental or consequential damages, whether based on contract, tort, or any other legal theory, arising out of this equipment

loan agreement or Recipient's use of the Equipment.

**VII. MAINTENANCE**

During the Term, Recipient will maintain all Equipment in good operating order and condition at Recipient's cost or expense unless otherwise agreed to in writing by CDSS. All maintenance must be provided by personnel authorized by CDSS. All maintenance costs and expenses due to Recipient's negligence will be borne by Recipient. Recipient will be responsible for providing CDSS personnel ready and safe access to the Equipment for such maintenance and support, if requested by CDSS.

**VIII. SOFTWARE**

CDSS owns and has all rights to certain proprietary computer software which is installed on the loaned Equipment.

As part of the loan of Demo Equipment in the Agreement, Recipient obtains a limited right to use certain Proprietary Software installed on the Equipment for the Term of the Loan, subject to the following: 1) The proprietary software may be used only in conjunction with the CDSS equipment; 2) The proprietary software is to be kept confidential; 3) The proprietary software shall not be copied, reverse engineered, or modified.

Recipient's right to use the proprietary software shall become effective upon receipt of Equipment and shall continue only for the use of the Loaned Equipment, or until otherwise terminated hereunder. The rights to use the proprietary software are non-exclusive, and are non-transferable, except with the prior written consent of CDSS.

**IX. NO ASSIGNMENT**

Neither this Agreement nor any right, privilege, license or obligations set forth herein may be assigned, transferred or shared by Recipient without CDSS's prior written consent, and any such attempted assignment or transfer is void. Any merger, consolidation, reorganization, transfer of substantially all assets of Recipient or other change in control or ownership of Recipient will be considered an assignment for the purposes of this Agreement.

**X. GOVERNING LAW**

This Agreement will be governed in all respects by the laws of the State of Oregon without reference to any choice of laws, provisions, as though this Agreement were entered into by residents of that State to be wholly performed within that State. The parties hereby waive any applications of the United Nations Convention on Contracts for the International Sale of Goods (as promulgated in 1980 and any successor or subsequent conventions) with respect to the performance or interpretations of this Agreement.

**XI. ENTIRE AGREEMENT**

This Agreement and the Equipment Schedule attached as Exhibit A comprise the entire understanding between the parties with respect to its subject matter and supersede any previous communications, representations, or agreements, whether oral or written. No modification of this Agreement will be binding on either party unless in writing and signed by an authorized representative of each party. If there is a conflict between the terms of this Agreement, or any other agreement between the parties, then the terms of this Agreement shall supersede and take priority over the conflicting terms of any other such Agreement.

**XII. SIGNATURES**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

Company: \_\_\_\_\_ (Recipient)

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

For C. DAVIS SYSTEMS & SOFTWARE, L.L.C.