



WHIDBEY

TELECOM

*Internet & Broadband*

**EQUIPMENT LEASE AGREEMENT**

**THIS EQUIPMENT LEASE** (“Lease”) is entered into by and between Whidbey Telecom and/or Whidbey Telecom Internet and Broadband (“Lessor”) and the undersigned customer (“Lessee”), is dated as of 05/12/2022 and is made and effective on the date the Equipment (defined more fully below) is provided to Lessee (“Effective Date”). This Lease governs the Equipment, and all substitutions and/or replacements of such Equipment made by Lessor. All monetary amounts referenced in this Lease are in US Dollars. BY ACCEPTING DELIVERY OF AND BY USE OF THE EQUIPMENT AND/OR INTERNET AND BROADBAND RELATED SERVICE (“SERVICE(S)”) FURNISHED BY LESSOR, LESSEE ACKNOWLEDGES AND AFFIRMS THAT IT IS ELIGIBLE FOR SUCH SERVICE AND LESSEE AGREES TO BE BOUND BY THIS LEASE AND THE TERMS AND CONDITIONS OF SUCH SERVICE.

Lessor reserves the right to modify the terms of this Lease and prices for the Service(s), and may discontinue or revise any or all other aspects of the Service(s) in its sole discretion at any time by providing Lessee with (i) a written version of the revised Lease, or (ii) instructions on where to view a revised version of the Lease on Lessor’s website. Lessee’s continued use of the Equipment and/or Service after any such changes constitutes Lessee’s acceptance of this Lease as modified by such changes. The revised version of this Lease shall supersede any prior version that may have been included in any software or related materials provided by Lessor

**Definitions**

A. “Equipment” means any equipment provided by Lessor to Lessee in conjunction with this Lease and/or any Lessor provided Service(s). This may include, but is not limited to, routers, modems, Optical Network Terminals (“ONT”), Backup Power Sources (defined below) including an Uninterruptible Power Supply (“UPS”), wireless routers, wireless cards, networking devices, and all applicable power supplies, connection cables, installation guides and Equipment packaging.

B. “Backup Power Source” means equipment that is a source of power, generally used for a limited period of time during a power outage, in the provisioning of customer subscribed Service(s) (e.g., a battery or UPS). The Lessor may provide such Backup Power Sources to Lessee for a monthly equipment lease charge, in addition to any other monthly Equipment charges. Backup Power Sources may also be available to Lessee for purchase from Lessor and other retail sources.

C. “Late Payment Charge” means the charge billed to the Lessee for failure to make any payment by the payment due date specified on Lessee’s monthly bill.

D. “Replacement Value Charge” means the then current market value of Equipment that Lessor will bill to Lessee for Equipment that must be replaced by the Lessor due to the loss, or theft of, or damage to the Equipment while in the Lessee’s possession.

E. “Service” means any service provided by Lessor to Lessee.

**Disclaimer of Warranties and Waiver of Defenses**

A. Warranty by Lessor

Lessor makes no warranty, express or implied, regarding the fitness, merchantability, design, condition, capacity, performance or any other aspect of the Equipment or its material or workmanship. Lessor



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makes no warranty of any kind that the Equipment, or any results of the use there, will meet Lessee's or any other person's requirements, operate without interruption, achieve any intended result, be compatible or work with any telecommunication or networking systems, software systems, or other services, or be secure, accurate, uninterrupted, complete, or error free. Nevertheless, LESSOR WILL REPLACE EQUIPMENT, as provided for in this Lease (except to the extent Equipment is rendered defective by the negligence or intentional misuse by Lessee), if defective and if Lessor is given notice by Lessee of such defect prior to the termination, cancellation or expiration of this Lease. Lessor further disclaims any and all liability for loss, damage, or injury to Lessee or third parties as a result of any defects, latent or otherwise, in the Equipment whether arising from Lessor's negligence or application of the laws of strict liability. The Equipment is provided, and Lessee leases and accepts the Equipment, "ASIS".

**B. Assignment for Breach of Warranty**

Lessor hereby assigns to Lessee, solely for the purpose of prosecuting such a claim, all of the rights which Lessor may have against a supplier and a supplier's vendor (in each case, other than Lessor and its affiliates) for the breach of warranty or other representations respecting the Equipment of this Lease; provided, however, that this assignment shall be of no force or effect with respect to Equipment that is replaced by Lessor or otherwise returned to Lessor in good working order.

**Emergency 911 and Voice Over Internet Protocol ("VoIP") Service**

Lessee agrees and acknowledges that VoIP service (and any voice service transmitted over a fiber ONT) may not function during a power outage or if the Lessee's internet connection fails. A Backup Power Source may be needed to continue the operation of the Lessee's Service(s). Lessor shall have no liability for any such failure or interruption of Services, is not required to provide a Backup Power Source as part of the provisioning of Services, and Lessee is hereby notified that Lessee should consider installing a Backup Power Source to aid in Lessee's ability to connect to 911 Emergency Services in such instances. Lessee is hereby notified that:

- Lessee must notify Lessor any time Lessee moves its VoIP service (if any) from one service location to another so that location information can be updated in Lessor's database.
- Calls made to 911 Emergency Services through VoIP service may connect to a 911 call center that is not within the closest proximity to the caller's location.
- VoIP service may not automatically transmit outgoing phone number and location information and callers using VoIP service may need to provide their location and other information to the 911 Emergency Service call center representative.
- Lessee has the option of purchasing, and/or requesting the installation of, a Backup Power Source from Lessor or some other retail source, at Lessee's expense.
- The amount of time a Backup Power Source will continue to operate may vary. Lessee should refer to the user manual or the manufacturer for more information.

**Term**

The term of this Lease shall begin on the Effective Date, and shall continue thereafter until either the Lessee or the Lessor disconnects Service(s) and Lessee returns all leased Equipment to Lessor.

**Equipment Lease Charge**

Any applicable Equipment lease charges will be billed by Lessor and shall be paid by Lessee on a monthly basis until such time that Service has been disconnected. With the exception of the initial partial month, if any, the installment for each month will normally be invoiced at the beginning of the month.

**Care and Use**

Lessee, at Lessee's sole cost and expense, shall maintain and keep the Equipment in good repair,



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condition, and working order, shall provide the proper physical environment for the Equipment, shall not use the Equipment unlawfully, and shall not alter the Equipment without Lessor's prior written consent.

**Risk of Loss**

Lessee shall bear any and all risks of loss and damage to Equipment. In the event of loss of or damage to the Equipment, Lessee shall pay to Lessor the replacement value of the Equipment as defined in this Lease, within twenty (20) days of when the loss or damage occurs.

**Delivery Upon Termination of Lease**

Upon the expiration, cancellation, or termination of this Lease, Lessee shall return the Equipment to Lessor, at Lessee's expense, in good repair, condition, and working order. If Equipment is not returned within fifteen (15) days following expiration, cancellation or termination of this Lease, Lessee shall pay to Lessor the replacement value of the unreturned Equipment as determined pursuant to this Lease.

**Indemnity**

Lessee shall indemnify, hold harmless, and defend Lessor and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Party (collectively, "Losses"), arising out of or related to any third-party claim alleging:

- A. breach or non-fulfillment of any provision of this Lease by Lessee;
- B. any negligent or more culpable act or omission of Lessee (including any reckless or willful misconduct) in connection with the performance of its obligations under this Lease;
- C. any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Lessee (including any reckless or willful misconduct); or
- D. any failure by Lessee to comply with any applicable federal, state or local laws, regulations, or codes in the performance of its obligations under this Lease.

**Default**

In the event Lessee defaults in timely payment of any amount due under this Lease or fails to perform any other of its obligations as set forth in this Lease, Lessor may exercise any one or more of the following remedies:

- A. To declare the entire balance of the greater of replacement value of the Equipment as defined in this Lease and/or any applicable lease charge immediately due and payable without notice;
- B. To sue for and recover all payments and other monies due;
- C. To take possession of all Equipment described in this Lease;
- D. To terminate this Lease and/or related Service(s); and
- E. To pursue any other legal remedy.

**Title. Ownership**

The Equipment, as described in this Lease, is and shall remain the sole exclusive property of Lessor, and Lessee shall have no right, title or interest therein, except as set forth by this Lease. This Lease and the Equipment leased hereunder are transferable at the sole discretion of Lessor.

**Attorneys' Fees**

Any party to this Lease who is the prevailing party in any legal proceeding against the other party brought under or with respect to this Lease or transaction will be additionally entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.



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**Counterparts**

Lessor and Lessee may execute this Lease in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. A facsimile or electronic mail transmission shall be binding on the party or parties whose signatures appear thereon. If so executed, each counterpart is to be deemed an original for all purposes, and all counterparts shall, collectively, constitute one agreement, but in making proof of this Lease, it shall not be necessary to produce or account for more than one counterpart.

**Successors and Assigns**

This Lease will be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

**Assignment**

Lessee may not assign this Lease without Lessor's prior written consent, which consent shall be given or denied in Lessor's sole and absolute discretion.

**Severability**

If any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, that invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if the invalid, illegal, or unenforceable provision had never been contained herein. Furthermore, in lieu of any invalid, illegal, or unenforceable provision, there shall be automatically added to this Lease a provision as similar to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

**Entire Agreement**

This Lease (i) constitutes the sole and only agreement of the parties hereto with respect to the subject matter hereof (ii) supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter hereof, and (iii) cannot be changed except by their written consent.

**Time for Performance**

Time is of the essence with this Lease.

**Survival**

None of the covenants or other obligations of Lessee or Lessor shall survive the termination of this Lease unless such survival is expressly provided for in this Lease, in which case such covenants or obligations shall survive for the periods provided in this Lease (or, if no period is provided, indefinitely) and shall not be deemed to have merged or terminated at the termination or cancellation of this Lease.

**Force Majeure**

In no event will Lessor be liable or responsible to Lessee, or be deemed to have defaulted under or breached this Lease, for any failure or delay in fulfilling or performing any term of this Lease, when and to the extent such failure or delay is caused by any circumstances beyond Lessor's reasonable control (a "Force Majeure Event"), including (i) acts of God; (ii) flood, fire, earthquake, epidemic, pandemic, or explosion; (iii) embargoes or blockades in effect on or after the date of this Lease; (iv) national or regional emergency, national or regional government order; (v) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (vi) shortage of adequate power facilities. Either Party may terminate this Lease if a Force Majeure Event affecting the other Party continues substantially uninterrupted for a period of thirty (30) days or more.



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**Waiver of Jury Trial**

Each party hereto, knowingly and voluntarily, and for their mutual benefit, waives any right to trial by jury in the event of litigation regarding the performance or enforcement of, or in any way related to, this Lease.

**Governing Law**

This Lease will be construed under and in accordance with the laws of the State of Washington and all obligations of the parties created hereunder are performable in the county in which the Property is located, Washington.