

# **AVAYA**

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**FINANCIAL SERVICES**

**Dealer Lease  
Program Agreement**



FINANCIAL SERVICES

Dealer Information

**COMPANY INFORMATION**

Company (Full Legal Name) \_\_\_\_\_ Tax Identification Number \_\_\_\_\_

DBA \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Phone No. ( ) \_\_\_\_\_ Fax No. ( ) \_\_\_\_\_

Years in Business Under Present Ownership \_\_\_\_\_ Duns # \_\_\_\_\_ No. of Employees \_\_\_\_\_

Principal Owner(s): Name & Address \_\_\_\_\_ SS Number \_\_\_\_\_ Telephone Number \_\_\_\_\_

Principal Owner(s): Name & Address \_\_\_\_\_ SS Number \_\_\_\_\_ Telephone Number \_\_\_\_\_

Proprietorship  
 Partnership  
 Limited Liability Co.  
 Corporation  
 Date of Inc. \_\_\_/\_\_\_/\_\_\_  
 State of Inc. \_\_\_\_\_

**GENERAL INFORMATION**

Principal Products Sold \_\_\_\_\_ Principal Software Licensed (if any) \_\_\_\_\_

Size of sales territory (Local/Regional/National) \_\_\_\_\_ Number of Sales Representatives \_\_\_\_\_

Leasing Coordinator \_\_\_\_\_ Phone \_\_\_\_\_

Average Transaction Size \_\_\_\_\_ Number of Transactions Per Month \_\_\_\_\_ Average Monthly Sales (\$) \_\_\_\_\_

Average Lease Transaction Size \_\_\_\_\_ Number of Lease Transactions Per Month \_\_\_\_\_ Average Monthly Lease Volume (\$) \_\_\_\_\_

**VENDOR REFERENCES**

Name	Phone	Contact	Annual Sales Last Year	Authorized Vendor
1. _____	_____	_____	_____	Yes No
2. _____	_____	_____	_____	Yes No
3. _____	_____	_____	_____	Yes No

**BANK REFERENCES**

Your Bank	Account #	Account Contact	Phone No.
_____	_____	_____	( ) _____
Your Bank	Account #	Account Contact	Phone No.
_____	_____	_____	( ) _____

Have you ever filed bankruptcy?  Yes  No

Unless otherwise requested, payments to your company on incepted leases will be wire fund transferred to the bank account you identify below.

Bank Name \_\_\_\_\_ Account# \_\_\_\_\_

Bank Address \_\_\_\_\_ ABA Routing # \_\_\_\_\_

**CUSTOMER REFERENCES**

Name	Address	Phone	Contact
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

Service of Products is Provided By:  You  Third Party  Both Installation of Products is Provided By:  You  Third Party  Both

**TRADE REFERENCES**

Leasing Companies Used:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

Inventory Finance Companies Used:  Yes  No

Name	Address	Phone	Contact
1. _____	_____	_____	_____
2. _____	_____	_____	_____

**RELEASE**

To Whom This May Concern: This will be your authority and my request to you to release any information requested concerning credit standing of the company and any individual listed above.

**X** \_\_\_\_\_  
 Signature Date



FINANCIAL SERVICES

# Dealer Lease Program Agreement ("Agreement")

**TO OUR VALUED VENDOR: CIT Communications Finance Corporation**, is widely recognized as one of the premier providers of telecommunications and data equipment financing. We continually strive to maintain that position by providing world-class customer service to vendors and dealers that we support and our mutual customers. We think that it is important at the start of a relationship to spell out in "Plain English" the parties' mutual expectations. When we use the words **you** and **your company** in this Agreement, we mean the **dealer** indicated below. When we use the words **we**, **us** and **our** in this Agreement, we mean **CIT Communications Finance Corporation**. Our address is **1 CIT Drive, Livingston, New Jersey 07039**. Phone **1-800-327-3333**.

<b>DEALER INFORMATION</b>	Legal Name	Phone
	P.O. Box	Street Address
	City/State/Zip Code	

**YOU AND WE AGREE AS FOLLOWS**

**This Agreement replaces and supersedes any other Dealer Lease Program Agreement that you may have signed with us. The provisions of this Agreement shall be effective from the time the relationship between you and us originated and govern the subject matter of this Agreement as if it had been entered into at that time.**

**1. LEASE CREDIT APPROVALS.** From time to time you will submit applications to us for lease credit approval covering equipment your company sells ("Equipment") and, if applicable, software your company is authorized to license ("Software"). For purposes of this Agreement, any reference to a "Lease" includes either a true lease, a lease for security, or a rental agreement. We will use our reasonable efforts to determine the creditworthiness of an applicant within 24 hours of receipt of the credit information we have requested. Notice of the approval or rejection of an applicant will be promptly conveyed to you. All credit approvals will be valid for 90 days, provided that we may cancel the approval if we determine that there is a material adverse change in the financial condition of an approved applicant ("Customer") prior to your delivery of Equipment and/or Software to that Customer or any information submitted to us is incorrect. We will supply you with our lease rate factors to be used in the pricing of our Leases, which factors are subject to change by us upon notice to you. You agree to designate us as a preferred provider of Lease financing for your company. This Agreement does not obligate us to purchase any Equipment or finance any Software if we decide in our sole discretion not to do so.

**2. FUNDING.** We will pay you for the Equipment and/or Software within 2 business days after we receive: A) a Lease signed by the Customer; B) the advance payment or security deposit called for in the Lease; C) an itemized original invoice from your company to us for the Equipment and/or Software; D) confirmation from the Customer that the Equipment and/or Software has been delivered, installed and accepted (including, if requested by us, a properly completed delivery and acceptance certificate); and E) all other documentation or information we reasonably require (including, if requested by us, UCC financing statements). Please note that we reserve the right to inspect the Equipment and/or Software at the Customer's location prior to paying you for it. As between you and us, you bear the risk of any loss or damage to an item of Equipment and/or Software until we have received all of the items listed above, all in form and substance acceptable to us.

**3. DOCUMENTATION/CREDIT APPLICATIONS.** If you supply any lease documentation to a Customer you will use only our approved forms. You promise that the applications for lease credit approval you submit to us will be only for bona fide customers who are interested in acquiring products of the type that we normally finance and that to the best of your knowledge all information that you submit to us with respect to an applicant is genuine and accurate, including whether the applicant has consented to the release to us of information from third parties concerning the applicant's and/or its principal's personal or business credit standing. Before you submit any application to us for lease credit approval, you will provide the applicant with notice, in a form approved by us, relating to an applicant's rights under the Equal Credit Opportunity Act ("ECOA"). This ECOA notice is detachable from our application and is to be retained by the applicant. If you do not use a written application, you agree to provide each applicant with one of our single page ECOA notices, a supply of which will be provided to you upon request.

**4. SUPPORT & PROMOTION.** We will supply you with instructions in using our lease programs, lease documents and supporting materials, and you will provide us with reasonable access to your sales force to provide them with such instructions. If you wish to use our name or the name of any subsidiary, parent or affiliate of ours, you must first obtain our written approval. Unless otherwise agreed, vendor advertising, promotion or printing (other than the documents supplied by us) will be at your expense.

**5. WEBSITE.** At our sole discretion, we will allow you to access and utilize our e-commerce site on the internet ("Website"), which is commercially referred to as "Lease Avaya" (or any successor or similar sites maintained by us) solely for the purposes of processing new lease applications. You agree that you will use our Website only in the manner for which it is intended. We reserve the right to deny you access to our Website in our sole discretion at any time without notification to you.

**6. NO AGENCY.** Neither you nor we are authorized to make any contract, agreement, warranty or representation on behalf of the other or to create any obligation, express or implied, on behalf of the other. Neither you nor we will act or represent itself as an agent, partner, broker or joint venturer of the other.

**7. REPORTS.** Upon request, we will provide you with our periodic lease activity report summarizing business generated by you under this Agreement.

## ADDITIONAL TERMS AND CONDITIONS ARE SET FORTH ON THE BACK.

**BY SIGNING THIS AGREEMENT: (i) YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH IS DOCUMENTED ON OUR FORM AFS-DLPA 05/04, AND (ii) YOU AGREE THAT IF A COPY OF THIS AGREEMENT IS SIGNED BY YOU AND THE FRONT OF THE COPY IS DELIVERED TO US BY FACSIMILE TRANSMISSION OR OTHERWISE, TO THE EXTENT ANY PROVISIONS ARE MISSING OR ILLEGIBLE OR CHANGED (AND NOT INITIALED BY BOTH YOU AND US), THE TERMS AND CONDITIONS OF OUR FORM AFS-DLPA 05/04 IN USE ON THE DATE WE RECEIVE THE COPY SIGNED BY YOU WILL BE THE TERMS AND CONDITIONS OF THE AGREEMENT.**

DEALER: \_\_\_\_\_

X  
Signature

Print Name

Title

Date

CIT COMMUNICATIONS FINANCE CORPORATION

X  
Signature

Print Name

Title

Date



**8. INSURANCE.** If requested by us, you will obtain and maintain (at your expense) commercial general liability insurance ("Insurance") for so long as any Lease remains open under this Agreement, naming us as an "additional insured". Such Insurance shall cover bodily injury, personal injury and property damage liability related to the manufacture, sale, maintenance, condition, installation, possession, use, delivery, or return of any Equipment and Software, and be maintained at limits specified by us. We reserve the right to require reasonable increases in these limits from time to time. Such Insurance must cover events that occur during the policy period regardless of when the claim is made. Each Insurance policy shall provide that it shall not be cancelable without at least 30 days prior written notice to us and shall be issued by insurers of recognized responsibility licensed to conduct business in the State of New Jersey. Copies of such policies will be supplied by you to us upon our request.

**9. SOFTWARE.** Any Software provided to a Customer under this Agreement will be licensed by you to a Customer pursuant to a written license agreement. **YOU AGREE THAT WE ARE NOT RESPONSIBLE FOR A CUSTOMER'S COMPLIANCE WITH ANY SOFTWARE LICENSE PROVIDED BY OR ON BEHALF OF YOUR COMPANY, AND YOU AGREE THAT WE SHALL HAVE NO LIABILITY FOR ANY VIOLATION BY SUCH CUSTOMER (OR ANY OTHER PARTY) OF ANY SOFTWARE LICENSE OBLIGATION.**

**10. RESPONSIVENESS TO CUSTOMERS.** We agree to respond promptly to all Customer complaints concerning our administration of the Leases. You agree to respond promptly to all Customer complaints concerning the performance of the Equipment and/or Software and to comply with and fulfill all your warranties, express or implied, relating to the Equipment and/or Software (and to permit any such warranties to be transferred to and be enforceable by the Customer during the term of the Lease). You agree to perform all maintenance and/or service covering the Equipment and/or Software required under any maintenance or service agreement entered into by you. Upon our request, you will provide us with product information relating to the Equipment and/or Software and copies of any applicable warranty, guaranty, maintenance or service agreements.

**11. YOUR PROMISES.** You represent, warrant and covenant to us that when an invoice for Equipment and/or Software is submitted for funding that: (a) unless otherwise disclosed to us in writing, the Equipment and/or Software is new when delivered by you to the Customer; (b) all invoices you submit to us are true and correct and accurately reflect a commercially reasonable price for the Equipment and/or Software; (c) you have fully informed us of all material information known to you concerning the applicant, the prospective lease, and the Equipment and/or Software to be subject to the prospective lease; (d) no material misrepresentations have been made by you to the Customer or to us; (e) you have not provided the Customer with any part of the advance lease payment or security deposit; (f) to the best of your knowledge, the Equipment and/or Software is to be used solely for a business or commercial purpose, and will not be used for personal, family or household purposes; (g) unless otherwise disclosed to us in writing, your company has acted solely on its own behalf and has not acted as a broker for another equipment vendor; (h) you will comply with and fulfill all of your Equipment and/or Software warranties pursuant to Paragraph 10 above; (i) you will perform all required maintenance and service as required under Paragraph 10 above; (j) you will obtain and maintain the Insurance required under Paragraph 8 above; (k) you will not, without our prior written consent, (i) modify the terms of a Lease; (ii) accept or make any Lease payments by or on behalf of a Customer (other than advances or security deposits disclosed to us); or (iii) consent to the return or surrender of Equipment by a Customer; (l) with respect to any Software, you either have title to such Software or a license in such Software sufficient to permit it to be licensed to the Customer; (m) with respect to any Equipment, you have conveyed a good and valid title in such Equipment to us; (n) the Equipment and/or Software does not infringe upon any third party patent, trademark, copyright, or trade secret; (o) the Equipment and/or Software has been delivered to and unconditionally accepted by the Customer; and (p) you consent to any Customer's assignment to us of rights under the purchase documents or any software license. You represent and warrant to us that as of the date you executed this Agreement: (x) your company is a corporation, duly organized, validly existing and in good standing under the laws of its state of incorporation and is duly qualified to do business and is in good standing in every jurisdiction where the nature of its business requires it to be qualified; (y) your company has full power, authority and legal right to execute, deliver and perform this Agreement and the execution, delivery and performance hereof have been duly authorized by all necessary corporate action; and (z) this Agreement has been duly executed and delivered by you and constitutes a legal, valid and binding obligation of your company enforceable in accordance with its terms.

**12. OUR PROMISES.** We represent and warrant to you that as of the date we executed this Agreement that: (a) we are a corporation, duly organized, validly existing and in good standing under the laws of the state of Delaware and are duly qualified to do business and are in good standing in every jurisdiction where the nature of our business requires us to be qualified; (b) we have full power, authority and legal right to execute, deliver and perform this Agreement and the

execution, delivery and performance hereof have been duly authorized by all necessary company action; and (c) this Agreement has been duly executed and delivered by us and constitutes a legal, valid and binding obligation of ours enforceable in accordance with its terms.

**13. REMEDIES.** If you breach any of your representations, warranties and covenants contained in this Agreement with respect to any Lease, you agree upon our request, to purchase that Lease from us at our accounting net investment (as determined by us in accordance with our customary practices), plus an administration fee of 10% of that accounting net investment, plus any applicable taxes. We will then assign to you, without recourse, our interest in that Lease and transfer to you "**AS-IS, WHERE-IS**" any interest we have in the related Equipment. You also agree that we may exercise any other right or remedy available to us at law or in equity. Upon the occurrence of any misrepresentation or breach by your company under this Agreement, we may elect to rescind any pending lease approvals (whether given to you or to a Customer, and whether given orally or in writing). In addition to the aforementioned remedies, you hereby grant to us the right to directly set-off, or cause to be set-off, any and all amounts due or that become due under this Agreement or otherwise.

**14. INDEMNIFICATION. (a) BY US TO YOU.** From and after the date first set forth above, we shall indemnify, defend and save you harmless from and against any and all loss, cost, damage or expense resulting from: (i) any breach of this Agreement by us; and (ii) any claim by a Customer regarding our administration of a Lease. **(b) BY YOU TO US.** From and after the date first set forth above, you shall indemnify, defend and save us harmless from and against any and all loss, cost, damage or expense resulting from: (i) a breach of this Agreement by you; and (ii) claims (including, without limitation, claims asserted by way of defense or counterclaim) with respect to Equipment or Software based on: (x) product liability principles including strict liability in tort or negligence; or (y) patent, trademark, trade secret or copyright infringement principles.

**15. CREDIT STANDING. YOU AUTHORIZE US OR ANY OF OUR AFFILIATES TO OBTAIN CREDIT BUREAU REPORTS REGARDING YOUR COMPANY, ANY OF ITS AFFILIATES AND/OR ANY OF ITS PRINCIPALS, AND MAKE OTHER CREDIT INQUIRIES THAT WE FEEL ARE NECESSARY. IF REQUESTED BY US, YOU WILL PROVIDE US WITH YOUR MOST RECENT FINANCIAL STATEMENTS.**

**16. CONFIDENTIALITY.** Any information or material that we transmit to you shall be treated by you as confidential and not disclosed, except for information that: (i) is or becomes available to the public other than as a result of your disclosure of it or (ii) is required to be disclosed under applicable law. We may use your Customer lists for our own business purposes (including that of any subsidiary, parent or affiliate of ours).

**17. RIGHT OF FIRST REFUSAL.** You hereby grant to us the right of first refusal to provide the leasing and financing services on any of your companies transactions with customers; provided, however, that no customer of yours is prohibited from obtaining and using its own leasing or financing source. We are not obligated to purchase any equipment from you or subsequently lease any such equipment to your customers.

**18. TERM.** This Agreement may be terminated by either you or us upon 30 days' written notice or immediately by the non-breaching party after breach of this Agreement by the other party. Upon termination of this Agreement, each party's rights and obligations will remain in effect for all Leases entered into before the date of termination.

**19. MISCELLANEOUS.** We and you each have the authority and legal right to enter into this Agreement and each had it signed by a duly authorized representative. The failure of either you or us to enforce any right under this Agreement will not modify this Agreement. Any changes to this Agreement must be in writing signed by both you and us. This Agreement is the entire agreement between you and us and supersedes all prior agreements with respect to the subject matter of this Agreement. This Agreement may not be assigned or transferred by you without our written consent. **IF A SIGNED COPY OF THIS AGREEMENT IS DELIVERED TO US BY FACSIMILE TRANSMISSION, IT WILL BE BINDING ON YOU. HOWEVER, WE WILL NOT BE BOUND BY THIS AGREEMENT UNTIL WE ACCEPT IT BY MANUALLY SIGNING IT. YOU WAIVE NOTICE OF ACCEPTANCE AND WAIVE YOUR RIGHT TO RECEIVE A COPY OF THE ACCEPTED AGREEMENT. YOU AGREE THAT, NOTWITHSTANDING ANY RULE OF EVIDENCE TO THE CONTRARY, IN ANY HEARING, TRIAL OR PROCEEDING OF ANY KIND WITH RESPECT TO THIS AGREEMENT, WE MAY PRODUCE A COPY OF THE AGREEMENT TRANSMITTED TO US BY FACSIMILE TRANSMISSION THAT HAS BEEN MANUALLY SIGNED BY US AND SUCH SIGNED COPY SHALL BE DEEMED TO BE THE ORIGINAL OF THIS AGREEMENT. IF YOU DELIVER THIS AGREEMENT TO US BY FACSIMILE TRANSMISSION, YOU ACKNOWLEDGE THAT WE ARE RELYING ON YOUR REPRESENTATION THAT THIS AGREEMENT HAS NOT BEEN CHANGED. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY. YOU CONSENT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THAT STATE.**