

Blue Ridge Communications  
Commercial Cable Modem Agreement

Customer Name: \_\_\_\_\_

Form of Entity: Corp. LLC LLP Sole Proprietor Limited Partnership Non Profit Government

Billing Address: \_\_\_\_\_

Date: \_\_\_\_\_

Install Address (Location) \_\_\_\_\_

Service \_\_\_\_\_

Service \_\_\_\_\_

Monthly Price \$ \_\_\_\_\_

Additional \$ \_\_\_\_\_ per month for lease of Modem.

Installation fee \$ \_\_\_\_\_

Serial No. \_\_\_\_\_

Total Mo. Service(s) Rate \_\_\_\_\_

MAC Id. \_\_\_\_\_

This is a legal agreement between you, the Customer, Blue Ridge Communications (BRC) and PenTeleData LP I (PTD). Signature on this agreement or use of the Service indicates that you accept these terms.

1.0 Service: BRC, in conjunction with PTD, will provide to Customer internet access at the location, number of computers and maximum bandwidth ratings set forth above subject to the terms herein. The Customer will receive up to two dynamic IP addresses and \_\_\_\_\_e-mail addresses. Cable modem/facilities support is provided by BRC during normal business hours. PTD will provide internet customer support during its normal business hours.

1.1 Email boxes: PenTeleData and BRC provide Customers with up to5 email boxes per account. Any email box that is inactive for six consecutive months will be deleted. Any email within an inactive email box is probably spam and will be automatically deleted without inspection along with the email box. Once deleted, the email address associated with the email box will be deleted and become available for assignment to other customers. An email box is inactive if it has not been checked in 6 months, does not have an email forward associated with it and is not the primary login fora dial-up account. If you intend to keep a mailbox active you may do so by retrieving email from within the email box at least once every 6 months. PenTeleData and BRC are not responsible for any loss of any kind because of the deletion of boxes or the email inside. If your email box is deleted for inactivity, you may contact Customer Service at 800-281-3564 to have the email box reinstated if the email address is still available.

2.0 Term and payment:

2.1 This Agreement is effective upon signature by Customer and installation/activation of the service by BRC (Installation Date) indicating BRC’s and PTD’s acceptance of the Agreement.

2.2 The Term of this Agreement begins on the Installation Date and shall run on a month to month basis within the BRC 30-day billing cycle.

2.3 The terms shall automatically renew for additional identical terms unless terminated by either party with 30 days advanced written notice or immediately with written notice upon breach of this Agreement.

2.4 Recurring Billing shall begin on the Installation Date.

2.5 Deposits and Installation fees shall be billed within 30 days of the Effective Date of this Agreement.

2.6 BRC may adjust the charges for the services provided hereunder upon the expiration of the initial term or by giving customer at least thirty (30) days prior written notice. If BRC increases the service charges, Customer may terminate this Agreement upon written notice to BRC prior to the effective date of the increase.

3.0 Conditions of Use:

3.1 The Internet Service provided may be used by the directors, officers, and employees of Customer, and its agents and consultants while performing services for Customer for commercial, research and/or educational purposes (Users). Customer may not provide INTERNET connectivity to any third parties other than the above mentioned entities.

3.2 The Internet Service or connectivity **may not** be sold to other persons or Organizations.

3.3 Users shall use reasonable efforts to promote efficient use of the networks to minimize, and avoid, if possible, unnecessary network traffic and interference with the work of other users of the interconnected network.

3.4 Users shall not disrupt any of the PTD or other associated networks as a whole or any equipment or system forming part of their systems, or any services provided over, or in connection with, any of the PTD or other associated networks. Disruptions include but are not limited to: distribution or propagation of computer worms and viruses, and using the network to make unauthorized entry to any other machines accessible via the network. PTD networks shall not be used to transmit any communication where the meaning of the message, or its transmission or distribution, would violate any applicable law or regulation or would likely be highly offensive to the recipient or recipients thereof. Mass distribution of any message, including advertising, may not be "broadcast" or otherwise sent on an intrusive basis to any user of the PTD network or any directly or indirectly attached network.

3.5 Users shall not use the PTD Network for any purpose that violates state, local or federal laws or regulations or any policies posted at [www.penteledata.net/support/aup.shtml](http://www.penteledata.net/support/aup.shtml) as they may change from time to time.

3.6 Customer shall indemnify and hold BRC and PTD harmless for any and all claims, damages and injuries (including attorney’s fees) that arise out of or are connected to User’s violation of this Section.

3.7 Except as expressly permitted in writing by an addendum to this agreement. Customer may not network to the Service more than the number of computers identified above. This provision is subject to the audit paragraph below. The number of computers identified above may be networked **only** by NAT or by Proxy. No servers of any kind may be connected in any manner to the Service. Servers include but are not limited to ftp servers, mail servers, and web servers.

3.8 Customer authorizes PTD and BRC to monitor and record transmissions using the Service and calls or transmissions to PTD or BRC concerning the Services in order to detect fraud, check quality and operate, maintain and repair the Services. Said information shall be disclosed only for internal purposes, in case of emergency as determined by BRC or PTD, at the request of law enforcement officials and as otherwise may be required by law.

3.9 To increase efficiency of network operations, Blue Ridge and/or PTD may, from time to time, upgrade or alter the software of any modem connected to the Network including Customer owned modems. Customer expressly authorizes these software changes as a condition of continued use of the system.

4.0 Reasonable Steps to Assure Compliance: Customer shall be responsible for taking reasonable steps to secure compliance by all Users at, by, or through, the Customer consistent with the Conditions of Use, above. Ifa probable violation of the Conditions of Use section, is detected, Customer is requested to report the probable violation in as much detail as is practical to assist BRC and PTD and other allied organizations in preventing or deterring similar violations.

5.0 Audit Rights: The Service will be provided to Customer based upon your representation that no more than the number of computers identified above. BRC and PTD reserve the right to inspect Customer’s networking of the computers to the Service without notice within normal business hours. If an inspection reveals more computers networked to the Service than provided for in this Agreement, Customer shall pay to BRC, retroactive to the Installation Date, an additional \$30 per month for each computer networked to the Service in excess of those authorized under this agreement.

6.0 No Warranties; Limitation of Liabilities.

6.1 **BRC and PTD WARRANT THAT THE SERVICE WILL PROVIDE CUSTOMER WITH ACCESS TO THE INTERNET. BRC and PTD DO NOT MAKE ANY OTHER EXPRESS OR IMPLIED WARRANTY OF ANY KIND. SPECIFICALLY, THERE IS NO EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FOR THE SERVICES TO BE PROVIDED HEREUNDER.**

6.2 **The protocols used on the PTD network (TCP/IP) call for end to end verification of the accuracy of any message. Similarly, these protocols provide for end to end verification of the recipient of all of the data that is transmitted.**

6.3 **Use of information obtained via the services provided hereunder is at Customer’s own risk. Customer is solely responsible for (a) the accuracy and/or quality of information obtained or data transmitted through the PTD network and (b) assuring that each message Customer sends or receives has been received.**

6.4 **Due to technical difficulties or otherwise, service may be temporarily interrupted. BRC and PTD shall not be liable for interruptions unless the interruption lasts for more than 24 hours. If the interruption lasts for more than 24 hours, a pro rata credit will be issued for each hour in excess of 24 hours the interruption lasts.**

6.5 **Neither PTD nor BRC shall be liable to Customer for any damage arising from any event that is out of the control of PTD or BRC. PTD or BRC shall not be liable to Customer for indirect, special, incidental, exemplary, consequential, or any other form of money damages, including, but not limited to, lost profits, or for the loss of data or information of any kind, however caused, and arising out of or in connection with the performance of PTD or BRC, or the provision of services or performance hereunder, whether based in contract, tort, or any other legal theory, and whether or not BRC or PTD has been made aware of the possibility of such damages.**

6.6 **This Agreement does not expressly or implicitly provide any third party (including Customer’s Users) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege against BRC or PTD.**

6.7 **PTD, BRC, ITS EMPLOYEES, AFFILIATES, INDEPENDENT CONTRACTORS, SUBCONTRACTORS AND ASSIGNS SHALL NOT BE RESPONSIBLE FOR LOST, STOLEN, OR DAMAGED EQUIPMENT. WITHOUT LIMITATION, PTD and BRC SHALL NOT BE HELD LIABLE FOR LOSS OF ANY SOFTWARE, HARDWARE OR DATA, IN WHATEVER FORM STORED ON ANY COMPUTER EQUIPMENT ONTO WHICH A CABLE**

Customer \_\_\_\_\_ Title: \_\_\_\_\_

Date \_\_\_\_\_

*This agreement includes the terms and conditions on the reverse.*

**IF MODEM AND ASSOCIATED EQUIPMENT IS INSTALLED. IT IS CUSTOMER'S RESPONSIBILITY TO BACK UP ANY AND ALL DATA, AND SOFTWARE PRIOR TO THE INSTALLATION OF THE CABLE MODEM AND ASSOCIATED EQUIPMENT.**

**7.0 Indemnification**

- 7.1 The parties agree to indemnify fully, defend and hold harmless each other and their respective parents, affiliated or subsidiary companies and officers, agents and employees from and against any and all third party claims, (including Users) demands, damages and costs (including without limitation, reasonable attorney's fees), liabilities, suits, actions and proceedings of any nature and regardless of form of action arising from or in connection with this Agreement.
- 7.2 The indemnified party will notify the indemnifying party in writing promptly upon learning of any claim or suit for which indemnification may be sought; provided that failure to do so shall not affect the indemnity except to the extent the indemnifying party is prejudiced thereby.
- 7.3 The indemnifying party shall have control of the defense or settlement provided that the indemnified party shall have the right to participate in such defense or settlement with counsel of its own choosing and at its sole expense.
- 7.4 The indemnified party shall reasonably cooperate with the defense, at the indemnifying party's expense.
- 7.5 The indemnifying party shall not, without the indemnified party's express prior written consent, make any admission or stipulation, or consent to any settlement agreement or injunctive or non-monetary relief which could adversely affect any indemnified party.

8.0 Bandwidth Rating. Unless specifically stated to the contrary, the quoted bandwidth rating is a maximum and not a constant amount. Due to the demands of the Internet, the maximum bandwidth may be available but on a burst basis only. Customer use which overloads the PTD network or exceeds usual and customary bandwidth demands, as shall be determined by BRC, shall subject this Agreement to renegotiation or termination without liability. PTD reserves the right to manage its network for maximum bandwidth efficiency.

9.0 Customer Equipment: Customers may purchase cable modems from BRC or from other sources (see [www.brctv.com](http://www.brctv.com) for modem requirements). BRC cannot and does not guarantee that any cable modem that is not purchased from BRC will work properly within the BRC cable system. BRC will offer reasonable assurances that modems purchased from BRC will work in certain areas of the cable system. Before purchasing a modem from BRC, you must check with your local office to determine if your cable modem will work at your residence. BRC will refund the purchase price of a modem sold by BRC upon return of the cable modem in an undamaged condition within 15 days of the sale if the modem does not work due to system failures. Otherwise, any warranty applies.

**10.0 BRC Equipment**

- 10.1 You may have been issued a cable modem and associated equipment for Customer's use while the Customer is a subscriber in good standing with PTD and BRC. The cable modem and associated equipment is the property of BRC and may not be relocated from the Customer's address without advanced written consent of BRC. If any service with BRC or with PTD is terminated for any reason, you must immediately return the modem and associated equipment in an undamaged condition to BRC at the nearest BRC office. If the modem and associated equipment is not immediately returned upon termination, you will be assessed a charge of the current retail value, plus collection costs and collection proceedings will be commenced against you.
- 10.2 From the time the cable modem and associated equipment is provided until it is returned, Customer is responsible for it. If it is lost, stolen or damaged under any circumstances after it is provided until it is returned, regardless of fault, you shall be responsible for all charges, including labor costs, to replace or repair the cable modem and associated equipment.

11.0 Billing: Customer shall reimburse BRC for all collection costs, including reasonable attorney's fees, associated with collecting delinquent or dishonored payments. A returned check fee of \$25 shall apply. Past due amounts will be assessed a 1.5% per month interest charge or the maximum rate allowed by law. Customer is responsible for all shipping charges, sales and use taxes, and all other taxes, including franchise fees and levies which are applicable to this Agreement and the provision of services thereunder, including personal property tax on the equipment used by PTD in connection therewith, if any, but excluding tax on PTD's income. Valid tax exemption certificates must be provided prior to the commencement of Services. Customer is subject to additional charges including, but not limited to, excess PTD storage charges, e-mail address changes, non-pay reconnect fees and transfer to another address (billable labor charges).

12.0 Notices. Notices under this Agreement shall be given by delivery in person to an officer of the other party (in which event notice shall be deemed given at the time of that delivery), or by first class U.S. Mail or by overnight private carrier (e.g., UPS, FedEx), in which event notice shall be deemed given three business days after such deposit of notice with the carrier with the cost of delivery full pre-paid. To be effective, notices given via the U.S. Mail or private carrier shall be followed within 24 hours with fax or electronic mail delivery of said notice.

13.0 Force Majeure. Failures of service by the local exchange or the interexchange carrier, local cable company, or other third party or by strikes, labor disturbances, Acts of God, or any event of force majeure which prevents commencements of service hereunder or causes material continuing degradation of service under this Agreement shall give BRC, PTD and Customer a right to terminate this Agreement. No damages or cost reimbursements will be owed by either party to the other if this Agreement is terminated on account of an event of force majeure or an act of an unrelated third party. In any event, each party shall cooperate to enable BRC to remove the Equipment, if any, and otherwise to cease providing service without undue cost or delay.

14.0 Entire Agreement. The Agreement represents the complete agreement and understanding of the parties with respect to the subject matter herein, and supersedes any other agreement or understanding, written or oral. This Agreement may be modified only in writing signed by all parties to this Agreement. Such modifications shall be effective only if signed by an officer of the party or other person to whom signing authority has been delegated by that party.

15.0 Severability. If any portion of this Agreement is found to be unenforceable or invalid, the remaining provisions shall remain effective and the parties shall promptly negotiate to replace invalid or unenforceable portions that are essential parts of this Agreement.