



Equipment Rental Terms and Conditions

In addition to the general terms and conditions contained in the Service Agreement between PAETEC and Customer (the "Agreement"), of which this Equipment Rental Schedule is a part, the following terms and conditions apply with respect to the rental of the "Equipment". In the event of any inconsistency between this Schedule and the Agreement, this Schedule shall control.

(1) **Price.** Customer agrees to pay in full all amounts due hereunder when invoiced in accordance with the payment terms set forth in the Agreement. Customer also agrees to pay all sales, excise, use, property and similar taxes (other than income taxes on payments made by Customer to PAETEC under this Schedule) and related charges that may be imposed or assessed by any governmental entity or other taxing authority with respect to such Equipment.

(2) **Term.** The term for the Equipment rental shall commence on the date the Equipment is shipped to Customer and shall continue thereafter for the number of months set forth in the Rate Schedule to the Agreement ("Equipment Rental Term"). After expiration of the initial Equipment Rental Term, the Equipment Rental Schedule shall renew automatically for successive renewal terms, each for a period of time equal to the original Equipment Rental Term, unless either Party serves the other Party with written notice of such Party's intent not to renew the Equipment Rental Schedule at least thirty (30) days prior to expiration of the then current Equipment Rental Term. Customer agrees, at its sole expense, to provide the proper environment and electrical and telecommunications connections for the Equipment. Customer is solely responsible for correcting any hazardous conditions that may adversely affect PAETEC personnel or the Equipment. If Customer is unable or unwilling to schedule or accept delivery or installation on the date PAETEC tenders delivery or installation, PAETEC shall have the right to initiate billing for the amounts due hereunder as of the date delivery was tendered. Customer shall be solely responsible for the return of Equipment to PAETEC, upon expiration or termination of the Agreement or Equipment Rental Schedule, in good repair, condition and working order, ordinary wear and tear excepted, at the location(s) within the continental United States specified by PAETEC. Customer shall remain obligated to pay the Equipment Use Charge for the remainder of the applicable Equipment Rental Term notwithstanding the early termination of the Equipment Rental Schedule or the Agreement.

(3) **Disclaimers; Warranties.** CUSTOMER RENTS THE EQUIPMENT AS IS AND, NOT BEING THE MANUFACTURER OF THE EQUIPMENT, THE MANUFACTURER'S AGENT OR THE SELLER'S AGENT, PAETEC MAKES NO WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN OR CONDITION OF THE EQUIPMENT, OR INTELLECTUAL PROPERTY RIGHTS (INCLUDING WITHOUT LIMITATION ANY PATENT, COPYRIGHT AND TRADEMARK RIGHTS, OF ANY THIRD PARTY WITH RESPECT TO THE EQUIPMENT, WHETHER RELATING TO INFRINGEMENT OR OTHERWISE) WITH RESPECT TO THE EQUIPMENT. PAETEC SHALL NOT BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM POSSESSION OR USE OF THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS OR BUSINESS REVENUE, LOST BUSINESS, WHETHER SUCH DAMAGES ARE FORESEEABLE AND WHETHER PAETEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT PAETEC SHALL NOT BE LIABLE FOR ANY DELAY IN DELIVERY OR INSTALLATION OF, OR ANY FAILURE TO DELIVER OR INSTALL, ANY EQUIPMENT. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL PAETEC'S LIABILITY (WHETHER IN TORT, NEGLIGENCE OR OTHERWISE) TO CUSTOMER WITH RESPECT TO THE EQUIPMENT UNDER THIS SCHEDULE EXCEED AN AMOUNT EQUAL TO THE AGGREGATE CHARGES OR FEES ACTUALLY PAID BY CUSTOMER WITH RESPECT TO THE EQUIPMENT FOR THE ONE (1) MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH DURING WHICH THE EVENT GIVING RISE TO PAETEC'S LIABILITY OCCURS.

(4) **Use of Equipment.** Customer agrees that this Schedule shall not grant Customer any property rights in any of the Equipment. Customer shall use the Equipment solely in the conduct of its business, in a manner and for the use contemplated by the manufacturer thereof. No incremental physical hardware or software changes can be made that would alter the configuration of the PAETEC equipment rental device. PAETEC shall be entitled to inspect the Equipment at reasonable times. PAETEC may require markings to be affixed to the Equipment. Customer shall keep the Equipment free from any markings or labeling, which might be interpreted as a claim of ownership thereof by Customer. Without the prior written consent of PAETEC, Customer shall not assign, lend, pledge, transfer, or sublease the Equipment, permit to exist any security interest, lien or encumbrance with respect to any of the Equipment; or cause or permit any of the Equipment to be moved from the location specified in the Agreement. Customer shall bear the risk of any loss, theft, damage or destruction to the Equipment during the Term. Customer shall obtain and maintain at its own expense insurance against the loss of or damage to such Equipment, including, without limitation, loss by fire or other casualty. Customer acknowledges that PAETEC may lease the Equipment from, or pledge any or all of its rights in the Equipment to, First

American Commercial Bancorp, Inc. or other financing source (each a "Lessor") and Customer shall comply with any and all directions from such Lessor regarding the Equipment, including releasing the Equipment to Lessor upon written request. Customer hereby irrevocably authorizes PAETEC and/or Lessor to file and record such Uniform Commercial Code financing statement(s), amendments and continuations and/or other lien recordation documents as may be prudent to confirm and maintain PAETEC's and/or Lessor's interest in the Equipment.

(5) Maintenance Services. PAETEC shall provide routine diagnostic and maintenance services (the "Services") on the Equipment, as follows:

(a) In the event that Customer is experiencing a problem with the Equipment, Customer shall be required to call PAETEC and open a trouble ticket. PAETEC shall respond to Customer's request via telephone or email within four (4) business hours. Customer shall be required to provide a telephone line plus modem at the location where the Equipment is housed to enable PAETEC to provide remote support. If the problem cannot be identified and resolved per the terms of this Schedule via remote support, PAETEC will dispatch a technician or Project Engineer to the Customer's location during normal business hours.

(b) PAETEC shall use all commercially reasonable efforts to identify and correct the problem with the Equipment. The Service does not include upgrading software versions. If the Equipment cannot be fixed and none of the exclusions in Section (e) below apply, PAETEC shall replace the defective equipment with either new or reconditioned equipment.

(c) PAETEC WARRANTS THAT THE SERVICES TO BE PROVIDED UNDER THIS SCHEDULE WILL BE PERFORMED IN A TIMELY AND WORKMANLIKE MANNER, USING ONLY QUALIFIED TECHNICIANS FAMILIAR WITH THE EQUIPMENT AND ITS OPERATION. PAETEC MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THIS SCHEDULE OR THE MATERIALS OR SERVICES CONTEMPLATED HEREUNDER. PAETEC MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE EQUIPMENT.

(d) Services may be provided by a PAETEC affiliate or subcontractor.

(e) If persons other than those employed by PAETEC shall repair, modify or perform any maintenance service on any Equipment, or if Customer fails to maintain the Equipment in accordance with the manufacturer's requirements, and as a result of either of the foregoing, further maintenance services by PAETEC are required to restore the Equipment to good operating condition or the Equipment needs to be replaced, such further maintenance services or replacement Equipment charges shall be billed to Customer at PAETEC's then current time and materials rate. Note: Equipment must be in operation at the same location as the service address for network Services. Customer must notify PAETEC in the event that Customer re-locates the Equipment to another facility. PAETEC shall use reasonable efforts to provide the Services at the new location, but has the right to terminate this Schedule without liability if the Equipment is relocated to a facility outside of the PAETEC serving area.