



**EQUIPMENT LEASE OR PURCHASE
TERMS AND CONDITIONS**

TABLE OF CONTENTS

1. INTRODUCTION 1

2. WARRANTIES 2

 2.1 Limitation on Warranties 2

 2.2 Disclaimer of Warranties 2

3. LEASE 2

 3.1 Purpose 2

 3.2 Term 2

 3.3 Rent 2

 3.4 Default 3

 3.5 Remedies 3

 3.6 Assignment 3

 3.7 Collection Expenses, Overdue Payment, Termination 4

4. EQUIPMENT 4

 4.1 Title 4

 4.2 Use, Maintenance, And Repair 4

 4.3 Loss or Damage 4

 4.4 Return of Equipment 4

 4.5 Option to Purchase 5

 4.6 Taxes 5

5. INDEMNITY 5

6. MISCELLANEOUS ADDITIONAL TERMS 5

 6.1 Entire Agreement 5

 6.2 Time is of the Essence in the Equipment Lease 5

 6.3 Severability 5

 6.4 Financing and Interest 5

7. CUSTOMER WAIVERS 6

 7.1 Notice of Acceleration 6

 7.2 Jury Trial 6

 7.3 Rights and Remedies under the UCC 6

 7.4 Requirement for Company to Sell 6

 7.5 Limitation on Legal Action 6

 7.6 Specific Performance 6

1. INTRODUCTION

In addition to those Terms and Conditions set forth in the **PC TELCOM GENERAL TERMS AND CONDITIONS** available online at www.pctelcom.coop and at the Business Office located in Holyoke, Colorado, the following additional terms and conditions shall be applicable to any and all agreements by and between PC Telcom and the Customer for equipment lease or purchase. All references to the

“Company” in these Terms and Conditions applies to any of the family of PC Telcom companies, or all of them together.

By entering into a specific Service Agreement or another agreement for internet services provided by or offered through the Company, the Customer agrees to be bound by these additional terms and conditions.

2. WARRANTIES

- 2.1. **Limitation on Warranties.** When the Company has made equipment available to the Customer (including but not limited to Internet receivers, routers, modems, etc, or other Company-provided equipment as applicable) for purchase or lease, to the extent it is appropriate and available, the Company will transfer and assign the applicable manufacturer’s warranties to the Customer. However, in no way shall a transfer or assignment of the manufacturer’s warranty extend, change, modify or in any other manner alter warranties provided by the Company, if any, or limitations on the Company’s warranties as provided in the Company’s separate General Terms and Conditions, or in any applicable Service Agreement with respect to the equipment.
- 2.2. **Disclaimer of Warranties. THE CUSTOMER SELECTS EQUIPMENT BASED ON THEIR OWN JUDGMENT AND SHALL BE ENTITLED TO ANY MANUFACTURER’S WARRANTY ACCOMPANYING SAID EQUIPMENT. The Company warrants its own installation services for 60 days after completion of installation during which period the Company’s sole obligation will be to correct any deficiency in the installation services. EXCEPT AS SPECIFICALLY STATED, THE COMPANY HAS NOT MADE, DOES NOT MAKE, AND DISCLAIMS, ANY REPRESENTATION OR WARRANTY OF ANY KIND, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, AS TO INFRINGEMENT OR INTERFERENCE OR THE SUITABILITY, DURABILITY, DESIGN, OPERATION OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, FITNESS FOR USE FOR PARTICULAR PURPOSES, OR OTHERWISE. THE COMPANY SHALL NOT BE LIABLE TO THE CUSTOMER AND THE CUSTOMER WILL NOT MAKE ANY CLAIM AGAINST THE COMPANY FOR ANY LOSS, DAMAGE, OR EXPENSE OF ANY KIND CAUSED DIRECTLY OR INDIRECTLY BY THE EQUIPMENT.**

3. LEASE.

- 3.1 **Purpose.** The Company agrees to lease the “Equipment” to the Customer and said equipment will be located at the address provided by the Customer in the Service Agreement. Acceptance of the Equipment occurs upon the later of delivery or final installation by the Company. Upon receipt, the Customer shall inspect it and to verify by telephone or in writing such information as we may require. ONCE THE COMPANY ACCEPTS THE LEASE, THE CUSTOMER MAY NOT CANCEL IT DURING THE FULL TERM unless all unpaid Monthly Payments for the remainder of the Lease term plus any other amounts due to us under this Lease are paid in full.
- 3.2 **Term.** The term of any Lease shall be for the Term provided in the Service Agreement. After the original Term or extension, the Lease shall renew on a month-to-month basis unless the Customer notifies the Company in writing at least 30 days prior to the expiration of the Term or any extension thereof. The Customer must pay any additional payments due until the Equipment is returned AND received by the Company or its agent in good condition and working order. The Customer shall pay all shipping charges for return of Equipment.
- 3.3 **Rent.** The Customer agrees to pay the Company “Rent” in the form of Monthly Payments, plus applicable taxes, on or before each Payment Date starting with the Commencement Date. The Rent shall be paid at the address provided by the Company in the Service Agreement, or at any other address specified in writing by the Company. If the Customer

retains possession but does not purchase the Equipment at the end of the Term, the Customer shall pay the Monthly Payments so long as they retain the Equipment or until the applicable Lease is formally terminated. Rent shall also include any other amounts due under the applicable Lease.

- 3.4 **Default.** Customer will be in default under the Equipment Lease if any of the following happen: (a) the Company does not receive any Monthly Payment or other required payment within 10 days after its due date; (b) the Customer or any of Customer's guarantors break any promises in this Equipment Lease or any guaranty and do not correct the problem within 10 days after the Company sends written notice; (c) the Customer or any of Customer's guarantors become insolvent, are liquidated or dissolved, merged, transfer substantially all of Customer's stock or assets, stop doing business or assign Customer's rights or property for the benefit of creditors; (d) a petition is filed by or against Customer or any of Customer's guarantors under any bankruptcy or insolvency law; (e) (for individuals) Customer or any of Customer's guarantors die or have a guardian appointed; (f) Customer (or any affiliate) is in default under any other agreement between Customer and the Company or Company's affiliates; or (g) without the Company's written permission in advance, the Customer tries to move, sell, transfer, pledge, part with possession of, sublet, or put a lien on, any of the Equipment.
- 3.5 **Remedies.** If there is a default, at the Company's sole discretion, the Company may do any or all of the following: (a) give the Customer written notice of the default; (b) require the Customer to pay immediately as compensation for loss of the bargain and not as a penalty: (i) all unpaid Monthly Payments for the remainder of the Lease term, plus (ii) any other amounts due, including any expenses the Company incurs to take possession, hold, repair and dispose of the Equipment, plus (iii) the estimated average fair market value of similar equipment of like age, provided that the Company will discount all future Monthly Payments to the present value at the higher of 6% or the lowest rate allowed by law; (c) require the Customer to return the Equipment as provided in paragraph 11; and/or (d) pursue any other remedy the Company may have. In the event the Customer does not return the Equipment, the Company or Company's agent may peacefully repossess same without a court order and the Customer agrees to make no claims against the Company for trespass, damage, or any other reason. Although not obligated to do so, the Company has the right to sell the repossessed equipment. Upon a sale, the Company will credit the Customer for the amount received minus the cost of the sale. The Customer is responsible for any amount still owing and is obligated to said amount immediately. If this is not a true lease and if the Company is paid a price that exceeds the amount owed, plus cost of sales, the Company will pay the excess to the Customer. The Customer agrees that a 10-day advance notice of the sale of said equipment and no notice of advertising is necessary. The Customer agrees to pay all costs of enforcing the Company's rights, including attorney's fees. The Customer agrees that if the Company does not enforce the rights at the time of default that it in no way relinquishes the right to do so at any time. The Customer also agrees that the Company may telephone at any reasonable time to enforce those rights.
- 3.6 **Assignment.** THE CUSTOMER MAY NOT SELL, TRANSFER, ASSIGN, PERMIT A LIEN ON, OR SUBLEASE THE EQUIPMENT. The Company may, without notifying you, sell, assign or transfer this Equipment Lease and the Company's rights to the Equipment. The Customer agrees that the new owner will have the same rights and benefits that the Company now has, but will not have to perform any of the Company's obligations. The Customer agrees that the rights of the new owner will not be subject to any claims, defenses or setoffs that the Customer may have against the Company. Once the Customer is given notice of a new owner, Customer agrees to respond to any requests about this Lease and, if directed, to pay the new owner all Monthly Payments and other amounts due under this Lease.

- 3.7 **Collection Expenses, Overdue Payment, Termination.** Customer agrees that the Company can, but has no obligation to, take any action on the Customer's behalf which the Customer fails to take to comply with this Equipment Lease. Any expenses related to these actions will be added to the Monthly Payments which the Customer owes and will be considered part of the required Monthly Payments. The Company may charge the Customer a late charge to cover collection costs equal to the higher of 10% of any late payment or \$22.00, but not more than the highest legal rate. Any late payment will continue to accrue interest at the lower of 18% or the highest legal rate from the due date until paid.

4. EQUIPMENT.

- 4.1 **Title.** The Equipment is and remains the Company's sole property during the Term and thereafter until the Lease is terminated or until the Customer purchases the Equipment. The Customer's only right is to use the Equipment (including any software necessary for its operation) during the Term and thereafter as long as the applicable Lease remains in effect and the Customer is not in default under the Lease.
- 4.2 **Use, Maintenance, and Repair.** The Customer will not move the Equipment from the Equipment Location Address without the Company's advance written consent. The Customer will give us reasonable access to the Equipment Location to check the Equipment's existence, condition and proper maintenance. The Customer shall use the Equipment in the manner for which it was intended, as required by all applicable manuals and instructions and keep it eligible for any manufacturer's certification. The Company will keep the Equipment in good repair, condition, and working order, except for: ordinary wear and tear; damage caused to or repairs necessitated by improper use of the Equipment by negligence or intentional misconduct; or for loss, destruction or damage covered by paragraph 11 – "Loss or Damage" below, the repairs of which shall be paid for by the Customer. All replacement parts and repairs will become the Company's property. The Customer will not make any permanent alterations to the Equipment nor attach it to any real estate. If any repairs or maintenance are covered by a manufacturer's or supplier's warranty but also require co-payment of any amounts by the Customer or the Company in connection with said repairs or maintenance, the Company shall have the right to charge those costs to the Customer.
- 4.3 **Loss or Damage.** The Customer is responsible for any loss, destruction, or damage to the Equipment caused by the negligence, misconduct, improper use or care of the Equipment by the Customer or any person under Customer's control, whether or not insured, from the time the Equipment is delivered to the Equipment Location Address until it is returned to the Company, except for routine maintenance, repair and warranty work to be provided by the Company. The Customer is required to pay all Rent even if there is any such loss, destruction, or damage. The Customer must notify the Company in writing immediately of any loss, destruction, or damage. Then at the Company's option the Customer will either (a) pay the Company to repair or replace the Equipment so that it is in good condition and working order and eligible for any manufacturer's certification, or (b) pay the Company the amount required by paragraph 14 "Default". Both Customer and Company will apply any insurance proceeds received by either to reduce any unpaid obligations for said equipment to the Company.
- 4.4 **Return of Equipment.** When the applicable Equipment Lease is terminated, the Customer will immediately (i) allow the Company access to the Equipment Location Address to remove the Equipment or (ii) at the Company's option and the Customer's expense, return the Equipment in good operating condition to the Company at the Company's Business Office. The Customer will continue to pay Rent until the Company receives the Equipment at the Company's Business Office.
- 4.5 **Option to Purchase.** The Company will provide an Option to Purchase on some leases, provided the Customer is not in default on any contract with the Company. On 60 days

advance written notice to the Company, the Customer may purchase the Equipment at the end of the Lease term at the Option Price amount stated on the first page of the Service Agreement, AS IS, WHERE IS, WITH NO EXPRESS OR IMPLIED WARRANTY. The Company may determine the fair market value of the Equipment in our reasonable judgment.

- 4.6 **Taxes.** The Company will file any required personal property tax returns and pay applicable property taxes related to the Equipment unless Customer and Company agree otherwise in writing. The Company has no obligation to contest any tax on the Equipment or the Lease.
5. **INDEMNITY.** The Company is not responsible for any injuries, damages, penalties, claims or losses, including legal expenses – incurred by the Customer or any other person – caused by the installation, manufacture, selection, purchase, lease, ownership, possession, maintenance, condition, use, return, or disposition of the Equipment. The Customer agrees to reimburse the Company for and to defend same against any claims for such losses, damages, penalties, claims, injuries, or expenses. This indemnity continues after the Lease has expired.
6. **MISCELLANEOUS ADDITIONAL TERMS.**
- 6.1 **Entire Agreement** - In addition to the terms and conditions stated in the Lease, the Customer agrees that the Lease is subject to all the Company's General Terms and Conditions and policies with respect to the Equipment, and any services provided by us which are associated with the Equipment. These documents contain the entire agreement and supersedes any conflicting provision of equipment purchase orders or any other agreement.
- 6.2 **Time is of the Essence in the Equipment Lease.** The parties hereby agree that time is of the essence with respect to performance of each of the Parties' obligations under this Lease. Company and Customer agree that in the event that any date on which performance is to occur falls on a Saturday, Sunday, or state or national holiday, then the time for such performance shall be extended until the next business day thereafter occurring.
- 6.3 **Severability.** If a court finds any provision of this Equipment Lease to be unenforceable, the remaining terms of the Equipment Lease remain in effect. Any written notices by either Customer or Company must be sent by certified or first class mail or recognized overnight delivery service, postage prepaid, to the respective addresses given on the equipment lease, or at such other address as either may have later given in writing.
- 6.4 **Financing and Interest.** At the Company's request, the Customer will provide any financing statements, waivers, or financial information requested, and the Customer will pay all costs involved. Customer grants the Company a security interest in the Customer's rights in the Equipment to secure Customer's Equipment Lease obligations. The Company may execute and file any UCC financing statement in Customer's name to secure Company's interest in the Equipment. Both Customer and Company intend to comply with all applicable laws. Interest will be charged at the highest rate allowed by law. If Customer's payments under this Lease result in an interest payment higher than allowed by applicable law, then any excess interest collected will be applied to the repayment of principal. In no event will the Company charge or receive, or will Customer pay any amounts in excess of the legal amount.

7. CUSTOMER WAIVERS.

- 7.1 **Notice of Acceleration.** The Customer hereby waives all notices of the Company's intent to accelerate the Monthly Payments, the acceleration of the Monthly Payments, and the enforcement of the Company's rights.
- 7.2 **Jury Trial.** BOTH CUSTOMER AND COMPANY AGREE TO WAIVE – AND TO TAKE ALL REQUIRED STEPS TO WAIVE – ALL RIGHTS TO A JURY TRIAL.
- 7.3 **Rights and Remedies under the UCC.** To the extent the Customer is permitted by law, the Customer waives all rights and remedies under Article 2.5 (Sections 508-522) of the Uniform Commercial Code, including but not limited to the Customer's right to: (a) cancel or repudiate this Lease; (b) reject or revoke acceptance of the Equipment; (c) recover damages from the Company for any breach of warranty or for any other reason; and (d) grant a security interest in any Equipment in your possession.
- 7.4 **Requirement for Company to Sell.** To the extent the Customer is permitted to by law, the Customer also waives any rights held now or later under any statute or otherwise which require the Company to sell, lease, or otherwise use any Equipment to reduce the Company's damages or which may otherwise limit or modify any of the Company's rights or remedies.
- 7.5 **Limitation on Legal Action.** Customer agrees that action taken against the Company for any default, including breach of warranty or indemnity, it is governed by the Civil Statutes of Limitation in Colorado.
- 7.6 **Specific Performance.** The Company will not be liable for specific performance of this Lease or for any losses, damages, delay, or failure to deliver the Equipment.

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