

**Qwest DSL®
Modem Rental Agreement and
Modem Purchase Agreement**



Thank you for purchasing Qwest DSL® service. Please carefully read the following terms and conditions that apply to your modem rental or purchase (both the Rental Agreement and Purchase Agreement follow), and your use of the modem. If you do not recall, your bill will state whether you elected to rent or purchase the modem. Please call Qwest at 1-800 244-1111 (Consumer/Residential accounts), 1-800-603-6000 (Small Business accounts), or 1-800-777-9594 (Global/Business & Government Services accounts) if you have any questions regarding your account.

MODEM RENTAL AGREEMENT

By installing the modem ("Modem"), you affirm that (a) you understand this Modem Rental Agreement ("Agreement") between you and Qwest Interprise America, Inc. ("Qwest") and (b) you accept this Agreement and its terms and conditions, even if you choose not to read it. If you do not agree to all of the terms and conditions of this Agreement, you must return the Modem to Qwest by following the return process described on the Return Policy & Procedure card included in the box with your Modem (black and white card).

1. You will be billed monthly the rental rate quoted to you at the time of purchase and shipping and handling fees plus applicable taxes. The billed rate will continue unless you call promptly and inform us that the billed monthly rate is not the one quoted to you. Late charges at the then-currently applicable rate for late charges will apply to late payments. Rental payments are due for every month you rent the Modem and rental payments do not count towards a purchase of the Modem. If you wish to purchase the Modem you must terminate this Agreement and enter into a separate Modem Purchase Agreement under which you will be required to pay the full purchase price of the Modem, regardless of your past rental payments.

2. The Modem is Qwest's property. You may not assign, rent, or transfer the Modem or your rights or duties under this Agreement to another without Qwest's prior written consent. You agree not to mishandle, abuse, misuse, or improperly store or operate the Modem, including using the Modem with equipment electrically or mechanically incompatible with, or of inferior quality to, it, and if the Modem is damaged by you and/or non-operational or malfunctioning for reasons other than a manufacturing defect at anytime during the term of this Agreement or upon termination of this Agreement, Qwest may charge you for its full retail cost, not to exceed \$100.

3. Subject to any applicable rules or laws, Qwest may (a) stop offering to rent the Modem, (b) change any of the terms and conditions of this Agreement, and/or (c) increase the rental for the Modem. When significant changes in the terms and conditions of this Agreement or increases to the rental occur, Qwest will notify you 30 days prior to the effective date of the change or increase, and if applicable, a new Agreement will be provided to you. The notice may be included with your monthly bill and your failure to return the Modem within 30 days or payment of the rental after such notice means you agree to it. Price decreases may be made with less than 30 days notice. You may terminate this Agreement at any time by calling Qwest at 1-800-218-4443. Upon termination, you must promptly return the Modem to Qwest by following the return process provided on the Return Policy & Procedure card. Upon termination, Qwest will continue to charge you the monthly rental charge for the Modem until it receives the Modem. To avoid additional monthly rental charges, please follow the outlined procedures closely. If your Qwest DSL service is terminated, or is subject to termination, for any reason, such as but not limited to your cancellation of that service or failure to pay, this Agreement will be deemed terminated, except for your obligation to continue to pay monthly rental charges, as of the termination of the Qwest DSL service, and you will be obligated to return the Modem to Qwest in accordance with the return process provided on the Return Policy & Procedure card.

4. Qwest extends a Limited Warranty for the Modem. The terms of the Limited Warranty are set out below (the "Limited Warranty") and are part of this Agreement. A copy of the Limited Warranty is also available, upon request, from Qwest at no charge. Nothing in this Agreement will be deemed to alter the terms of the Limited Warranty. Qwest does not guarantee the compatibility of the Modem with your computer, operating system, or networking equipment, nor does Qwest's Limited Warranty cover any defect present in your computer or network systems.

Qwest does not refund or credit rent, so please call Qwest immediately if the Modem is not working properly for a replacement Modem. Qwest is under no obligation to provide a replacement Modem except as provided in the Limited Warranty, however, if you require a replacement Modem and the Limited Warranty does not apply, Qwest may choose to provide you with a replacement Modem. If Qwest provides you a replacement Modem outside the Limited Warranty, you will be charged the full retail cost of your non-operational or malfunctioning Modem plus a monthly rental charge for the replacement Modem. Replacement Modem may or may not be the same model.

5. QWEST, ITS AFFILIATES, AND CONTRACTORS WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA OR COSTS OF COVER ARISING FROM OR RELATED TO THE MODEM OR ITS FAILURE TO MEET ANY SPECIFICATIONS INCLUDING THE LIMITED WARRANTY OR ANY OTHER OBLIGATION, OR THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND REGARDLESS OF WHETHER QWEST HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LIABILITY, LOSS OR DAMAGE. YOUR EXCLUSIVE REMEDY FOR ANY AND ALL CLAIMS OF DAMAGE RELATED TO THE MODEM, AND/OR FOR ANY AND ALL CLAIMS IN CONNECTION WITH THIS AGREEMENT OR YOUR RELATIONSHIP WITH QWEST WILL BE LIMITED TO THE TOTAL RENT PAID OR PAYABLE BY YOU TO QWEST UNDER THIS AGREEMENT DURING THE MOST RECENT SIX-MONTH PERIOD PRECEDING THE OCCURRENCE OF THE EVENT

GIVING RISE TO THE CLAIM. SOME STATES DO NOT ALLOW EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

6. THE REPAIR OR REPLACEMENT REMEDY SET FORTH IN THE SEPARATE LIMITED WARRANTY IS THE ONLY REMEDY AVAILABLE WITH RESPECT TO THE MODEM, WHETHER ARISING UNDER THE LIMITED WARRANTY, UNDER A LEGALLY EFFECTIVE IMPLIED WARRANTY OR OTHERWISE. QWEST IS NOT RESPONSIBLE FOR DEFACEMENT, MISUSE, ABUSE, NEGLIGENCE, IMPROPER USE, IMPROPER ELECTRICAL VOLTAGES OR CURRENT, REPAIRS BY OTHERS, ALTERATIONS, MODIFICATIONS, ACCIDENTS, FIRE, FLOOD, VANDALISM, ACTS OF GOD, OR THE ELEMENTS. NO ADVICE OR INFORMATION GIVEN BY QWEST, ITS AFFILIATES, ITS CONTRACTORS, OR THEIR RESPECTIVE EMPLOYEES WILL VARY THE TERMS OF THE LIMITED WARRANTY OR THIS AGREEMENT.

7. In the event of any inconsistency between this Agreement and any other documents exchanged between you and Qwest related to the Modem, the provisions of this Agreement will control.

8. **Dispute Resolution and Arbitration.** PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF ALL DISPUTES THROUGH FINAL AND BINDING ARBITRATION WITH A FAIR HEARING BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION

8.1 Arbitration Terms. You agree that any dispute or claim arising out of or relating to the Modem or this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration.

(a) **Arbitration Procedures.** Before commencing arbitration you must first present any claim or dispute to Qwest in writing to allow Qwest the opportunity to resolve the dispute. If the claim or dispute is not resolved within 60 days, you may request arbitration. The arbitration will be conducted in accordance with the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Arbitration Rules. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, will govern the arbitration of the dispute. New York state law, without regard to choice of law principles, will otherwise govern and apply to any and all claims or disputes. All arbitration proceedings and hearings will take place in Denver, Colorado. Arbitration is final and binding. Under the JAMS Rules, there may be no right to pre-arbitration discovery. Any arbitration will be confidential, and neither you nor Qwest may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. The arbitration award will be in writing, but is not required to include factual findings or legal reasoning. Judgment on any arbitration award may be entered in any court having jurisdiction. Each party will pay its own expenses of the arbitration, including attorney fees, except as provided below.

(b) **Costs of Arbitration.** The party requesting arbitration must pay the applicable JAMS filing fee, except that for claims of less than \$2,000 you will only be obligated to pay a filing fee of \$25 and Qwest will pay all of the other JAMS costs and fees. For claims of \$2,000 or more, after the claimant pays the JAMS filing fee, all other JAMS administrative fees will be divided equally between you and Qwest. Each party will bear the expense of its own counsel, witnesses, preparation, and presentation of evidence at the arbitration.

8.2 Waiver of Class Action. By this Agreement, both you and Qwest are waiving rights to litigate claims or disputes in court, including the right to a jury trial. You are further waiving any right to pursue any claim on a class or consolidated basis or in a representative capacity.

9. LIMITED WARRANTY MODEM RENTAL

9.1 This Modem is warranted by Qwest to the person renting the Modem, and no others, to be free of manufacturing defects during the term of the Modem Rental Agreement ("Rental Agreement"), only. This Limited Warranty covers only the basic operations of the Modem, and Qwest does not warrant the compatibility of the Modem with any computer, operating system, or networking equipment, nor does this Limited Warranty cover any defect present in any computer, network, or operating or other system. If the Modem malfunctions due to a manufacturing defect, before the termination of the Rental Agreement, Qwest will replace or repair it, at its option, without charge, so long as: (a) you notify Qwest by calling the correct number set forth in Section 9.5 below, report that the Modem's basic operations are not functioning properly, and cooperate with the Qwest representative to evaluate the circumstances; (b) the Rental Agreement for the Modem is in effect and has not been terminated; and (c) you promptly return the Modem as provided in the Return Policy & Procedure card. Qwest will: (1) replace or repair the Modem, at its option, and return the replacement or repaired Modem to you, within thirty (30) days after you comply with (a) through (c), above; (2) provide you with an expedite option whereby Qwest will send you a replacement Modem promptly after you comply with (a) and (b); provided that, prior to sending you such replacement Modem, Qwest may charge you, via a credit card that Qwest accepts or other means Qwest chooses, for the full retail cost of the replacement Modem ("Advance Charge"). If you return your defective Modem to Qwest according to the procedure set forth in the Return Policy & Procedure card and Qwest receives your defective Modem on or before the 30th day after you request a replacement Modem pursuant to this Limited Warranty, Qwest will credit back the Advance Charge to the same payment method to which the Advance Charge was applied (e.g., credit card) or to your monthly service bill; or (3) such other option that you and Qwest may agree to. No other person or party is authorized to provide repair or replacement service pursuant to this Limited Warranty.

9.2 Repaired/Replacement Modem. Qwest may use new or reconditioned parts to repair the Modem, or replace the Modem with a new, repaired, or reconditioned Modem, all at the sole discretion of Qwest. This Limited Warranty will apply to the replaced or repaired

Modems, during the term of the Rental Agreement, only. All replaced products or parts become the property of Qwest and will not be returned.

9.3 Exception and Exclusions. This Limited Warranty does not cover defects due to defacement, misuse, abuse, neglect, improper use, improper electrical voltages or current, repairs by others, alterations, modifications, accidents, fire, flood, vandalism, acts of God or the elements.

9.4 No Other Express Warranties and Limitation of Implied Warranties. This Limited Warranty is the only express warranty extended by Qwest in connection with the Modem. Implied warranties which may not be disclaimed are limited in time to the duration of this Limited Warranty, and all remedies for all such implied warranties are restricted to the remedy and procedure set forth for this Limited Warranty. This Limited Warranty is in lieu of all other warranties, however arising, and all such other warranties are hereby disclaimed. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

9.5 This Limited Warranty is extended to the person renting the Modem, and no others, by:

(a) Qwest , 5 William White Blvd., Pueblo, CO 81001-4894

(b) Consumer/Residential Accounts, please call 1-800 244-1111
Small Business Accounts, please call 1-800-603-6000
Global/Business & Government Services Accounts, please call 1-800-777-9594

(c) If you have questions or comments, call or write us at the above number or address.

9.6 This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from state-to-state.

MODEM PURCHASE AGREEMENT

By installing the modem ("Modem"), you affirm that (a) you understand this Modem Purchase Agreement ("Agreement") between you and Qwest Interprise America, Inc. ("Qwest") and (b) you accept this Agreement and its terms and conditions, even if you choose not to read it. If you do not agree to all of the terms and conditions of this Agreement, you must return the Modem to Qwest by following the return process described on the Return Policy & Procedure card included in the box with your Modem (black and white card).

1. You will be billed the full purchase price for the Modem quoted to you at the time of purchase and shipping and handling fees, plus applicable taxes. In the event Qwest offers the ability to pay the Modem purchase price in installment payments over time ("Installment Option"), the aggregate payments under the Installment Option may be greater than the purchase price paid by customers who pay the total Modem purchase price in one payment. The billed rate will continue unless you call us promptly and inform us that the billed monthly rate is not the one quoted to you. Late charges at the then-currently applicable rate for late charges will apply to late payments.

2. Qwest extends a Limited Warranty to the original purchaser (you) for the Modem. The terms of the Limited Warranty are set out below (the Limited Warranty") and are part of this Agreement. A copy of the Limited Warranty is also available upon request from Qwest at no charge. Nothing in this Agreement will be deemed to alter the terms of the Limited Warranty. Qwest does not guarantee the compatibility of the Modem with your computer, operating system, or networking equipment, nor does Qwest's Limited Warranty cover any defect present in your computer or network systems.

3. QWEST, ITS AFFILIATES, AND CONTRACTORS WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY LOST OR IMPUTED PROFITS OR REVENUES OR LOST DATA OR COSTS OF COVER ARISING FROM OR RELATED TO THE MODEM OR ITS FAILURE TO MEET ANY SPECIFICATIONS INCLUDING THE LIMITED WARRANTY OR ANY OTHER OBLIGATION, OR THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS ASSERTED AND REGARDLESS OF WHETHER QWEST HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH LIABILITY, LOSS OR DAMAGE. YOUR EXCLUSIVE REMEDY FOR ANY AND ALL CLAIMS OF DAMAGE RELATED TO THE MODEM AND/OR ALL CLAIMS IN CONNECTION WITH THIS AGREEMENT OR YOUR RELATIONSHIP WITH QWEST WILL BE LIMITED TO THE TOTAL PURCHASE PRICE PAID OR PAYABLE BY YOU TO QWEST FOR THE MODEM. SOME STATES DO NOT ALLOW EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

4. THE REPAIR OR REPLACEMENT REMEDY SET FORTH IN THE SEPARATE LIMITED WARRANTY IS THE ONLY REMEDY AVAILABLE WITH RESPECT TO THE MODEM, WHETHER ARISING UNDER THE LIMITED WARRANTY, UNDER A LEGALLY EFFECTIVE IMPLIED WARRANTY OR OTHERWISE. QWEST IS NOT RESPONSIBLE FOR DEFACEMENT, MISUSE, ABUSE, NEGLIGENCE, IMPROPER USE, IMPROPER ELECTRICAL VOLTAGES OR CURRENT, REPAIRS BY OTHERS, ALTERATIONS, MODIFICATIONS, ACCIDENTS, FIRE, FLOOD, VANDALISM, ACTS OF GOD, OR THE ELEMENTS. NO ADVICE OR INFORMATION GIVEN BY QWEST, ITS AFFILIATES, ITS CONTRACTORS, OR THEIR RESPECTIVE EMPLOYEES WILL VARY THE TERMS OF THIE LIMITED WARRANTY OR THIS AGREEMENT.

5. In the event of any inconsistency between this Agreement and any other documents exchanged between you and Qwest related to the Modem, the provisions of this Agreement will control.

6. Dispute Resolution and Arbitration. PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF ALL DISPUTES THROUGH FINAL AND BINDING ARBITRATION WITH A FAIR HEARING BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY OR THROUGH A CLASS ACTION.

6.1 Arbitration Terms. You agree that any dispute or claim arising out of or relating to the Modem or this Agreement (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration.

(a) Arbitration Procedures. Before commencing arbitration you must first present any claim or dispute to Qwest in writing to allow Qwest the opportunity to resolve the dispute. If the claim or dispute is not resolved within 60 days, you may request arbitration. The arbitration will be conducted in accordance with the Judicial Arbitration and Mediation Services ("JAMS") Comprehensive Arbitration Rules. The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, will govern the arbitration of the dispute. New York state law, without regard to choice of law principles, will otherwise govern and apply to any and all claims or disputes. All arbitration proceedings and hearings will take place in Denver, Colorado. Arbitration is final and binding. Under the JAMS Rules, there may be no right to pre-arbitration discovery. Any arbitration will be confidential, and neither you nor Qwest may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. The arbitration award will be in writing, but is not required to include factual findings or legal reasoning. Judgment on any arbitration award may be entered in any court having jurisdiction. Each party will pay its own expenses of the arbitration, including attorney fees, except as provided below.

(b) Costs of Arbitration. The party requesting arbitration must pay the applicable JAMS filing fee, except that for claims of less than \$2,000 you will only be obligated to pay a filing fee of \$25 and Qwest will pay all of the other JAMS costs and fees. For claims of \$2,000 or more, after the claimant pays the JAMS filing fee, all other JAMS administrative fees will be divided equally between you and Qwest. Each party will bear the expense of its own counsel, witnesses, preparation, and presentation of evidence at the arbitration.

6.2 Waiver of Class Action. By this Agreement, both you and Qwest are waiving rights to litigate claims or disputes in court, including the right to a jury trial. You are further waiving any right to pursue any claim on a class or consolidated basis or in a representative capacity.

7. LIMITED WARRANTY MODEM SALE

7.1 The Modem is warranted by Qwest to the original purchaser, and no others, to be free of manufacturing defects for a period of one year from the date of purchase. This Limited Warranty covers only the basic operations of the Modem, and Qwest does not warrant the compatibility of the Modem with any computer, operating system, or networking equipment, nor does this Limited Warranty cover any defect present in any computer, network, or operating or other system. If the Modem malfunctions due to a manufacturing defect, before the one year term expires, Qwest will replace or repair it, at its option, without charge, so long as (a) you notify Qwest by calling the correct number set forth in Section 7.5 below, report that the Modem's basic operations are not functioning properly, and cooperate with the Qwest representative to evaluate the circumstances; (b) the Modem was purchased less than one year from the date you so notify Qwest; and (c) you promptly return the Modem as provided in the Return Policy & Procedure card. Qwest will: (1) replace or repair the Modem, at its option, and return the replacement or repaired Modem to you, within thirty (30) days after you comply with (a) through (c), above; (2) provide you with an expedite option whereby Qwest will send you a replacement Modem promptly after you comply with (a) and (b); provided that, prior to sending you such replacement Modem, Qwest may charge you, via a credit card that Qwest accepts or other means Qwest chooses, for the full retail cost of the replacement Modem ("Advance Charge"). If you return your defective Modem to Qwest according to the procedure set forth in the Return Policy & Procedure card and Qwest receives your defective Modem on or before the 30th day after you request a replacement Modem pursuant to this Limited Warranty, Qwest will credit back the Advance Charge to the same payment method to which the Advance Charge was applied (e.g., credit card) or to your monthly service bill; or (3) such other option that you and Qwest may agree to. No other person or party is authorized to provide repair or replacement service pursuant to this Limited Warranty.

7.2 Repaired/Replacement Modem. Qwest may use new or reconditioned parts to repair the Modem, or replace the Modem with a new, repaired, or reconditioned Modem, all at the sole discretion of Qwest. This Limited Warranty will apply to the replaced or repaired Modems, for ninety (90) days or until the end of the one year period after the initial purchase, whichever is longer. All replaced products or parts become the property of Qwest and will not be returned.

7.3 Exception and Exclusions. This Limited Warranty does not cover defects due to defacement, misuse, abuse, neglect, improper use, improper electrical voltages or current, repairs by others, alterations, modifications, accidents, fire, flood, vandalism, acts of God or the elements.

7.4 No Other Express Warranties and Limitation of Implied Warranties. This Limited Warranty is the only express warranty extended by Qwest in connection with the Modem. Implied warranties which may not be disclaimed are limited in time to the duration of this Limited Warranty, and all remedies for all such implied warranties are restricted to the remedy and procedure set forth for this Limited Warranty. This Limited Warranty is in lieu of all other warranties, however arising, and all such other warranties are hereby disclaimed. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

7.5 This Limited Warranty is extended to the original purchaser of the Modem, and no others, by:

(a) Qwest, 5 William White Blvd., Pueblo, CO 81001-4894

(b) Consumer/Residential Accounts, please call 1-800 244-1111
Small Business Accounts, please call 1-800-603-6000
Global/Business & Government Services Accounts, please call 1-800-777-9594

(c) If you have questions or comments, call or write us at the above number or address.

7.6 This Limited Warranty gives you specific legal rights, and you may also have other rights which vary from state to state.

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