

Broker Master Agreement

Broker Name (use **exact** registered business name)

D/B/A, if any

Place of Business:

Street

City

State

Zip

()

()

Telephone Number

Fax Number

Contact Person

This Broker Master Agreement ("Agreement") is made by and between Marlin Leasing Corporation ("MLC"), a Delaware corporation with its principal place of business located at 300 Fellowship Road, Mt Laurel, NJ 08054, Marlin Business Bank ("MBB"), a Utah state chartered commercial bank with its principal place of business at 2795 E. Cottonwood Parkway, Suite 120, Salt Lake City, Utah 84121, (MLC and MBB are each a "Lessor", and together are referred to herein as the "Lessors") and the broker named above ("you"). The Lessors agree that one of the Lessors may elect to purchase and take assignments of equipment leases from you on the terms and conditions set forth herein and said Lessor shall be referred to herein as the "Funding Lessor". This Agreement will become effective on the later of the dates it is signed by the Lessors or you. Intending to be legally bound, the Lessors and you agree as follows:

1. **Referral of Leases; Sale of Lease Transactions.** You may in your sole discretion, from time to time, offer to sell/assign equipment lease and refer lease customers to Lessors. An unexecuted or pre-documented lease transaction referral in which one of the Lessors would be the originating lessor is referred to herein as a "Referred Lease". A lease transaction already completed and documented by you and offered to the Lessors for sale is referred to herein as a "Sold Lease." The Lessors, in the Lessors sole discretion, may accept such Referred Leases and Sold Leases. ***You understand and agree that this is not a committed referral or purchase facility.***

2. **Agreement Applies to All Lease Transactions.** This Agreement shall apply to all Referred Leases and Sold Leases accepted by Lessors and is hereby automatically incorporated into the transaction documents between you and Lessors.

3. **Lessors' Review of Lease Transactions.** You understand that Lessors will investigate and review each Referred Lease transaction and Sold Lease transaction (including, but not limited to, investigation of the creditworthiness of the lessee) and may establish special terms or conditions, in writing, which must be satisfied before Lessors will have any obligation to accept the lease referral or your offer to sell/assign.

4. **Submission of Deals to Other Finance Sources.** You agree not to submit the same application or transaction to any other leasing company or other funding source for a period of one (1) full business day (eight business hours) following your submission of the deal to Lessors.

5. **Documents.** For each Sold Lease, you will execute a separate schedule of sale and assignment of lease in the form attached hereto as Exhibit "A." For each Sold Lease and

Referred Lease, you agree to enter into or provide such other agreements and documents (both before and after each transaction is finalized) as may be reasonably necessary to complete the transaction. On or prior to the date of each sale and assignment, you agree to sign and provide to Lessors a lessee notification letter in the form attached hereto as Exhibit "B-1" if MLC is the funding Lessor or "B-2" if MBB is the funding Lessor. ***You hereby grant to the Lessors power of attorney to file Uniform Commercial Code financing statements in your name, as the Lessors shall deem necessary or desirable, to record the Funding Lessor's security interest or ownership interest in the leases or the leased equipment; and you hereby acknowledge that such power is a "power coupled with an interest."*** You consent to the Lessors disclosure of this Agreement to third parties as evidence of the grant of this power of attorney.

6. **Due Care in Document Preparation.** You shall use all due care in preparing lease documents and arranging for the same to be executed (except for those cases in which the Lessors expressly agree to prepare and arrange for the execution of such documents by the Lessors). You may not delegate this duty to any other person or entity. If another party, such as the equipment vendor, assists you with these tasks, you agree that you will be responsible for such other party's negligence or improper conduct.

7. **Referral Fees; Purchase Prices.** The fees to be paid to you by Lessors for each Referred Lease, and purchase price to be paid for each Sold Lease, will be based on the Lessors then current rates, provided you also agree to such fees and rates at that time.

8. **Notices of Credit Decline to Lessees.** You agree to be responsible for the sending of any notices required by federal or state laws to credit applicants, including but not limited to notices required pursuant to the Equal Credit Opportunity Act and "Regulation B".

9. **No Agency between You and the Lessors.** This Agreement does not create an agency, partnership, joint venture or any similar kind of relationship between you and Lessors. Each party agrees that it will not act as or represent itself as the other party's agent, partner or joint venturer and will not use the other party's name in any way whatsoever. Each party agrees that it will not have authority to bind the other party in any way whatsoever.

10. Rights, Titles and Interests Being Transferred.

A. Sold Leases. For each Sold Lease, this Agreement and the individual transaction documents between you and Lessors shall have the effect of selling, assigning and transferring to the Funding Lessor and its successors and assigns, without recourse except as provided in this Agreement, all of your right, title and interest in and to such Sold Lease, including, without limitation, all chattel paper, the full remaining lease receivables, your right, title and interest in and to the leased equipment, the residual rights and interests under the lease, all of the security and collateral therein, the lessee's option (if any) to purchase the equipment at the end of the lease term, and all of your rights and remedies under the lease, including but not limited to, the right to collect payments and to undertake legal proceedings. ***It is agreed that no sale of a Sold Lease or referral of a Referred Lease shall relieve you from your obligations, if any, with respect to the transaction, and you shall continue to perform your obligations thereunder. Lessors shall not be obligated to assume, and by Lessors acceptance of any such sale or referral, shall not be deemed to have assumed any of your obligations with respect to such transaction.***

Notwithstanding the foregoing, it is also agreed that Lessors will be solely responsible for administering each Sold Lease after such sale, including but not limited to any invoicing or electronic payment requests and any sales/use, property or other taxes due and payable pursuant to the Sold Lease.

B. Sold Leases and Referred Leases. For each Sold Lease and Referred Lease, the sale or referral of the lease (as the case may be) shall automatically, by this Agreement without the need for any further agreement, be deemed to include your assignment and transfer to Lessors of any and all of your rights, claims, counterclaims, defenses and set-offs you may have against any third parties (for example, a vendor or manufacturer) and all other remedies you may have under contract or law against such third parties.

11. No Exercise of Lessors' Rights After Referral or Sale.

Following the referral of any Referred Lease or the sale of any Sold Lease, and unless and until there is a repurchase or reassignment to you pursuant to Section 14 of this Agreement, you will have no authority to and will not exercise any of Lessors' rights under the lease, including without limitation, accepting collections, repossessing or consenting to the return of the leased equipment, or modifying the lease documents. You will promptly send to Lessors any payments and correspondence of any kind (for example, letters, bankruptcy or other legal notices) you receive from the lessee or any other person following the sale or referral to Lessors.

12. Your Representations and Warranties to Lessors.

A. Unqualified Representations and Warranties to Lessors. You hereby represent and warrant to Lessors, without qualification, the following with respect to each Referred Lease or Sold Lease (as more particularly indicated below):

(a) For each Sold Lease and Referred Lease, each document submitted by you to Lessors (such as lease agreements, lessee applications, etc.) will be, at the time so submitted, a true, correct and complete copy (or original, in the case of lease agreements) of the document it purports to be;

(b) For each Sold Lease, the amount of the remaining lease payments represented by the documents or by you at the time the lease is referred/sold to Lessors is correct;

(c) For each Sold Lease and Referred Lease, the lease or the transaction have not been sold, assigned, pledged, or transferred to any person or entity other than Lessors;

(d) For each Sold Lease, you are the sole owner of the lease and the chattel paper and have the legal ability to sell the same to Lessors, and the same is free and clear of any liens, security interests, rights of third parties and other encumbrances of any kind;

(e) For each Sold Lease, you (or, to the best of your knowledge, the equipment vendor if the equipment is being purchased by the Funding Lessor directly from such vendor) have good and marketable title to the equipment at the time it is transferred to Lessors, (other than software, which title remains with the developer), free and clear of any liens, security interests, rights of third parties and other encumbrances of any kind;

(f) For each Sold Lease, the Lessee is not in material default with respect to any obligation under the lease;

(g) For each Sold Lease and Referred Lease, you have performed all of your obligations, if any, to the lessee with respect to the transaction, and there are no actual, pending or threatened suits, demands, counterclaims, or set-offs asserted or capable of being asserted against you by the lessee or any other party with respect to the transaction;

(h) For each Sold Lease and Referred Lease, the consideration paid to you by the Funding Lessor will not include any product, service or other thing of value not disclosed on the lease agreement, the invoice or other document provided to Lessors (other than monies paid to your employees, if any);

(i) For each Sold Lease and Referred Lease, you have not granted to any lessee any allowance, adjustment, settlement or amendment of the lease;

(j) For each Sold Lease and Referred Lease, you have furnished Lessors with all credit information known to or possessed by you concerning the lessee and its owners under each lease, including but not limited to all written credit information in your possession provided by credit bureaus and other third parties; and no such information (including adverse or negative information and ratings) has been altered, deleted, or omitted by you;

(k) For each Sold Lease and Referred Lease, the lease transaction has not been "rebrokered", as that term is generally understood in the industry, unless this fact has been disclosed to Lessors in writing prior to Lessors' acceptance of the transaction. Without limiting the generality of the foregoing, the term "rebrokered" includes transactions in which any monies have been or will be paid by you (or your predecessor in the transaction, if any) to any party other than your employees; and

(l) For each Sold Lease and Referred Lease, the lease transaction submitted by you to Lessors has not been split as between you and any other various funding sources, and the lease request is for the full amount the lessee is applying for, unless otherwise disclosed to Lessors in writing prior to Lessors' acceptance of the transaction.

B. Qualified Representations and Warranties to Lessors. You hereby represent and warrant to Lessors, with respect to each Sold Lease or Referred Lease (as more particularly indicated below), that (i) each of the following statements is true to the best of your knowledge, information and belief after due inquiry by you; and (ii) if any such statement is false but you do not have knowledge, information or a belief it is false, you did not do any act or commit any omission that caused or contributed to such statement being false:

(a) For each Sold Lease and Referred Lease, such transaction resulted from a bona fide lease of the equipment

described therein for business or commercial purposes and not for personal, family or residential purposes, and all information stated in the lease is true, correct and complete;

(b) For each Sold Lease, the lease agreement and guarantee (if any) is in full force and effect and is valid and binding upon and enforceable against the lessee and guarantor (if any) in all respects in accordance with its terms, except as enforcement may be affected by bankruptcy or insolvency laws or by general principles of equity;

(c) For each Sold Lease, the lease agreement (with respect to Sold Leases) is the sole and entire understanding and agreement with the lessee; and with respect to both Sold Leases and Referred Leases, there are no other agreements with respect to the lease or financing of the equipment thereunder;

(d) For each Sold Lease, the lease was duly authorized and properly executed by a lessee having legal capacity to enter into the lease;

(e) For each Sold Lease, the lease and guarantee (if any) are free of defenses, claims, counterclaims and set-offs of any kind whatsoever;

(f) For each Sold Lease, all of the leased equipment was new at the time of delivery to the lessee unless disclosed otherwise on the lease agreement or in writing to Lessors;

(g) For each Sold Lease, except in cases where the lease is documented on a form prepared by and supplied to you by Lessors, the lease agreement complies with all applicable federal, state and local laws and regulations, including but not limited to Article 2A of the Uniform Commercial Code and state usury laws; and

(h) For each Sold Lease and Referred Lease, the lessee has not made an assignment for the benefit of creditors, has not ceased to do business as a going concern, nor has filed or has had filed against it a petition under the Bankruptcy Code or for the appointment of a receiver.

The representations and warranties stated in Sections 12(A) and 12(B) are deemed to be true and correct as of the time the transaction is submitted to Lessors and at the time of the sale and assignment (or, in the case of Referred Leases, at the time of payment to you). These representations and warranties shall survive and be enforceable following such sale (or referral) and shall also survive and be enforceable following the termination of this Agreement. You covenant and agree that you will promptly notify Lessors in the event you discover at any time that any of such representations are or may be false, misleading or inaccurate.

13. Indemnification.

A. Your Indemnification of Lessors. You hereby agree to defend, indemnify and hold Lessors harmless from and against all claims, demands, losses and liabilities, suits and legal proceedings, and any and all related costs and expenses (including reasonable attorney's fees) arising out of a breach of or inaccuracy in any of your representations, warranties, covenants or agreements hereunder. ***This indemnity is a continuing indemnity and shall survive termination of this Agreement.***

B. Lessors' Indemnification of You. Lessors hereby agree to defend, indemnify and hold you harmless from and against all claims, demands, losses and liabilities, suits and legal proceedings, and any and all related costs and expenses (including reasonable attorney's fees) arising out of a breach of or inaccuracy in any of Lessors' representations, warranties, covenants or agreements hereunder. ***This indemnity is a***

continuing indemnity and shall survive termination of this Agreement.

14. **Breach of Representation, Warranty, Covenant or Agreement; Repurchase.** In addition to rights and remedies Lessors have under Section 13(A) of this Agreement, in the event you breach any representation, warranty, covenant or agreement stated in this Agreement with respect to any Referred Lease or Sold Lease, or in the event any such representation or warranty was false, misleading or inaccurate when made, then, upon five (5) business days' written notice from the Lessors, you shall repurchase the lease from the Funding Lessor for an amount equal to the sum total of the remaining balance of payments due (including past due payments and all future payments to become due) under the scheduled term of the lease plus the residual value (if any) under the lease discounted at ten percent (10%) per annum at the time demand is made, plus applicable taxes, outstanding late charges and other amounts due to Lessors under the Lease. Following your payment of such repurchase price to the Funding Lessor, Lessors shall assign the lease and all its rights to you without recourse. This shall be in addition to any other rights or remedies Lessors may have at law or in equity. In addition, upon the occurrence of any breach of the representations, warranties, covenants or other agreements hereunder, Lessors may elect to rescind any pending approvals with respect to other transactions which have been presented by you to Lessors.

15. **Payment Guarantee.** For all Sold Leases and Referred Leases, you shall guarantee the payment by the Lessee to Lessors of the first contractual payment due after the lease commences. If the first contractual payment is not received by Lessors from the lessee within thirty (30) days of its due date, Lessors shall notify you and you shall contact the lessee in an attempt to remedy the payment default (such remedy not to include your making the first contractual payment to Lessors on behalf of lessee). If the first contractual payment is not received by Lessors from the lessee within sixty (60) days of its due date, you shall, within three (3) days of notice from Lessors, repurchase the Sold or Referred Lease from Lessors for an amount equal to (i) the present value of the sum of the remaining future lease receivable due to Lessors under the lease transaction (including all payments to become due in the future through the end of the originally scheduled term of the lease transaction plus the residual (if any) under the lease transaction, discounted in arrears using a discount rate equal to the rate implicit in the lease transaction), plus (ii) all past due amounts owing under the lease transaction.

16. **Lessors Not to Solicit Your Business Clients.** Lessors agree that Lessors will not knowingly solicit lease business from your equipment vendors, brokers, lessees and other business clients unless (i) the client in question had an existing documented relationship with Lessors prior to the time such client was introduced to Lessors directly by or through you or (ii) the client becomes known to or acquainted with Lessors after the date hereof through a source other than you.

17. **Miscellaneous.** This Agreement:

(a) contains the complete agreement and understanding between you and the Lessors on the subjects discussed herein and will conclusively control over any inconsistent verbal or written agreement or understanding;

(b) shall be governed by and construed in accordance with the laws of the State of New Jersey;

(c) may not be amended except by a written document signed by both parties;

(d) may not be assigned by you without the prior written consent of the Lessors; and

(e) will be binding on, and inure to the benefit of, each party's respective successors and permitted assigns.

In addition, you agree that:

(f) Lessors may sell, transfer, assign, pledge or otherwise deal with the leases and the leased equipment and may assign Lessors rights (but not delegate Lessors duties, without your prior written consent) under this Agreement to a third party;

(g) In the event of a dispute between Lessors and you arising out of this Agreement or your obligations hereunder, you hereby stipulate that your contacts with MLC in the State of New Jersey are sufficient to enable Lessors to obtain personal jurisdiction over you in the courts in New Jersey, and in the event of suit the losing party shall be responsible to pay the prevailing party's attorneys' fees and costs of suit; and

(h) This Agreement may be terminated at any time by either Lessors or you upon written notice to the other party; provided, however, that such termination shall in no way reduce or affect either party's liability or obligations to the other party under this Agreement as to leases referred or sold to Lessors prior to the termination.

18. **Faxed and Copied Documents.** The parties intend and agree that a carbon copy, photocopy, or facsimile of this document with their carbon copied, photocopied or facsimile signatures thereon (or counterpart documents signed separately by them) shall be treated as an original, and shall be deemed to be as binding, valid, genuine, and authentic as an original-signature document for all purposes, including all matters of evidence and the "best evidence" rules.

MARLIN LEASING CORPORATION

By: _____

Print name: _____

Title: _____ Date: _____.

MARLIN BUSINESS BANK

By: _____

Print name: _____

Title: _____ Date: _____.

BROKER: _____

By: _____

Print name: _____

Title: _____ Date: _____.

**EXHIBIT "A" TO
BROKER MASTER AGREEMENT**

LEASE ASSIGNMENT SCHEDULE

Date of this Sale/Assignment: _____

Lessee: _____

Lessor: _____

Description of Leased Equipment (Attach separate schedule if necessary):

Lease Agreement signed by Lessee on: _____

FOR VALUE RECEIVED, the undersigned (the "Seller"), does hereby sell, assign and transfer to the Lessor named above, its successors and assigns (the "Buyer"), the annexed equipment lease agreement and all associated chattel paper between the Seller and the lessee identified above, together with all of the Seller's rights, titles, security and other interests with respect to such lease (including but not limited to the Seller's right, title and interest in and to the equipment described therein), and all of the Seller's rights and remedies thereunder, including the right to collect any and all lease and other payments due and to become due thereunder, and all monies due or to become due in connection with the exercise by the lessee of any option to purchase the leased equipment, and further including the right in the Buyer's or Seller's name to take all proceedings, legal, equitable or other, that the Seller might take were it not for this assignment.

THIS SCHEDULE IS SUBJECT TO THE TERMS AND CONDITIONS OF THE BROKER MASTER AGREEMENT (AS THE SAME MAY BE AMENDED FROM TIME TO TIME), BY AND BETWEEN THE BUYER AND THE SELLER, WHICH IS HEREBY INCORPORATED BY REFERENCE HEREIN.

The parties intend and agree that a carbon copy, photocopy, or facsimile of this document with their signature thereon shall be treated as an original, and shall be deemed to be as binding, valid, genuine, and authentic as an original-signature document for all purposes, including all matters of evidence and the "best evidence" rules.

WITNESS:

SELLER: _____

By: _____

(Print name, title, date)

**EXHIBIT "B-1" TO
MASTER BROKER AGREEMENT**

(Put on Broker's letterhead)

(Date)

(Name and address of lessee)

Re: (Broker's lease number or other reference)

Dear Sirs:

Please be advised that we have sold and assigned your equipment lease to Marlin Leasing Corporation. Marlin now owns all of our rights and interests under the lease and in the equipment. Effective immediately, please remit all payments to Marlin Leasing Corporation at the address provided on the invoice.

If you need to call Marlin to any reason, you may reach them toll-free at (888) 479-9111.

We appreciate your giving us the opportunity to serve you.

Sincerely,

**EXHIBIT “B-2” TO
MASTER BROKER AGREEMENT**

(Put on Broker’s letterhead)

(Date)

(Name and address of lessee)

Re: (Broker’s lease number or other reference)

Dear Sirs:

Please be advised that we have sold and assigned your equipment lease to Marlin Business Bank. Marlin now owns all of our rights and interests under the lease and in the equipment. Effective immediately, please remit all payments to Marlin Business Bank at the address provided on the invoice.

If you need to call Marlin to any reason, you may reach them toll-free at (888) 479-9111.

We appreciate your giving us the opportunity to serve you.

Sincerely,