

UNOFFICIAL COPY

Exclusive Automatic Teller Machine ("ATM") Lease Agreement and Exhibit A

Parties: By and between Qualtex Corp
("Company"), an Illinois corporation,
and
BLUE CATUS
INC
("Customer")

Property Address:

1938 W CHICAGO AVE CHICAGO IL 60622

PIN:

17-06-433-040-0000

LEGAL Description: LOT 8 IN CRANE'S SUBDIVISION OF LOTS 5 AND 6 IN
SUPERIOR COURT PARTITION OF BLOCK 7 IN COCHRAN'S SUBDIVISION OF
THE WEST ½ OF THE SOUTHEAST ¼ OF SECTION 6 TOWNSHIP 39 NORTH,
RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,
ILLINOIS.

Exclusive Automatic Teller Machine ("ATM") Lease Agreement and Exhibit A

Cook County Recorder, please record the attached document, Thank you.

Mail to: Brad Zerman
Qualtex Corp
1229 W Washington, 4th Floor
Chicago, IL 60607



Doc#: 0620026121 Fee: \$36.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 07/19/2006 12:21 PM Pg: 1 of 7

UNOFFICIAL COPY**EXCLUSIVE AUTOMATIC TELLER MACHINE ("ATM") LEASE AGREEMENT**

This Exclusive ATM Lease Agreement (hereinafter referred to as the "Agreement"), is made and entered into this 15 day of May, 2006 by and between QUALTEX, an Illinois corporation (hereinafter referred to as the "Company") and Blue Coats Inc. (hereinafter referred to as "Customer") for the property located at (see Exhibit "A" attached hereto), (hereinafter referred to as "Premises").

In the event the "Premises" are defined to include multiple locations, the terms of this Agreement apply separately to each of those locations.

Customer specifically acknowledges, understands and agrees that (i) the property of the Company, including its public ATMs and any equipment related or incident thereto (hereinafter referred to as "ATM [s]"), shall be affixed to the Premises of Customer and that the Company and said ATMs will physically occupy a portion of the Premises (the "Leased Premises"), and (ii) the Leased Premises is being leased to the Company in the form of a tenancy and possessory interest in and to real property.

In consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Company and Customer hereby agree as follows:

1. The Company, shall have and is hereby granted the sole and exclusive right to install, maintain and operate public ATMs or point of sale cash back device [s] and any equipment related or incident thereto on the Premises and, except as otherwise provided herein, to provide all service and maintenance with regard to said ATMs. In addition, the Company shall have the sole and exclusive right to place signs of advertisement at or on the Premises in order to advertise and market the ATM and the networks and services offered at the ATM located on the Premises. Company shall also have the sole and exclusive right to sell or market on-screen advertising on the ATM's monitors or screens and to sell or market advertising affixed to the ATM. Company shall obtain permission from Customer in advance of any advertising of ATM or on the ATM, which permission shall not be unreasonably withheld. Any revenue or monies generated from said advertising whether on-screen or affixed to the ATMs shall be the sole property of Company and not be subject to the rent or rent schedule attached hereto.

2. The Company agrees to pay expenses of installation except, after initial installation of the ATMs, any re-location of the same shall be at Customer's sole expense. The Company also agrees to pay to Customer, as rent for the Leased Premises and in exchange for the Company's right to physically possess and occupy the Premises and operate its ATMs on the Premises pursuant to this Agreement, the amounts listed in Exhibit "A" attached hereto.

3. Customer agrees to (i) provide reasonable and sufficient space to the Company in order to allow the Company to install, operate and maintain the ATMs pursuant to this Agreement, and to (ii) provide, at Customer's own expense, any and all electricity required and necessary for the operation of said ATMs, and to promptly notify the Company in writing of any requests for service or maintenance on the ATMs. Customer's failure to notify the Company in writing, regarding any service requests or maintenance for the Company's ATMs located at the Premises, shall be conclusive evidence that, at all relevant times, the Company's ATMs were in good working order and condition and properly maintained by the Company. Customer agrees to use its best efforts to promote the public use of the ATMs and not to remove or tamper with, or permit any individual or entity other than the Company or the Company's duly authorized agents to remove, or tamper with, the ATMs or the contents thereof.

4. Customer hereby irrevocably assigns and grants to the Company and its duly authorized agents, all rights and privileges consistent with this Agreement in and to the Premises, including, but not limited to,

UNOFFICIAL COPY

providing the Company access to the Premises during business and non-business hours as reasonably required and necessary to install, repair or maintain the ATMs (including the right to replenish cash, paper and other related supplies.)

5. Customer acknowledges, understands and agrees that neither Customer nor any other individual or entity shall install, operate, manage, allow or maintain any other ATMs, point of sale cash back device[s] or related equipment on the Premises other than the ATMs of the Company as provided herein.

6. At all times, all ATMs located on or about the Premises, and the contents contained therein, and related equipment, wiring and accessories shall be and remain the sole and exclusive property of the Company. In the event Customer declares voluntary bankruptcy or an involuntary bankruptcy is commenced against Customer, Customer agrees that neither it, as a debtor-in-possession nor any trustee in bankruptcy shall have any claim to the ATM or the cash inventory in the ATM and the ATM and the cash inventory in the ATM shall not be part of the Customer's bankruptcy estate. In this regard, Customer hereby consents to and agrees not to contest or otherwise dispute Company's motion to lift the automatic stay (should the automatic stay be deemed applicable) in order for Company to obtain possession of the ATM and cash inventory in the ATM in any bankruptcy proceeding. Upon termination of this Agreement whether by lapse of time or otherwise, the Company shall have the right to remove its ATMs or other property installed on or attached to the Premises.

7. Term. The initial term of this Agreement shall be three (3) years from the date hereof and same shall automatically renew and remain in full force and effect for like successive terms unless canceled in writing by Customer, sent registered U.S. mail, with restricted delivery requested, addressed to the Company at the above listed address, no more than sixty (60) nor less than thirty (30) days prior to the expiration of any term hereof. In the event the "Premises" are defined to include multiple locations, the term of this Agreement shall be calculated separately for each location from the date identified as the "effective date" for each individual location set forth in Exhibit "A" hereto. Notwithstanding the foregoing, in the event that the revenue generated from the ATMs located on the Leased Premises is not satisfactory to the Company or for any other reason, at any time, the Company shall have the unconditional right to terminate this Agreement upon written notice to Customer.

8. Damages for Early Termination. In the event of early termination of this Agreement by or through the actions or omissions of Customer, Customer shall be liable for liquidated damages, which will be computed as follows:

- a) The number of months remaining in the contract at the time of early termination multiplied by the average number of withdrawals processed by the ATM on a monthly basis, throughout the most recent three (3) months at the time of early termination of the Agreement, multiplied by the Surcharge amount of each withdrawal at the ATM.
- b) In the event Customer terminates Agreement prior to the installation of the ATM or within ninety (90) days from the date the ATM becomes operational, Customer shall be liable for \$125.00 per month multiplied by the number of months remaining in the contract at the time of early termination.

Notwithstanding anything stated herein, in the event that the Premises permanently closes its doors for business and Customer is not otherwise in default of any provision of this Agreement at the time of the request to early terminate, Customer shall have the right to terminate this Agreement early without penalty provided Customer provides Company with written notice of termination at least 30 days prior to the effective date of termination including a sworn statement stating that (1) the business of Customer is being permanently closed; (2) the business of Customer is not being relocated; (3) the business of

UNOFFICIAL COPY

Customer has not been sold or otherwise transferred and; (4) the Premises have not been sold or otherwise transferred.

9. Both the Company and Customer acknowledge, understand and agree that at the time this Agreement was entered into, it was difficult if not impossible to ascertain what the Company's damages would be in the event of a breach of this Agreement by Customer, and that both the Company and Customer have made a reasonable attempt to forecast what the Company's damages might be in the event of a breach of this Agreement by Customer. The Company's right to receive its liquidated damages hereunder shall not impede its right to injunctive relief under this Agreement, but shall be in addition to the same.

10. Customer represents, warrants and guarantees to the Company that Customer and the undersigned have all requisite power and authority to enter into and to perform this Agreement as a binding transaction upon Customer, and that this Agreement does not, and will not, violate or conflict with Customer's governing instruments or any other contract, lease or agreement to which Customer is bound or a party. Specifically, Customer covenants, represents and warrants that he/she is not bound by any other exclusive ATM, or related agreement that would prohibit him/her from entering into this Agreement. Customer's signature below covenants, represents and warrants that he/she is fully authorized and empowered to act on behalf of and to bind Customer to this Agreement.

11. Customer acknowledges that, pursuant to the Agreement, the Company has the physical right to possess the Leased Premises and Customer acknowledges that same shall constitute a possessory interest in real property vested in the Company.

12. Customer acknowledges that any violation of any of the representations, warranties or covenants contained in this Agreement would cause immediate, immeasurable and irreparable harm, and loss and damage to the Company not adequately compensable by a monetary award. Accordingly, Customer agrees, without limiting any of the other remedies available to the Company, that any violation of this Agreement or of said covenants, representatives, or warranties, by Customer may be enjoined or restrained by any court of competent jurisdiction, and that any temporary restraining order or emergency, preliminary or final injunctions may be issued by any court of competent jurisdiction, without notice and without bond. In the event any proceedings are commenced by the Company against Customer for any actual or threatened violation of any of said covenants, Customer shall be liable to the Company for, and shall pay to the Company, all costs and expenses of any kind, including attorneys' fees, which the Company may incur in connection with such proceedings, regardless of whether the Company shall ultimately prevail, so long as the Company had a good faith basis for commencing such proceedings. In any such litigation, Customer shall stipulate to the facts acknowledged in this Agreement.

13. In the event "Premises" are defined to include multiple locations, and notwithstanding anything to the contrary herein, Customer acknowledges and agrees that in the event Customer breaches this Agreement with respect to any one location, this Agreement can be unilaterally declared null and void by Company, at its sole option, as to any or all of the locations and Customer shall have no recourse in law or equity against Company.

14. Company may increase or decrease the fee that it charges to Cardholders with the consent of Customer, which consent shall not unreasonably be withheld. In the event of any increase or decrease in such fees, Company shall increase or decrease commissions payable to Customer as listed in Exhibit "A" proportionately.

15. Customer hereby covenants, represents, warrants and guarantees to the Company that in the event of any sale or transfer of Customer's business or the Premises, Customer shall disclose in writing, the

UNOFFICIAL COPY

existence of this Agreement to said Purchaser or Transferee and obtain a written acknowledgment from said Purchaser or Transferee that said Purchaser or Transferee will be bound by this Agreement and the terms contained herein and, accordingly, this Agreement shall survive any sale, assignment or other transfer of Customer's business or the Premises. In the event of the breach of this paragraph, the remedies set forth in paragraph 8 hereof will apply.

16. Customer shall promptly notify the Company, in writing, of any closure or relocation of Customer's business at the Premises, at least twenty-one days in advance of such closure or relocation.

17. Any claim made by Customer pursuant to this Agreement must be in writing, must set forth the facts upon which it is based, and must be received by the Company within one (1) year of (i) the occurrence of event which gave rise to such claim or (ii) the expiration of this Agreement, whichever is earlier. In the event that the Company or any of its officers, directors, agents or employees are held to be liable to Customer or to any person or party claiming to be, through or under Customer, such liability shall be limited to, and shall not exceed 20% of the gross surcharge revenue collected by the Company from the ATMs located on the Premises for the prior calendar year. In no event shall the Company be liable for special, incidental or consequential damages, including, but not limited to loss of revenue, profits, or goodwill, use of capital or property, or for claims by third persons against Customer, or damages for any other loss whether based on contracts, tort, strict liability, breach of warranty or other cause of action.

18. Company agrees that it will provide all cash inventory to the ATM in addition to providing cash replenishment services to and for Company's ATMs. Customer acknowledges that all cash dispensed out of the ATMs will be that of Company's and not Customer's. Company further agrees that it shall be responsible and pay for the monthly telephone charges for the dedicated telephone line for the ATMs, which account shall be in the name of Company. Company agrees that it shall also be responsible to perform the services of refilling paper and other related supplies, as required and necessitated, into the ATMs for purposes of operating electronic journal and receipt printer [s].

19. All discussions, correspondence, understandings, and agreements heretofore had or made between the parties are superseded by and merged into this Agreement, which alone fully and completely expresses the agreement between the parties, and the same is entered into with no party relying upon any statement or representation made by or on behalf of any party not embodied in this Agreement. Any modification of this Agreement may be made only by a written agreement signed by both of the parties to this Agreement. Each party hereby agrees to cooperate with the other and to execute and deliver all such additional documents and instruments, and to take all such other action, as the other party may reasonably request from time to time to effectuate the provisions and purposes of this Agreement. This Agreement may not be assigned by Customer, whether by operation of law or otherwise, without the prior written consent of Company. Company or any successor of Company shall have the unconditional right to assign, at Company's sole discretion, without having first obtained consent of Customer, this Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legatees, devisees, personal and legal representatives, successors and assigns. No delay on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by any party of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The waiver of any breach or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of any of the terms and conditions of this Agreement. This Agreement is deemed to have been drafted jointly by the parties, and any uncertainty or ambiguity shall not be construed for or against either party as an attribution of drafting to either party. Whenever the context so requires, the singular shall include the plural and vice versa. All words and phrases shall be construed as masculine, feminine or neuter gender, according to the context. Whenever possible, each provision of this Agreement shall be construed and interpreted in such a manner as to be effective and valid under applicable law, but if any

UNOFFICIAL COPY

provision of this Agreement or the application thereof to any party or circumstance shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision or any other provision of this Agreement or the application of such provision to other parties or circumstances. This Agreement is being executed and delivered in the State of Illinois, and the validity, construction, and enforceability of this Agreement shall be governed in all respects by the domestic laws of the State of Illinois applicable to agreements made and to be performed entirely within the State of Illinois, without regard to the conflicts of laws principles of the State of Illinois or any other state. The parties hereto consent to the jurisdiction of the courts of the State of Illinois. All disputes arising under this Agreement will be resolved in the State Court of Illinois, Cook County. **The parties represent and warrant to each other that they have read this Agreement in its entirety, that they understand the terms of this Agreement and understand that the terms of this Agreement are legally enforceable, that they have had ample opportunity to negotiate with each other with regard to all of its terms, that they have entered into this Agreement freely and voluntarily, that they intend to and shall be legally bound by this Agreement, and that they have full power, right, authority, and competence to enter into and execute this Agreement. Customer acknowledges and agrees that the Company has advised Customer in writing to consult with a lawyer before signing this Agreement. This Agreement may be executed in counterparts which counterparts when taken together shall constitute one in the same Agreement and each such counterpart may be executed by facsimile copy to the other party and the parties here agree that such facsimile counterparts shall be deemed to be an original executed counterpart for all purposes hereof.**

20. Company and Customer hereby agree that nothing contained in this Agreement shall be construed as making Company and Customer joint venturers, partners, or agents, with or for each other.

ACCEPTED AND AGREED TO as of this 15 day of May, 2006 by the undersigned parties.

QUALTEX, an Illinois corporation,

By: [Signature]
Its Authorized Agent

CUSTOMER

By: [Signature]
Its Authorized Agent

UNOFFICIAL COPY

EXHIBIT A

I. For ATM withdrawals at the each Premises for which Company collects a Surcharge, Company shall pay to Customer on a monthly basis the following amounts:

If 1001+ surcharged withdrawals are processed in any given month: \$1.00 per surcharged withdrawal;

If 751 - 1000 surcharged withdrawals are processed in any given month: \$.90 per surcharged withdrawal;

If 501 - 750 surcharged withdrawals are processed in any given month: \$0.75 per surcharged withdrawal;

If 251-500 surcharged withdrawals are processed in any given month: \$0.65 per surcharged withdrawal;

If 1-250 surcharged withdrawals are processed in any given month: \$0.50 per surcharged withdrawal;

II. Company shall pay such commissions to Customer monthly in arrears.

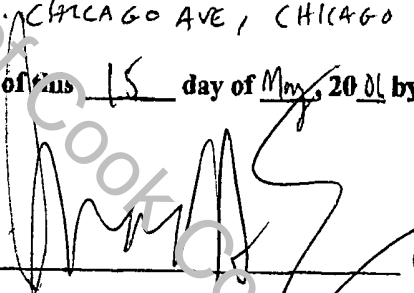
III. Location(s); name, address and effective date:

~~Mena Travel Agency, 1511 N. Milwaukee Ave., Chicago, IL 60622~~


HIGH DIVE, 1938 W. CHICAGO AVE, CHICAGO IL 60622

ACCEPTED AND AGREED TO as of this 15 day of May, 2006 by the undersigned parties.

QUALTEX, an Illinois corporation,

By: 
Its Authorized Agent

CUSTOMER

By: 
As the Authorized Agent of Customer, and Individually

Name: Alex Tsolakides

Home Address: 2237 W. Leland Ave 1W

Social Security Number: 318-78-3266

Home Phone Number: 773 315 6546

Cell Phone Number: Same

Fax Number: ⁷⁷³225 3497