



## COMMERCIAL FIBER SERVICES TERMS AND CONDITIONS

### **ACCEPTANCE OF THIS AGREEMENT**

The Fort Collins Connexion business services (“Services”) and any equipment owned and provided by Fort Collins Connexion (“Equipment”) in connection with the Services will be provided to the customer of record as shown on the bill (collectively “Customer”, “you” or “your”). Customer shall be solely responsible for complying with all the terms and conditions of the Services. The address as shown on the bill shall be the address of record and shall be the location where Fort Collins Connexion provides the Services and Equipment to Customer (“Premises”). The agreement for a Customer’s use of the Services and Equipment shall be according to the terms and conditions contained in this document, incorporating by reference the [Fort Collins Connexion’s Acceptable Use Policy](#) (collectively the “Agreement”). If Customer uses or otherwise accepts any Services or Equipment, you are deemed to accept this Agreement and to be bound by its terms. Customer may not modify the Agreement by making any typed, handwritten, or any other changes for any purpose.

### **ACCEPTABLE USE OF SERVICES**

The Services and Equipment provided to Customer shall only be used by the Customer. Customer shall not: (i) make the Services and/or Equipment available, nor permit the Services and/ or Equipment to be made available or to provide television, Internet, telephone or similar services to one or more third parties; (ii) use Pay-Per-View for commercial gain or public viewing without Fort Collins Connexion’s prior express authorization; (iii) resell or transfer the Services or Equipment to any other person for any purpose, or charge others to use the Services or Equipment; (iv) use the Services in any manner contradictory to Fort Collins Connexion’s Acceptable Use Policy; (v) tamper with, disrupt, or “hack” any Service or Equipment; or (vi) make use of the Services or Equipment in any way inconsistent with their intended purpose. A Customer’s use of the Services is subject to Fort Collins Connexion’s Acceptable Use Policy and [Privacy Notice](#) and you agree to be bound by these policies. Copies of this Agreement, the Acceptable Use Policy and the Privacy Notice are available at [www.fconnexion.com](http://www.fconnexion.com). A Customer who violates any terms contained in this Agreement or in any applicable policy is subject to having Services suspended or terminated. It is Customer’s responsibility to read and understand this Agreement and all applicable policies prior to accepting any Services and Equipment. It is Customer’s sole responsibility for ensuring other users of the Services and Equipment at the Premises understand and comply with this Agreement and all applicable policies.

### **UNAUTHORIZED USE OF THE SERVICES OR TAMPERING**

Customer agrees not to use or assist any other person to use any unauthorized equipment or device to access or tamper with Fort Collins Connexion fiber optic network, the Services, or Equipment for any purpose including, but not limited to, the unauthorized use and reception of the Services. Fort Collins Connexion may terminate the Services and seek damages from Customer if you perform any action described above. The unauthorized use, access or tampering of the Fort Collins Connexion fiber optic network, Services, or Equipment may result in criminal prosecution.

## **INSTALLATION AND GRANT OF ACCESS**

Customer agrees that Fort Collins Connexion, its employees, contractors, and agents may enter the Premises where the Services are provided and/or Equipment is installed at reasonable times for the purposes of installing, adjusting, repairing, replacing, maintaining, upgrading, moving, auditing, or removing any Equipment, as necessary. You represent that you either own the Premises or have the proper rights and permissions from the Premises owner to grant Fort Collins Connexion access to perform the activities specified above. Customer also grants access for the purpose of checking the operation and performance of the Services and Equipment. Customer may always ask for proper identification anytime a Fort Collins Connexion employee, contractor, or agent requests entry to the Premises. If identification is not provided, please do not allow access to the Premises.

## **FORT COLLINS CONNEXION OWNED EQUIPMENT**

All Equipment issued and not sold to Customer by Fort Collins Connexion, including without limitation, devices, software, and hardware, shall remain the property of Fort Collins Connexion at all times and will not be deemed a fixture or in any way a part of the Premises. Customer expressly agrees that you will use the Equipment exclusively for the Services. Customer agrees to be responsible for any loss, theft, or damage to the Equipment. Fort Collins Connexion may replace or remove any Equipment, at Fort Collins Connexion's discretion, at any time the Services are active or following the termination of the Services. Customer understands that if you make any addition to, removal of, or change to the Equipment this may interrupt the Services. Customer may not sell, lease, abandon, or give away any Equipment. The Services and Equipment may only be used at the Premises unless expressly authorized by Fort Collins Connexion. At Customer's request, Fort Collins Connexion may relocate the Equipment for a charge. Customer understands and acknowledges that if you attempt to install or use the Services or Equipment at a location other than the Premises or as otherwise expressly authorized by Fort Collins Connexion, the Services and Equipment may fail to function or may function improperly.

## **CUSTOMER OWNED EQUIPMENT**

Fort Collins Connexion is not responsible for the maintenance, operation, service, repair, or replacement of any equipment owned by Customer that is connected to or used in conjunction with to the Services and Equipment including, without limitation, televisions, computers, tablets, telephones, routers, or any other equipment you own. Customer agrees to allow Fort Collins Connexion and its contractors to send software and application updates to your equipment and to configure your equipment when necessary to provide the Services, even if doing so changes, adds, or removes features or functionality or impacts the performance of such equipment. Fort Collins Connexion makes no representation or warranty that any software or application installed or downloaded on Customer equipment does not contain a virus or other harmful software. It is Customer's sole responsibility to take appropriate precautions to protect your equipment from damage to its software, files, and data as a result of any such virus or other harmful software. Upon Customer's request, Fort Collins Connexion may install or run virus check software on your equipment. Fort Collins Connexion makes no representation or warranty that the virus check software will detect or correct any or all viruses. Customer acknowledges that you may incur additional charges for any service call related to a virus or other harmful feature detected on your equipment. Fort Collins Connexion will not be responsible for any damage to Customer equipment arising from such activities. If Customer is not the owner of the equipment, you are responsible

for obtaining any necessary approval from the owner to allow Fort Collins Connexion to access this equipment and to perform the activities listed above.

## **WIRING**

All inside wiring located in the Premises is owned by the Customer and it is the Customer's responsibility even if Fort Collins Connexion installs the inside wiring. Ownership of the inside wiring begins twelve (12) inches from where the wiring enters the outside of the Premises. Fort Collins Connexion has no responsibility for the operation, maintenance, repair, replacement, or support of any inside wiring. At Customer's request, Fort Collins Connexion may install or repair your inside wiring and will charge you for this service.

## **CREDIT POLICY AND DEPOSIT**

By making a request for Services, you agree that Fort Collins Connexion may review your previous billing history with Fort Collins Connexion, and you authorize Fort Collins Connexion to make credit inquiries and access your credit history from third parties. You further authorize Fort Collins Connexion to disclose this credit information to appropriate third parties for reasonable business purposes according to applicable law. Fort Collins Connexion may require you to pay a deposit acceptable to Fort Collins Connexion for the Services and/or the Equipment prior to activation of the Services or providing you with the Equipment. The deposit will be refunded upon your full termination of Services and return of all Equipment to Fort Collins Connexion.

## **BILLING AND PAYMENTS**

Fort Collins Connexion will bill all charges associated with the Services and Equipment monthly in advance (except for usage based charges, which will be billed monthly in arrears) plus applicable federal, state, and local taxes, and all other regulatory and governmental fees including without limitation, public, educational, and governmental access, universal service, and 911/E911 fees. Service charges and Equipment charges will be billed at Fort Collins Connexion's then-current fee schedule. You may find Fort Collins Connexion's current fee schedule online at [www.fcconnexion.com](http://www.fcconnexion.com) or by calling Fort Collins Connexion's Customer Service Center at (970) 212-2900. Some regulatory and government-imposed fees and taxes may be imposed or become applicable retroactively and you will be responsible for paying any such fees and taxes. If you are exempt from payment of taxes, you must provide Fort Collins Connexion with an original certificate that satisfies all applicable legal requirements for tax exempt status. A tax exemption will only apply from and after the date Fort Collins Connexion receives it. You agree to pay all charges as shown on your bill within ten (10) days from the date of the bill. Your failure to pay the total bill balance when due will result in a late fee in the greater amount of \$10.00 or 3%. The late fee charged is based on the cost associated with the additional maintenance/outreach of a delinquent account. Fort Collins Connexion may, at its sole discretion and in accordance with applicable law suspend or terminate your Services and remove Equipment from your Premises if you fail to pay the total bill balance when due. If your Services are suspended or terminated for failing to pay the total bill balance when due, Fort Collins Connexion may require you to pay a reconnection fee. This reconnection fee is in addition to all past due charges and any other fees. If you pay by credit card but Fort Collins Connexion does not receive payment from your credit card issuer or its agents, you agree to pay this amount upon Fort Collins Connexion's demand. Fort Collins Connexion may charge a reasonable fee for all returned checks and credit and debit card chargebacks and the unpaid amount plus the fee must be paid by cash, cashier's check, or money order. If Fort Collins Connexion retains an agency or attorney to collect any amount owed

by you, you will be obligated to pay all of Fort Collins Connexion costs of collection, including court cost and attorneys' fees. If you dispute any charge on your bill or if you are eligible to receive a bill credit, you must contact Fort Collins Connexion Customer Service at (970) 212-2900 or you waive such dispute or credit. Billing adjustments cannot be made after 6 years from the date of a billing error, per City Code. By using the Services, you are solely responsible for all such charges payable to third parties that you may incur such as calling phone numbers that charge for services, purchasing or subscribing to offers through the Internet, or for television content that is available but separate and apart from the Services charged by Fort Collins Connexion.

### **THIRD PARTY LICENSES**

Services and Equipment may require the use of third-party licenses and may be subject to end-user license agreements. All such licenses and agreements are incorporated herein by reference. You are granted a revocable, nonexclusive license to use the third-party licenses strictly in accordance with this Agreement. You agree to comply with all end-user license agreements that accompany the Services and Equipment or are otherwise applicable to your use of the Services. Upon termination of your Services, all third party licenses and end-user license agreements shall terminate, you agree to return all Equipment to Fort Collins Connexion, and you agree to return or destroy all versions and copies any software received related to third party licenses and end-user license agreements.

### **CUSTOMER SERVICE, TERMINATION OR CHANGES**

**You may call the Fort Collins Connexion Customer Service Center at (970) 212-2900 for customer service inquires or to terminate or change your Services.** Prior to making any changes to your Services, Fort Collins Connexion may verify your identity and confirm your elections. Upon termination, you will be charged for all Services up to the termination date and any unreturned Equipment. Fort Collins Connexion will refund all applicable prepaid monthly charges for Services after the date of termination. You agree that immediately upon termination you will stop using the Services and return all Equipment to Fort Collins Connexion. You agree that when contacting the Customer Service Center Fort Collins Connexion may monitor and record any telephone calls or other voice, data, or communications that are transmitted between Fort Collins Connexion and its agents and you, your agents, or any user of your Services or Equipment.

### **CHANGES TO SERVICE TERMS AND CONDITIONS**

Subject to applicable law, Fort Collins Connexion has the right to change Services, Equipment, rates and charges at any time without notice to you. Fort Collins Connexion may also change, add, or remove features or offerings contained in the Services including, without limitation to changes in programming, functionality, equipment requirements, and any terms and conditions related to the Services. Fort Collins Connexion may provide you notice of changes by posting these notices on Fort Collins Connexion's website at [www.fcconnexion.com](http://www.fcconnexion.com), by mail to your billing address, by email to the email address associated with your account, or by including notice in your bill for the Services. You agree that any one of the foregoing will constitute sufficient and effective notice under this Agreement.

### **E911 NOTICE**

As further set forth more specifically in the [Interconnected VOIP 911 Advisement](#), Fort Collins Connexion must have Customer's correct Premises address for 911 telephone calls to be properly

directed. If Customer moves a telephone or uses interconnected voice over internet protocol (VOIP) services (“Phone Services”) from a different location other than the Premises, a 911 call may not be properly directed. Customer agrees to call the Fort Collins Connexion Customer Service Center at (970) 207-7871 to notify Fort Collins Connexion of an address change prior to changing the location where Phone Services are used. It may take up to five (5) business days for the premises address to be updated in the 911 system. Phone Services require the electric power from your Premises. In the event of a power outage, 911 calling may be interrupted if battery back-up is not installed, fails, or is exhausted. Further, telephone calls may not be completed in the event of problems with network facilities or other technical problems. Fort Collins Connexion may make available a battery backup in order to maintain the ability to make 911 calls during a power outage. **Please call the Fort Collins Connexion Customer Service Center at (970) 212-2900 to check if a battery backup is available for your Premises.**

### **INTELLECTUAL PROPERTY**

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All intellectual property associated with the Services and Equipment including, but not limited to, all content, firmware, software, trademarks, trade names, and service marks are owned by Fort Collins Connexion, its suppliers, or their licensors and nothing in this Agreement or the use of the Services or Equipment shall grant Customer any right, title, license or any other interest in the intellectual property. Upon termination of the Services, Customer agrees to return to Fort Collins Connexion or destroy all intellectual property in the possession of the Customer.

### **TV**

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Customer acknowledges that Fort Collins Connexion has the right at any time to insert specific advertised video programming and to substitute other video programming without notice.

### **PARENTAL CONTROL**

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Parental control features are available for your use with the Services. Parents and legal guardians of minors can use this feature to block or filter video content that may not be appropriate for minors.

### **RIGHT TO AUDIT**

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Customers receiving Bulk Viewing and Public Viewing packages agree that Fort Collins Connexion’s pricing is calculated based upon the number of outlets or fire code capacity. Such Customers agree to notify Fort Collins Connexion in advance of any addition to the number of outlets or to the fire code capacity of Customer’s building. Fort Collins Connexion reserves the right to audit Customer’s premise for changes in the active number of outlets or increase in room capacity. Customer agrees to pay an increased rate for all unreported outlets or increases in fire code capacity retroactive to the date of installation or prior audit, whichever is later.

### **NO WARRANTIES**

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FORT COLLINS CONNEXION MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OR ANY WARRANTY THAT THE SERVICES OR THE EQUIPMENT WILL MEET CUSTOMER’S REQUIREMENTS. THE SERVICES AND THE FORT COLLINS CONNEXION EQUIPMENT ARE PROVIDED TO

CUSTOMER ON AN "AS IS" BASIS. THE SERVICES ARE NOT FAIL-SAFE AND MAY BE DISRUPTED. THE SERVICES ARE NOT DESIGNED OR INTENDED FOR USE IN SITUATIONS IN WHICH AN ERROR OR INTERRUPTION COULD LEAD TO INJURY TO BUSINESS, PERSONS, PROPERTY, OR THE ENVIRONMENT. WITHOUT LIMITING THE FOREGOING, FORT COLLINS CONNEXION DOES NOT WARRANT THAT THE SERVICES AND EQUIPMENT WILL BE WITHOUT FAILURE, DELAY, INTERRUPTION, ERROR, DEGRADATION OF QUALITY AND PERFORMANCE, OR LOSS OF CONTENT, DATA OR INFORMATION. STATEMENTS AND DESCRIPTIONS CONCERNING THE SERVICES OR EQUIPMENT, IF ANY, BY FORT COLLINS CONNEXION OR BY FORT COLLINS CONNEXION'S AUTHORIZED REPRESENTATIVES ARE INFORMATIONAL AND ARE NOT GIVEN AS A WARRANTY OF ANY KIND.

### **LIMITATION OF LIABILITIES**

IN NO EVENT SHALL THE CITY OF FORT COLLINS OR FORT COLLINS CONNEXION, INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUPPLIERS, LICENSORS, BUSINESS PARTNERS, AND SERVICE PROVIDERS BE LIABLE TO CUSTOMER OR TO ANY USER OF THE SERVICES AND EQUIPMENT FOR LOSS OF PROFITS OR FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM OR RELATED TO THE SERVICES AND EQUIPMENT PROVIDED BY FORT COLLINS CONNEXION UNDER THIS AGREEMENT, OR THE DELIVERY OR FAILURE TO DELIVER THE SERVICES AND EQUIPMENT EVEN IF FORT COLLINS CONNEXION HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. WITHOUT LIMITATION OF THE FOREGOING, FORT COLLINS CONNEXION SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS OR PROCEEDINGS RESULTING FROM (i) OTHERS ACCESSING THE SERVICES OR ANY EQUIPMENT RELATED TO THE SERVICES; (ii) SECURITY BREACHES, VIRUSES, EAVESDROPPING, OR INTERCEPTION OR INTERRUPTION OF THE SERVICES; (iii) ANY MISTAKES, OMISSIONS, FAILURES, MALFUNCTIONS, THEFT, DELETION, CORRUPTION OF FILES, ERRORS, DEFECTS, OR FAILURES OF PERFORMANCE RELATED TO THE SERVICES AND EQUIPMENT; AND (iv) ANY USE OF THE SERVICES OR EQUIPMENT THAT INFRINGES UPON ANY PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY, CONTRACTUAL RIGHTS OR ANY INTELLECTUAL PROPERTY RIGHTS OF ONE OR MORE THIRD PARTIES. IT IS EXPRESSLY AGREED THAT FORT COLLINS CONNEXION SHALL HAVE NO LIABILITY FOR ANY DAMAGE TO CUSTOMER OR ANY OTHER PERSON CLAIMED TO HAVE RESULTED FROM THE USE OF THE SERVICES AND/OR EQUIPMENT.

IN THE EVENT THAT FORT COLLINS CONNEXION IS HELD LIABLE FOR DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES, THIS AGREEMENT, OR ITS OBLIGATIONS UNDER THIS AGREEMENT FROM A COURT WITH JURISDICTION; FORT COLLINS CONNEXION'S AGGREGATE LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO FORT COLLINS CONNEXION FOR THE SERVICES FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH LIABILITY.

### **INDEMNITY**



CUSTOMER AGREE TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY OF FORT COLLINS AND FORT COLLINS CONNEXION FROM ALL LIABILITIES, DAMAGES, CLAIMS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COURT COSTS) THAT ARISE FROM (i) CUSTOMER'S USE OR MISUSE AND FROM ALL OTHER PERSONS WHO MAY USE OR MISUSE THE SERVICES AND EQUIPMENT; (ii) ANY VIOLATION OR INFRINGEMENT OF CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY OF ANY THIRD PARTY FROM CUSTOMER'S USE OF THE SERVICES OR USE OF ANY EQUIPMENT IN CONJUNCTION WITH THE SERVICES; (iii) FROM USE OR FAILURE OF THE 911/E911 FUNCTIONALITY OR ANY OTHER DIALING ASSOCIATED WITH A HOME SECURITY, HOME DETENTION, MEDICAL MONITORING OR OTHER SIMILAR SYSTEM; (iv) AND FROM CUSTOMER'S BREACH OF ANY PROVISION OF THIS AGREEMENT OR APPLICABLE POLICY. WHERE CUSTOMER IS OBLIGATED TO INDEMNIFY OR HOLD FORT COLLINS CONNEXION HARMLESS ANYWHERE IN THIS AGREEMENT, THOSE OBLIGATIONS RUN NOT ONLY TO FORT COLLINS CONNEXION, BUT ALSO TO ITS OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS, SUPPLIERS, LICENSORS, BUSINESS PARTNERS, AND SERVICE PROVIDERS.

#### **MISCELLANEOUS**

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This Agreement and any other documents incorporated by reference constitutes the final, complete, and entire written agreement between Fort Collins Connexion and Customer and supersedes all previous communications, representations, agreements, promises, statements, proposals, and specifications, whether written or oral. If any provision of this Agreement is held to be unenforceable, the unenforceable provision shall be replaced with a valid provision in accordance with applicable law and shall have substantially the same commercial effect as the unenforceable provision to reflect the original intentions of the parties, and the remainder of this Agreement shall remain in full force and effect. If Fort Collins Connexion fails to insist upon or enforce strict performance of any provision of this Agreement, it shall not thereby waive any provision or right. Any waiver by Fort Collins Connexion with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Any waiver of this Agreement shall only be valid if provided in writing. Neither the course of conduct between the parties nor trade practice shall modify this Agreement. This Agreement may not be assigned without the express written consent of Fort Collins Connexion. Fort Collins Connexion and Customer hereby certify that they are independent parties and nothing herein shall be construed to create a partnership, joint venture, agency, or any other type of fiduciary or service relationship between Fort Collins Connexion and Customer, and neither party shall have the authority to bind the other party in any respect.

#### **FORCE MAJEURE**

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Without affecting any other limitation on liability or disclaimer contained herein, Fort Collins Connexion shall in no case be liable for any harm caused to Customer or to others or to your successors and assigns if the event or circumstance causing such harm is beyond Fort Collins Connexion's reasonable control, including, but not limited to, acts of God, fire, earthquake, flood, the elements or other catastrophes; strikes, lock-outs, work stoppages or other labor difficulties; utility curtailments, power failures, explosions, insurrections, riots, wars or civil disturbances; any law, order, regulation, or requests of any government or of any civil or military authority; national

emergencies; shortages or failure of equipment or supplies; unavailability of transportation; acts or omissions of third parties; or any other cause beyond Fort Collins Connexion's reasonable control.

### **GOVERNING LAW**

This Agreement and the relationship between Customer and Fort Collins Connexion shall be governed by the laws of the State of Colorado without regard to conflict of laws principles and Customer agrees to the personal jurisdiction of the courts of Larimer County, Colorado and that these courts shall be the exclusive venue for resolution of any dispute that may arise out of the Services or this Agreement.

### **SURVIVAL**

Certain obligations under this Agreement by their terms shall continue beyond termination of the Services including, but not limited to, provisions dealing with payment for the Services and Equipment, access to the Premises, disclaimers of warranties, limitations of liability, and indemnity. The suspension, termination, expiration, or cancellation of the Services under this Agreement shall in no way affect the survival of such obligations.

### **ADDITIONAL REPRESENTATIONS AND WARRANTIES**

In addition to representations and warranties Customer made elsewhere in this Agreement, Customer also represents and warrants that: (i) you are at least 18 years of age; (ii) that you have provided Fort Collins Connexion with information that is accurate, complete, and current, including, without limitation, your legal name, address, telephone number(s), email address(es), the number of devices on which or through the Services are being used, and payment information; (iii) you agree to immediately notify Fort Collins Connexion if there is any change in the information that you have provided to Fort Collins Connexion; (iv) you own or have a legal right to occupy the Premises; and (v) that the Services and Equipment shall not be used for any illegal purpose or in any way that may violate the law.