



# EQUIPMENT LEASE CONTRACT

Lessor ("We" or "Us"):  Marlin Leasing Corporation ♦ Southeastern Division  
 6470E. Johns Crossing, Ste 430, Johns Creek, GA 30097  
 www.marlinleasing.com phone: 888.479.9111 • fax: 888.535.8576

or  Marlin Business Bank  
 2795 E. Cottonwood Pkwy, Ste 120 • Salt Lake City, UT 84121  
 phone: 801.453.1722

• Processing Office  
 1500 JFK Blvd, Ste 330  
 Philadelphia, PA 19106

**DESCRIPTION OF LEASED EQUIPMENT** (Include quantity, make, model, serial number and accessories. Attach schedule if necessary.) **MUST BE COMPLETED**

### LEASING CUSTOMER ("YOU")

Company Name (Exact business name): \_\_\_\_\_ Federal Tax ID#: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Street City County State Zip  
 Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_  Corp.  LLC  Partnership  Prop.  
 Equipment Location: \_\_\_\_\_ State of Incorporation/Organization: \_\_\_\_\_  
 Vendor: \_\_\_\_\_ Address: \_\_\_\_\_

Lease Term (Mos.)	Total No. of Payments	Amount of Each Payment	Advance Rentals	Security Deposit	Payment Frequency
	\$	\$	First and Last _____ Mos.	\$	
		(plus applicable taxes)			

### TERMS OF LEASE

1. You (the customer) want to acquire the above equipment from the above vendor. You want us (one of the Lessors identified above) to buy it and then lease it to you. This Lease will begin when the equipment is delivered to you and will continue for the entire Lease Term plus any interim rent period. You will unconditionally pay us all amounts due, without any right to set-off. If we do not receive your payment by its due date, there will be a late fee equal to the greater of \$25.00 or 15% of the late amount (or, if less, the maximum amount allowable under law) which you agree is a reasonable estimate of the costs we incur with respect to late payments and is not a penalty. Upon your request, we will waive the first assessed late charge. We may charge you a partial payment (interim rent) for the time between delivery and the due date for the first regular payment. We may charge you a one-time documentation fee up to \$149. You agree that we may adjust the payment amount above if the final equipment cost varies from the amount the payment was based upon. This Lease is not binding on us until we sign it. To expedite this Lease, you asked us to accept your faxed signature and have agreed it will be considered as good as your original signature and admissible in court as conclusive evidence of this Lease.

2. (a) Unless we have given you a written option to buy the equipment at the end of the Lease Term for \$1.00, you must notify us by certified mail between 90 and 180 days prior to the end of the Lease Term if you intend on returning the equipment. If you do not notify us, the Lease Term will automatically extend for 12 months under the same terms and conditions of this Lease. If you give us the proper and timely notice, then at the end of the Lease Term you shall return the equipment in good working order in a manner and to a location designated by us. You agree to reimburse us for our costs to refurbish returned equipment for damage beyond normal wear and tear. You are solely responsible for removing all data/images stored on the equipment prior to its return. (b) You agree the security deposit will not bear interest and that we may apply it to any amount owed to us, and should we do so, you agree to restore the security deposit to its original amount. You may request the return of the security deposit only after all of your obligations under this Lease have been met in full.

3. You alone selected the vendor and the equipment. You asked us to buy it. We are not related to the vendor and we cannot get a refund, nor is the vendor allowed to waive or modify any term of this Lease. Therefore, the Lease cannot be canceled by you for any reason, even if the equipment fails or is damaged and it is not your fault. We are leasing it to you "as is" and we disclaim all express and implied warranties, including any warranty of merchantability or fitness for a particular purpose. You are responsible for installation and all service. The vendor may have given you warranties. You may contact the vendor to get a statement of all warranties, if any. We assign to you any warranties the vendor may have given us. You shall settle any dispute regarding the equipment's performance directly with the vendor. You promise that the equipment will be used only for business and not for personal, family or household purposes. You will keep and use the equipment only at the above address and not move it or return it to us prior to the end of the Lease Term. Your payments may include amounts you owe to the vendor under a separate maintenance, service and/or supply arrangement. We may invoice such amounts on the vendor's behalf for your convenience. You agree that any claims related to maintenance, service or supplies will not impact your obligation to pay us the full amount due under this Lease.

4. If you do not pay us as agreed or fail to perform any other term of this Lease, you will be in default and you agree that we may (i) repossess or disable the equipment and/or (ii) directly

debit (charge) your bank account(s) and/or sue you for all past due payments and other charges and all payments due in the future to the end of the Lease Term, plus our legal and collection costs. If you are in default and/or do not meet your end of term obligations, we may also directly debit and/or sue you for the "residual" (end of term) equipment value. You agree to pay (i) a convenience fee of \$10 for any payment you elect to make by telephone and (ii) a charge of \$30 if any payment made by ACH or check is dishonored or returned. This Lease shall be governed by the laws of the Commonwealth of Pennsylvania (where we have an office and accepted this Lease). You agree that any suit relating to this Lease shall be brought only in a state or federal court in Pennsylvania. You irrevocably consent and submit to the jurisdiction of such courts, and you waive any claim that any such court is an inconvenient or improper forum. Each party waives any right to a jury trial. We will have title to the equipment at all times. This is a "true lease" and not a loan or installment sale. You grant us a first priority security interest in the equipment and authorize us to file Uniform Commercial Code ("UCC") financing statements (in case this is later determined not to be a "true lease"). You agree this is a "finance lease" under Article 2A of the UCC. You waive all UCC rights and remedies you may have, including those in Sections 2A-508 through 2A-522.

5. You must pay us for all sales, use, property and other taxes (and any penalties) relating to the Lease and the equipment. We may adjust this Lease and the payment above to finance for you any taxes and fees due at Lease inception. We may bill you based on our estimate of the taxes and fees. We may charge you an annual property tax administration fee up to \$25. Unless we have given you a written option to buy the equipment at the end of the Lease Term for \$1.00, we will be entitled to all tax benefits. If you do anything to disallow our getting these benefits, you will promptly indemnify (pay) us an equivalent amount. If we gave you a \$1.00 purchase option, we may require you to file all personal property tax returns. You accept all risks of loss, injury or damage caused by the equipment and shall indemnify us for all suits and other liabilities arising from the same. This indemnity will continue even after the Lease has ended. You must maintain acceptable public liability insurance naming us as "additional insured". You must keep the equipment insured against all risks of loss in an amount equal to the replacement cost and have us listed on the policy as "loss payee." If you do not give us proof of the required insurance within 30 days after the Lease commences, then depending on the original equipment cost we may either (i) obtain insurance to cover our interests and charge you a fee for such coverage (including a monthly administration fee and a profit to us) or (ii) charge you a monthly non-compliance fee up to \$50 (which provides no insurance benefit). You can cancel the insurance coverage fee or non-compliance fee at any time by delivering the required proof of insurance.

6. Since this Lease is based on your own credit rating, you may not assign (transfer) the Lease to anyone else. We may sell or transfer our interests to another entity, who will then have all of our rights but none of our obligations. Those obligations will continue to be ours. The rights we pass on to the new entity will not be subject to any defenses, claims or set-offs you may assert against us. All prior conversations, agreements and representations relating to this Lease or the equipment are integrated herein. None of the terms of this Lease shall be changed or modified except in writing duly executed by you and us. Any action by you against us must be commenced within one year after the cause of action arises or be forever barred.

**ACCEPTANCE OF LEASE AGREEMENT** THIS IS A BINDING CONTRACT. IT CANNOT BE CANCELED. READ IT CAREFULLY BEFORE SIGNING AND CALL US IF YOU HAVE ANY QUESTIONS.

X  
 Signature of Leasing Customer \_\_\_\_\_ Print Name of Signer \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
 Accepted and Signed by the Lessor identified above \_\_\_\_\_ Print Name of Signer \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

### PERSONAL GUARANTY

I HEREBY PERSONALLY AND UNCONDITIONALLY GUARANTEE ALL AMOUNTS OWED BY THE LEASING CUSTOMER UNDER THIS LEASE. I AGREE THAT THE LESSOR MAY EXTEND, TRANSFER AND AMEND THE LEASE AND I AGREE TO BE BOUND BY ALL SUCH CHANGES. I WAIVE ALL NOTICES, INCLUDING NOTICES OF DEMAND AND DEFAULT. I AGREE THE LESSOR MAY PROCEED AGAINST ME SEPARATELY FROM THE LEASING CUSTOMER. I HAVE AUTHORIZED THE LESSOR AND ITS AFFILIATES AND DESIGNEES TO USE MY CONSUMER CREDIT REPORTS FROM TIME TO TIME IN ITS CREDIT EVALUATION AND COLLECTION PROCESSES, AS WELL AS TO OFFER FUTURE CREDIT PRODUCTS AND SERVICES. I AGREE THAT THE LEASE AND PERSONAL GUARANTY SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA AND ANY SUIT RELATING TO THE LEASE OR PERSONAL GUARANTY SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT IN PENNSYLVANIA AND I IRREVOCABLY CONSENT AND SUBMIT TO THE JURISDICTION OF SUCH COURTS, AND I WAIVE TRIAL BY JURY. I AGREE THAT MY FAXED SIGNATURE SHALL BE CONSIDERED AS GOOD AS MY ORIGINAL SIGNATURE AND ADMISSIBLE IN COURT AS CONCLUSIVE EVIDENCE OF THIS PERSONAL GUARANTY.

X \_\_\_\_\_ X \_\_\_\_\_  
 GUARANTOR #1 (Print Name) Signature (Individually; No Titles) Date GUARANTOR #2 (Print Name) Signature (Individually; No Titles) Date

### ACCEPTANCE OF DELIVERY

I AM AUTHORIZED TO SIGN THIS CERTIFICATE ON BEHALF OF THE LEASING CUSTOMER. I CERTIFY TO THE LESSOR THAT THE EQUIPMENT HAS BEEN DELIVERED AND IS FULLY INSTALLED AND WORKING PROPERLY. I AUTHORIZE THE LESSOR TO PAY THE VENDOR AND COMMENCE THE LEASE.

X \_\_\_\_\_ X \_\_\_\_\_  
 Authorized Signature Name and Title (Please Print) Equipment Delivery Date

# *Addendum to Equipment Lease Contract*

## *for leases to state or municipal entities*

This addendum (the "Addendum") is incorporated into and a part that certain Equipment Lease Contract by and between \_\_\_\_\_ ("Lessor," "we," "us") and \_\_\_\_\_, a state or municipal governmental entity ("Lessee," "you," "your") executed by the Lessee on \_\_\_\_\_, \_\_\_\_\_, under which the Lessee will lease \_\_\_\_\_ from the Lessor. This Addendum and the Equipment Lease Contract together are one contract. This Addendum shall amend the Equipment Lease Contract to the extent, and only to the extent, that the terms of this Addendum are inconsistent with the terms of the Equipment Lease Contract. All other terms of the Equipment Lease Contract shall be and remain in full force and effect. In consideration of the Lessor's ("we") agreement to purchase the equipment and lease it to the Lessee ("you"), the Lessee agrees as follows:

- I. REPRESENTATIONS, COVENANTS AND WARRANTIES OF LESSEE.** You hereby represent, covenant and warrant to us as follows: (a) You are authorized under the Constitution and laws of the State to enter into this Lease (and the other agreements and documents relating to the Lease, hereinafter included in the definition of "Lease") and to perform all of your obligations hereunder and thereunder; (b) The officer of the Lessee entity who is executing the Lease and each Schedule has been duly authorized to execute and deliver same under the terms and provisions of a resolution of your governing body, or by other appropriate official action; (c) In authorizing and executing the Lease, you have complied with all public bidding, usury and other State and Federal laws applicable to the acquisition of the Equipment; (d) You have sufficient appropriations or other funds available to pay all amounts due under Lease for the applicable fiscal year; (e) The Equipment is essential to your proper, efficient and economic operation; (f) You have never terminated an equipment lease, lease-purchase or similar contract due to non-appropriation of funds or defaulted under the terms thereof.
- II. NON-APPROPRIATION OF FUNDS.** You believe that funds can and will be obtained in amounts sufficient to make all Lease Payments during the Lease term. You and your fiscal officer hereby covenant that you (the Lessee entity) and he/she will do all things within your and his/her power to obtain, maintain and properly request and pursue funds from which the lease payments and payments for other related charges, if any, may be made, specifically including in your annual budget requests amounts sufficient to make such payments for the full Lease term. You intend to make all such payments for the full Lease term if funds are legally available for that purpose. If your official governing body does not allot you funds for the succeeding fiscal year to continue such payments under the Lease, and you have no other available funds to continue making such payments under the Lease or to purchase, lease or rent other equipment or services to perform functions similar to those performed by the Equipment under this Lease, you may terminate the Lease at the end of the then current fiscal year, by giving ninety (90) days prior written notice to us, and enclosing therewith a sworn, notarized statement that the foregoing conditions exist. **The foregoing shall be the sole circumstance in which you will not be legally obligated to continue making such payments beyond the end of the then current fiscal year.** Upon the occurrence of this event, if any Lease is terminated by you in accordance with this paragraph, you agree (i) not to purchase, lease or rent personal property to perform the same or similar functions as, or functions taking the place of, those performed by the Equipment under this Lease, and (ii) not to permit such functions to be performed by your own employees or by any agency, contractor, service provider or other entity affiliated with or hired by you, for a period of three hundred sixty (360) days; provided, however, that these restrictions shall not be applicable in the event that the Equipment under this Lease is sold by us and the amount received from such sale, less all costs of such sale, is sufficient to pay the then balance otherwise then due from you under this Lease. If the application of these restrictions would affect the validity of this Lease, you agree to provide us with an opinion of your counsel relating to the circumstances of non-appropriation. Upon the occurrence of this event, you shall, at your cost and expense, both restore the Equipment to its original condition (excepting only reasonable wear and tear) and return it to us in accordance with the terms set forth in Section III of this Addendum. Upon termination of the Lease by reason of non-appropriation of funds as provided herein, you shall not be responsible for the payment of any additional Lease Payments coming due with respect to succeeding fiscal years. However, (a) **you shall continue to remain responsible for the payment of all past due payments and other obligations that accrued under the Lease prior to the end of the 90-day notice period referred to above;** and (b) if you have not delivered possession of the Equipment to us at your expense and conveyed title to us or released your interest in the Equipment to us within ten (10) days after the termination of the applicable Lease, the termination shall nevertheless be effective, but you **shall be responsible for the payment of damages in an amount equal to the amount of the lease payments thereafter coming due under the Lease that are attributable to the number of days after such ten (10) day period during which you fail to take such actions, plus all other losses suffered by us as a result of your failure to take such actions as required.** Non-Appropriation under one Lease shall not affect the validity or enforceability or any other lease or contract between you and us.

**III. RETURN OF EQUIPMENT.** Notwithstanding any contrary terms set forth or implied in the "Equipment Lease Contract," upon the expiration or termination of the Lease in accordance with its terms prior to the payment of all lease payments and other amounts due to us hereunder, you shall return the Equipment to us in the same condition it was in as of the date it was delivered to you, excepting only reasonable wear and tear, in the following manner as may be specified by us in our sole discretion: (a) by delivering the Equipment at your cost and expense to such place within the State as we shall specify; or (b) by loading such portions of the Equipment as are considered movable at your cost and expense, on board such carrier as we shall specify and shipping the same, freight prepaid by you, to a place specified by us. If you refuse to return the Equipment in the manner designated above, we may repossess the Equipment and charge you with the costs of such repossession and/or pursue any other remedy provided to us in this Lease or under law.

**IV. OPTION TO PURCHASE.** Notwithstanding any contrary term set forth or implied in the "Equipment Lease Contract" or any separate purchase option document executed by us, upon the expiration of the originally scheduled term of the Lease, provided you have made all scheduled payments to us, have not terminated the Lease by reason of non-appropriation or other reason, and are not then in default under the Lease, you shall have the option to purchase our interest in the Equipment for the purchase option price specified in such purchase option.

**V. FINANCIAL INFORMATION.** During the term of this Lease, you annually shall provide us with current annual financial reports, budgets, proof of appropriation for the ensuing fiscal year and such other financial information relating to your ability and commitment to continue the Lease as may be requested by us.

The terms of this Addendum shall inure to the benefit of Lessor's successors and assigns.

Intending to be legally bound, the parties hereto have executed this Agreement effective as of the effective date of the Equipment Lease Contract.

LESSOR: \_\_\_\_\_

LESSEE: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

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

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