



TELCO COLLOCATION TERMS AND CONDITIONS

1. License to Occupy and Permissible Use.

- A. ISI Communications, Inc. ("ISI") hereby grants to Customer a license ("License") to install, operate, maintain, and repair a communications system, associated equipment, lines and cables connected thereto, and/or hardware server(s) and its associated cables (collectively, "Equipment") in a portion of the premises owned or leased by ISI ("Premises") and connected to ISI's communications facilities and associated equipment ("Facilities"), as depicted in the applicable Service Order and Telco Collocation Request Form ("Equipment Space"). In the event Customer has an existing agreement for ISI Telco Collocation Services that is in effect at the time the Agreement is executed ("Existing Collo Agreement") and such Existing Collo Agreement is applicable to the Collocation Services provided pursuant to the Agreement, and not subject to these terms and conditions, then the terms of the Existing Collo Agreement shall govern Customer's ISI Collocation Services in the event of a conflict with these terms and conditions.
- B. Each Service Order, which shall include the Telco Collocation Request Form (collectively the "Service Order"), shall only be effective upon its full execution by the Parties.
- C. Customer shall use the Equipment Space and the Equipment installed within the Premises solely to provide communications services to or for the benefit of its customers or other End Users. Customer shall not prohibit or interfere with the use of the Premises or any portion thereof, by ISI or other tenants, customers or occupants of the Premises. Customer shall not sublicense, lease, rent, share, resell or allow the use of the Equipment or Equipment Space, in whole or in part, by any third party, including but not limited to other providers of computer or communications services.
- D. Customer may use the Equipment Space only for purposes of installing, maintaining and operating Equipment necessary to support interconnection to the ISI Network and to alternate providers, subject to the monthly minimums described below. When purchasing a Telco Collocation cabinet, Customer must purchase and maintain a minimum of \$_____ in monthly revenues of ISI Services, per cabinet, at each location where Customer collocates. When purchasing a Telco Collocation cage, Customer must purchase and maintain a minimum of \$_____ in monthly revenues of ISI Services, per rack/cabinet, and an additional \$_____ in ISI Services, per square foot of cage space above 100 square feet of cage space, at each location where Customer collocates. Failure to meet the aforementioned minimum charges shall be considered a Material Breach, and ISI may in its discretion either terminate the Agreement in accordance with Section 18 below, or adjust the License Fees (as defined herein) associated with Customer's use of the Equipment Space.
- E. As long as Customer maintains the aforementioned monthly minimums, and in cases where ISI has determined in its sole discretion that it is unable to provide certain requested Services to Customer, Customer may then cross-



connect to a third party carrier in a neutral location specified by ISI where ISI has created “meet-me” rooms. ISI will install and manage all cross-connections (whether to a third party carrier or to ISI), and will charge Customer accordingly. Cross-connections from one collocating customer to another may only occur in the applicable meet-me room or such other location designated by ISI. These cross-connections will also incur a charge; such additional charge will be determined by ISI depending on the specific circumstances and shall be set forth in the Agreement.

F. Customer will not be permitted to utilize the Equipment Space as a work site. Customer may not operate its business out of the Equipment Space or house personnel in the Equipment Space. For example, and without limitation, mail deliveries to the Customer may not be sent to the Premises. Any mail addressed to the Customer at the Premises will be refused. Customer must be present to receive all Equipment deliveries at each collocation site, must schedule the receipt of any deliveries with the site’s local ISI contact at least twenty-four (24) hours in advance of each delivery, and must ensure that all deliveries occur as scheduled. ISI will not be responsible in any way for the care of any deliveries made. Deliveries of any kind must be moved away from the loading dock or other receiving area at the collocation site within five (5) hours of the delivery. If the delivery has not been moved by a representative of the Customer, ISI may move the delivery to another site, and will not be responsible for the condition of the delivery, including Equipment delivered to the ISI Premises. Equipment may not be stored at any collocation site unless it is housed within Customer’s contracted caged area or cabinet.

G. Customer may obtain ISI Technical Services at ISI Premises in accordance with the Technical Services Terms and Conditions set forth under additional Terms and Conditions, incorporated into and made a part of the Agreement.

2. Condition of Equipment Space and Premises/Shared Space. ISI makes no warranty or representation regarding the Premises, including, without limitation, that the Equipment Space, the Facilities or the Premises are suitable for the License or its intended use thereof. Customer acknowledges that it has inspected the Equipment Space and the Premises, accepts the same “AS IS” and agrees that ISI is under no obligation to perform any work or provide any materials to prepare the Equipment Space or the Premises for Customer. In the event that Customer is obtaining Shared Space (defined as any space that does not reside in an individually, customer-specific locked cabinet or cage) from ISI, Customer further acknowledges that Shared Space is not secured separately or individually and as such, does not provide any security whatsoever from other ISI customers using Shared Space or any other individuals who have access to the Shared Space.

3. License Fee and Payment. The license fee(s) associated with Customer’s use of the Equipment Space are comprised of monthly recurring service fees, non-recurring charges, and other related charges which are in addition to any monthly recurring charges associated with services purchased under the Agreement, as set forth in the applicable Service Order (“License Fee”). License Fees and other applicable recurring and nonrecurring charges for collocation will appear on the invoice one (1) month in



advance, with the first month's charges pro-rated to the number of days in service for the first month. Usage-based or other related charges that vary will be billed in arrears. Customer shall not be entitled to abate payment of the License Fee during the pendency of any delays or failures in performance caused by or resulting from an event beyond the reasonable control of either Party.

4. Term. Unless otherwise separately terminated as provided for herein, Customer's collocation License shall be coterminous with the Agreement. The term of the License to occupy each Equipment Space ("Term") shall begin on the Start of Service Date applicable to the relevant Service Order. ISI will begin billing Customer for the License Fee and other applicable charges on the Start of Service Date. The minimum Term shall be the period set forth in each Service Order, but in any case not less than one (1) year. If the Term of the License as applicable to a particular Equipment Space extends beyond the effective date of termination of the Agreement, such License shall remain in effect for such agreed upon time period set out in the applicable Service Order, subject to all of the terms and conditions of the Agreement including these Telco Collocation Terms and Conditions and the applicable Service Order as if they were still in effect with respect to such Equipment Space. ISI shall not be liable for any damages whatsoever resulting from delays in meeting the Requested Service Date for the Equipment Space specified by Customer and set out in the applicable Service Order, or inability to provide Services to such Equipment Space. Customer may not cancel the Service Order of the Agreement if there is a delay in delivery of the Equipment Space or any related Services unless such delay is solely due to ISI and such delay extends ninety (90) days beyond the Requested Service Date; provided, however, in no event may Customer cancel if ISI has agreed to construct or is constructing facilities in the Equipment Space.

5. Renewal. Unless a Party notifies the other Party in writing not less than thirty (30) days prior to the expiration of the original or renewal term of a License that it intends not to renew such License, the License shall automatically renew for the same service term and at the same pricing, terms and conditions as set forth in the applicable Service Order and the Agreement, including these Telco Collocation Terms and Conditions; provided, however, that any such renewal shall be contingent on the election by ISI to continue to own or lease the Premises in which the Equipment Space is located (as identified in the Service Order) for the duration of the relevant renewal period(s), such election to be exercised at the sole discretion of ISI.

6. Reservation of Rights/Non-exclusivity.

A. Except for the License expressly granted pursuant to Article 1 above, ISI retains, in accordance with the lease or sublease under which ISI occupies the Premises ("Underlying Lease"), all rights and interests in and to the Premises, the ISI Facilities, the Equipment Space, and to any property, products, or equipment therein (other than the Customer Equipment), whether or not embedded in or attached to realty. Customer hereby acknowledges and agrees that the License and permission granted herein: (i) does not constitute a lease, sublease, assignment or easement; and (ii) shall not give Customer, its agents, employees, sublicensees, successors or anyone else any title or other ownership or real property interest in or to the Premises, the ISI Facilities, the Equipment Space or any ISI property whatsoever. Customer may not use the Premises and/or the Equipment Space, or allow access thereto or use thereof, except



pursuant to the terms and conditions of the Agreement including these Telco Collocation Terms and Conditions. Customer acknowledges that this License is expressly made subject to all applicable Underlying Lease(s). Other than as expressly set forth in the Agreement, Customer shall have no additional rights, and ISI shall have no additional obligations, with respect to the Premises, the ISI Facilities, and the Equipment Space.

B. ISI reserves the right to grant, renew or extend similar licenses to others for locating equipment and facilities in the Premises. If the Agreement shall be construed by the landlord or the sub-landlord of the Premises (if applicable) to be a violation of the Underlying Lease, then upon the request of ISI, Customer shall either enter into an agreement approved by such landlord or sub-landlord, or immediately remove Customer's Equipment from the Premises. ISI agrees to use commercially reasonable efforts to cooperate with Customer in obtaining the approvals Customer may need from the landlord or sub-landlord.

7. Access to ISI Premises. Subject to the terms and limitations described herein, including reasonable ISI security measures, and except as specified in the applicable Service Order, ISI shall provide Customer 24 x 7 key card access to the Equipment Space, so that Customer may perform installation, operation, maintenance, replacement and repair functions. Customer shall obtain key cards from ISI during ISI's normal business hours and at such location specified by ISI. Any special arrangements may incur additional charges, including escort charges at the rates set forth below. Customer may also be subject to escort charges if Customer loses a key card and ISI escorts Customer to its Equipment Space. In addition, Customer will be charged for any replacement key cards. All such access and other activities shall be subject to Customer providing ISI with reasonable advance notice, and shall be at Customer's expense. If the applicable Premises requires escorted access, then Customer must be accompanied at all times by an ISI designated representative and the following charges shall apply:

ISI Business Hours (Monday-Friday, 8:00 am to 5:00 pm local time (except ISI holidays): \$95.00 per hour, with a two (2) hour minimum

ISI Non Business Hours (all other times): \$140.00 per hour, with a four (4) hour minimum

ISI may deny Customer access to the Premises or otherwise suspend services during any period when Customer is in breach of the Agreement. Customer waives all claims arising out of any such denial of access.

8. Installation and Other Work.

A. Prior to the commencement of any work at or around the Premises, Customer shall, at its cost and expense, prepare and deliver to ISI working drawings, plans and specifications ("Plans"), detailing the technical characteristics, location and size of the Equipment and/or the Equipment Space, specifically describing the proposed installation and related work, and detailing the schedule for all installation activities related thereto. No work shall commence until ISI, in its sole discretion, has approved the Plans in writing and Customer has received such written approval. The Equipment shall be designed and



constructed so as to prevent electromagnetic and radio frequency signal leakage. ISI shall allow Customer to connect the Equipment to ISI Facilities in accordance with industry-accepted practices and procedures.

B. Customer shall:

- I. Perform such installation and other work in a safe manner consistent with the Equipment manufacturers' specifications, industry standards and practices and other requirements provided by ISI;
 - II. Perform such construction and other work so as to minimize interference with the operation of the Premises and the occupants' activities and businesses;
 - III. Perform heavy construction or installation activities, which would reasonably be considered as disruptive or noisy, before 8:00 a.m. and after 5:00 p.m. local time or as otherwise reasonably requested by ISI;
 - IV. Obtain necessary federal, state and municipal permits, licenses and approvals, prior to the commencement of any installation and other work;
 - V. Conduct its installation or work activities with properly trained, competent, and qualified technicians in accordance with applicable industry standards;
 - VI. Be responsible for safety conditions in the areas of work performance at all times;
 - VII. Keep the installation or work areas safe and orderly at all times; and
 - VIII. Upon completion of installation or other work, leave the Premises clean and free from all of its materials, tools, and equipment not required after installation and from all rubbish and debris which result from such installation activities.
- C. ISI shall have the right to stop Customer's installation or other work activities, without liability to ISI, if ISI determines such activities are interfering with the operation of the Premises or the occupants' activities and quiet enjoyment thereof.

9. Utilities and Interruptions.

A. During the Term of the License, ISI shall use commercially reasonable efforts to furnish to Customer electrical power necessary to meet the reasonable requirements of Customer at the Premises, subject to the charges set out in the Agreement. However, ISI may, upon written notice to Customer, pass through any additional charges, surcharges or taxes imposed by the underlying utility provider and/or modify the utility rates associated with the applicable Premises as a result of increases to ISI from the underlying utility provider. If the power provided by ISI causes interference with the proper operation of Customer's Equipment, Customer will be responsible for providing at Customer's sole expense any filtering or regulation devices within the Equipment Space, to correct the interference.



B. To the extent Customer chooses to install a separate electrical panel and meter for the Equipment, Customer shall pay all costs associated with installation of such separate electrical panel and meter in the Equipment Space. Customer shall pay, and otherwise be responsible for and indemnify ISI against all electrical, HVAC and other utility costs attributable to such separate panel and meter installed for the Equipment and all of Customer's activities in the Premises. Such payment will be made by Customer directly to the applicable utilities and vendors if so billed, or Customer shall pay Customer's pro rata share of such costs to ISI, including a management fee, if ISI is billed by the utilities. Customer acknowledges that such pro rata utility costs paid to ISI may vary by region and are subject to change with thirty (30) days notice to Customer.

C. ISI shall use commercially reasonable efforts to notify Customer in advance of any planned utility or other interruptions or outages which may interfere with Customer's use of the Equipment Space. Further, the Parties shall use reasonable commercial efforts to avoid any unnecessary interruptions and, where required, to work with each other to plan and coordinate necessary service and utility interruptions so as to minimize disruptions to Customer's Equipment and ISI Facilities. However, ISI shall not be liable, including without limitation to Customer or any of its customers or other End Users, for any damages, liabilities or expenses resulting from or caused by such interruptions or outages, whether or not due to ISI negligence or otherwise.

10. Equipment Ownership and Maintenance.

A. The Equipment shall belong to Customer and shall be located in the Premises at the sole risk of Customer, and ISI shall not be liable for damage thereto or theft, misappropriation or loss thereof, except in the event of ISI gross negligence or willful misconduct. All Equipment supplied by Customer shall be conspicuously labeled by the Customer as such.

B. Customer shall at its sole expense maintain and repair its Equipment, including without limitation to avoid hazard or damage to the Premises and ISI Facilities and injury to ISI employees, agents and suppliers or to the public. In case where additional protection facilities are required, the same shall be provided by Customer, at Customer's sole expense. ISI shall have no responsibility for the maintenance and repair of the Equipment.

C. At the expiration or termination of the applicable License Term, Customer will remove the Equipment and Customer's personal property from the relevant Premises in a neat and orderly manner, and repair all damage caused by such removal, at Customer's sole cost and expense. Any property not so removed within sixty (60) days after the expiration or termination of such License Term shall be deemed the property of ISI and Customer shall be liable for all costs incurred by ISI from the removal and storage, if applicable, of the Equipment which Customer failed or refused to remove as well as any costs incurred by ISI for the repair of the Premises or ISI Facilities as a result thereof.

11. Limitations on Use and Relocation.



A. ISI may, without liability, limit the use of the Equipment Space or any portion thereof by Customer hereunder when necessary because of conditions beyond ISI's control. In addition, ISI reserves the right at all times during the License Term to suspend any and all Services and/or Facilities to be provided hereunder, including, without limitation to furnishing of electrical power, and remove, change or otherwise terminate the operation of Customer-supplied Equipment installed in the Equipment Space without notice, if ISI deems, in its sole discretion, that such actions are necessary to protect the public, the Premises, ISI personnel or agents, ISI Facilities or ISI services from damages or injury of any kind. Where possible, ISI will notify Customer promptly of such action and work in cooperation with Customer to affect such remedies so as to permit the Equipment to be returned to operation in an acceptable manner.

B. ISI shall have the right to relocate or require the relocation of the Equipment if such relocation is necessary or desirable, in ISI reasonable judgment, including without limitation due to damage to the Premises. In such event, ISI shall provide Customer with reasonable advance notice of the need to relocate such Equipment, and the Parties shall meet to agree upon the activities required for such relocation. Customer shall be responsible for all costs resulting from such relocation of the Equipment. If Customer and ISI are unable to agree upon the terms of such relocation, Customer may terminate the applicable License, subject to Customer's performing its obligations resulting from termination and paying all sums due prior to actual termination.

12. Environmental Responsibility.

A. ISI and Customer agree to comply with applicable federal, state and local environmental, health and safety laws and regulations, including U.S. Environmental Protection Agency regulations issued under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, Superfund Amendments and Reauthorization Act and the Toxic Substances Control Act and OSHA regulations issued under the Occupational Safety and Health Act of 1970 and all similar or related state laws. Each Party has the responsibility to notify the other if compliance inspections occur and/or citations are issued that impact any aspect of the Agreement or involve any exposure to hazardous materials at an ISI Premises.

B. To the extent required by federal, state or local laws, ISI and Customer are each responsible for preparing and distributing or posting any and all notices of known, recognized or suspected physical hazards or chemical hazards, including but not limited to providing and posting Material Safety Data Sheets (MSDSs) for materials present on the Premises or brought on site to the Premises.

C. Customer owns any materials brought to or used at the Premises by Customer or remaining at the Premises as a result of Customer's activities. Customer shall indemnify ISI for any claims or liabilities arising from the effects of these materials or the presence of the materials themselves. Customer shall not



take any action that creates substantial new safety or environmental hazards nor shall Customer use or store hazardous materials other than those already present as a result of ISI's activities at the Premises. Customer shall have plans in place to address any release or exposure resulting from the presence of hazardous materials present at the Premises and if requested by ISI, Customer shall demonstrate to ISI that its plans are adequate and will result in the appropriate level of emergency response for materials present at the Premises.

D. Customer shall, at its sole cost and expense, obtain, maintain and comply with environmental permits, approvals, or identification numbers, to the extent such permits, approvals, or identification numbers are required under applicable federal, state or local laws. If the relevant regulatory authority refuses to issue a separate permit, approval, or identification number to Customer, Customer may seek permission from ISI to apply for coverage under or to use an existing ISI permit, approval, or identification number, but only if allowed by applicable federal, state or local laws. If ISI approves Customer's use of ISI's permit, approval or identification number, Customer shall, at its sole cost and expense, take all necessary steps to obtain the regulatory approvals required for Customer's use of ISI's permit, approval or identification number. Customer shall comply with all of ISI's environmental practices/procedures relating to the activity in question, including use of environmental "best management practices" (BMP) and/or selection of disposition vendors and disposal sites in accordance with ISI selection criteria. Notwithstanding Customer's compliance with this provision, Customer shall indemnify, defend and hold ISI harmless for any claims or liabilities arising out of Customer's use of ISI's permit, approval or identification number. Customer shall also provide ISI with copies of all documents, reports, data or other information associated in any way with Customer's use of ISI's permit, approval or identification number and shall cooperate with ISI if ISI is required to complete any reports or respond to other inquiries associated with Customer's use of ISI's permit, approval or identification number.

E. Customer shall be solely responsible for compliance with all ISI security, fire, safety, environmental and building practices/codes by its visitors, employees and contractors. Customer shall provide any necessary training to its visitors, employees and contractors who work in ISI Premises.

F. Customer shall, at its sole cost and expense, prepare and/or submit emergency response plans and community right-to-know reporting required by law for Customer's facilities at the Premises. Customer shall provide ISI with a copy of all such plans and reports. If ISI is required to prepare and/or submit emergency response plans and community right-to-know reporting, Customer shall provide ISI with information in Customer's possession necessary to complete such plans or reports and shall cooperate with ISI in the implementation of any such plans. Customer shall be solely responsible for payment of any fees associated with its plans or reports. If ISI is required to pay fees for plans or reports associated with the Premises as a whole, Customer and ISI shall develop a cost sharing procedure and Customer shall reimburse ISI for its share of such costs.



G. In addition to and without limiting Article 14 below, with respect to environmental responsibility under this Article 12, ISI and Customer shall indemnify, defend, and hold each other harmless from and against any claims (including without limitation, third party claims for personal injury or real or personal property damages), judgments, damages (including direct, indirect and punitive damages), penalties, fines, forfeitures, cost, liabilities, interest and losses that are either (i) proximately caused by the indemnifying Party's gross negligence or willful misconduct regardless of form, or (ii) in connection with the violation or alleged violation of any applicable requirement with respect to the presence or alleged presence of contamination arising out of the indemnifying Party's acts or omissions concerning its operations and/or activities at the Premises.

H. Any activities impacting safety, health or the environment must also be harmonized with (i) the Underlying Lease and any other agreement, and (ii) the relationship between, ISI and the private landowner or landlord, if any. Customer's activities may therefore be limited, including but not limited to limitations on Equipment access.

13. Customer's Covenants and Warranties. Customer hereby covenants and warrants:

- A. To keep the Equipment Space and the Equipment in good order, repair and condition throughout the License Term, to provide ISI with full and free access to the Equipment at all times, and to promptly and completely repair all damage to the Premises caused by Customer;
- B. To comply with federal, state and municipal laws, orders, rules and regulations applicable to its activities and the Equipment;
- C. Not to disrupt, adversely affect or interfere with ISI or other providers of services in the Premises or with any occupant's use and enjoyment of its equipment, its leased/occupied premises or the common areas of the Premises;
- D. To pay its monthly License Fee(s) when due and to provide written notice to ISI if such License Fee payment is disputed;
- E. To comply with the limitations on permissible Equipment and use of the Premises as set forth in Article 1 of these Telco Collocation Terms and Conditions;
- F. That it has obtained or will obtain, at Customer's sole cost and expense and prior to the installation of any of Customer's Equipment, from all applicable public and/or private authorities, all leases, licenses, authorizations, permits, rights of way, building access agreements and easements necessary to operate, maintain and repair Customer's Equipment within the Premises. Customer further represents and warrants that it will maintain all such authorizations throughout the License Term(s).



14. Indemnification. In addition to and without limiting any other provision of the Agreement, Customer shall defend, indemnify, and hold ISI, its principals, officers, directors, agents, and employees harmless from and against any loss, cost, damage, liability, claims and expenses of any kind arising directly or indirectly from the installation, operation, maintenance and repair of Customer's Equipment, or from Customer's or any of Customer's subcontractors' or agents' acts or omissions including, but not limited to, reasonable attorneys' fees and court costs, except to the extent such loss, damage, cost or expense is due to the gross negligence or willful misconduct of ISI or its employees or agents. The provisions of this Article 14 shall survive termination of the Agreement and/or any related License(s).

15. Insurance.

A. Notwithstanding any other provision of the Agreement, Customer will maintain throughout the License Term(s) the following insurance coverage with a licensed insurance company rated A- or better by A.M. Best: (a) Worker's Compensation Insurance to comply with the state laws in which the Equipment Space is located; (b) Commercial General Liability in an amount not less than \$5,000,000 per occurrence /\$5,000,000 general aggregate; (c) Risk Property Insurance in an amount equal to the replacement cost of all Equipment used by the Customer; and (d) Automobile Liability, including Non-Owned and Hired Auto Liability, in an amount not less than \$1,000,000.00 Combined Single Limit. "ISI Communications, Inc." and the building owner/landlord shall be added as an Additional Insured on Customer's policies and such policies shall waive all rights of subrogation. All insurance carried by Customer shall be primary and noncontributory with any insurance carried by ISI or the building owner/landlord. Customer shall provide certificates of insurance prior to entering the Premises. Customer shall ensure all agents/contractors entering the Premises will maintain the levels of insurance stated above. Additional insurance requirements may be imposed on Customer at the discretion of the building owner/landlord.

B. Insurance described above shall be maintained by Customer throughout the License Term(s) and any period during which any claims arising from the Agreement are or may be outstanding. Upon Customer's default in obtaining or delivering any such policy or certificate of insurance or Customer's failure to pay the premiums therefore, ISI may (but shall not be obligated to) secure or pay the premium for any such policy and charge Customer the cost of such premium, which Customer agrees to pay, or ISI may terminate the Agreement, in whole or in part, without liability to Customer.

16. Liens. Customer shall not permit any mechanic's, material men's or other liens to be filed against all or any part of the Premises, Equipment Space or Facilities, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Customer. Customer shall, at ISI request, provide ISI with enforceable, conditional and final lien releases (or other reasonable evidence demonstrating protection from liens) from its contractors or other parties performing such work. ISI shall have the right at all reasonable times to post on the Premises and record any notices of non-responsibility which it deems necessary for protection from such liens. If any such liens are filed, Customer shall, at its sole cost, within thirty (30) days after filing thereof, cause such lien to be released of record or bonded so that it no



longer affects title to the Premises, Equipment Space or Facilities. If Customer fails to cause such lien to be so released or bonded within such thirty (30) day period, ISI may, without waiving its rights and remedies based on such breach, and without releasing Customer from any of its obligations, cause such lien to be released or bonded. Customer shall reimburse ISI, within ten (10) business days after receipt of invoice from ISI, any sum paid by ISI to obtain such bond or release.

17. Subcontractors. Customer may subcontract any portion of work within the Premises contemplated by the Agreement to any entity competent to perform such work. However, Customer must obtain ISI written approval before utilizing any subcontractor to perform any activities within the Premises under the Agreement and provide evidence that such subcontractor maintains the same or additional insurance coverage as required of Customer under the Agreement. In no event shall such subcontract relieve Customer of any of its obligations or liabilities under the Agreement.

18. Termination.

A. Termination for Breach. As provided in the Agreement and subject to the general notice and cure periods set forth in the main body of the Agreement as may be modified or further detailed below, ISI may terminate the Agreement, and/or related License(s), in whole or in part, if Customer fails to comply with a material provision hereunder and Customer shall be subject to liability for early termination as set forth in Paragraph E below.

B. Events of Material Breach. Events constituting failure to comply with a material provision of the Agreement, and the cure periods applicable in such events, include, but are not limited to:

- I. Interference or damage caused to ISI Facilities or other equipment or facilities at the Premises by the installation, operation, maintenance, replacement or repair of the Equipment, which breach must be cured within twenty-four (24) hours.
- II. Failure by Customer to pay the License Fee or any charges under the Agreement or other ISI service agreement, and interest as and when due, which breach must be cured as provided in the Agreement.
- III. If Customer abandons or deserts the Equipment during the applicable License Term or Customer removes from the Premises (and does not replace or substitute equipment for) all of the Equipment for which breach there is no cure period.
- IV. Customer's failure to complete all installation activities within one (1) month of the Start of Service Date, for which breach there is no cure period.
- V. Failure to observe the use provisions and limitations on permissible Equipment as set forth in the Agreement, including



Article 1 above, which breach must be cured immediately upon notice.

- VI. Cancellation/abandonment of a site pursuant to a Service Order either prior to or after Customer has taken possession of the Equipment Space and/or ISI has begun the build-out of the requested space, for which breach there is no cure period.
- VII. Failure by Customer to meet the minimum monthly charges of ISI Services as required under Section 1D herein.

C. Upon Termination. Immediately upon termination of the applicable License(s), for any reason, Customer shall remove all of its Equipment from the Premises without demand or notice from ISI, but subject however to Customer's complying with Section 7 hereof. Customer shall indemnify ISI against, and hold ISI harmless from, all of ISI's losses, damages, costs and expenses (including attorneys' fees) incurred in connection with Customer Equipment remaining in the Premises after the effective termination date, including without limitation, claims and costs arising out of the presence of such Equipment in the Premises and ISI's storage, removal, and disposal of such Equipment. Customer acknowledges that leaving Equipment in the Premises after the effective termination date will cause ISI to bear additional costs and interfere with ISI's business planning, and that sixty (60) days from such termination date is a reasonable timeframe for Customer to remove its Equipment. Therefore, ISI may treat any Customer Equipment remaining in the Premises sixty (60) days or more after the effective termination date as abandoned, and Customer waives all claims for or in connection with such Equipment. ISI may dispose of such Equipment in any manner in ISI's sole discretion without any liability or obligation to Customer in connection with such Equipment or any data stored thereon. Neither this Section 18(C) nor any action by ISI hereunder shall affect Customer's other obligations or ISI's rights and remedies.

D. Communication Facilities. Notwithstanding anything contained herein to the contrary, in the event ISI is required to construct and/or acquire special facilities or equipment in connection with providing the Equipment Space to Customer, Customer acknowledges and agrees that ISI may therefore incur significant costs and expenses in preparing such Equipment Space to Customer. In addition to any other rights and remedies ISI may have at law, in equity or as provided herein, Customer agrees that if Customer cancels the Agreement or any individual License after execution of the Service Order, but prior to the Start of Service Date, Customer shall reimburse ISI for all costs and expenses ISI incurred in constructing and/or acquiring such special facilities or equipment.

E. Early Termination Charge/Breach.

- I. Prior to Start of Service. In addition to any other rights and remedies ISI may have at law or in equity, including those set forth in subs 18.C above, Customer agrees that if Customer cancels, terminates or breaches any applicable License after execution of the Service Order, but prior to the Start of Service Date, Customer



shall pay ISI an early termination charge in an amount equal to two (2) months of the License Fee set forth on the applicable Service Order.

- II. On or After Start of Service. Except as otherwise required by law, if, after the Start of Service Date, Customer: (a) commits and fails to cure (to the extent cure is permitted herein) a material breach of the Agreement, including any License or Service Order; or (b) Customer cancels or terminates the Agreement or any License at any time before completion of the Term or any renewal Term, then ISI may elect to pursue one or more of the following courses of action at its sole discretion: (i) terminate the Agreement and/or any License, whereupon all License Fees, including all non-recurring charges, for the remaining Term are immediately due and payable, and terminate any related ISI services, whereupon all early termination charges applicable to such services are also due; (ii) take immediate appropriate action to enforce payment, including suspension or discontinuance of the use of or access to the Premises, Equipment Space or Facilities or any part thereof, including discontinuing all services to such Equipment Space or Customer Equipment; and/or (iii) pursue any other remedies as may be available at law or in equity. Any termination of the Agreement, any License or any related Services by ISI shall not be construed as an exclusive remedy and shall not preclude or waive ISI's right to pursue any other available remedies. It is agreed that ISI damages in the event of cancellation or termination shall be difficult or impossible to ascertain. The provisions of this Article 18 are intended, therefore, to establish liquidated damages in the event of such event and are not intended as a penalty.

19. Damages Limitation and Disclaimer.

IN NO EVENT SHALL ISI BE LIABLE TO CUSTOMER OR TO CUSTOMER'S END USERS OR OTHER THIRD PARTIES FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LOST GOODWILL, OR LOST BUSINESS, ARISING UNDER OR AS A RESULT OF THE AGREEMENT, EVEN IF ISI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR EVEN IF DUE TO ISI'S OWN NEGLIGENCE. FURTHERMORE, IN NO EVENT WILL ISI BE LIABLE TO CUSTOMER FOR ANY DAMAGES, DIRECT OR INDIRECT, ARISING OUT OF CUSTOMER'S USE OF THE PREMISES OR THE SERVICES PROVIDED HEREUNDER, UNLESS SUCH DAMAGES ARE THE DIRECT RESULT OF ISI'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN ANY EVENT, ISI'S LIABILITY UNDER THE AGREEMENT WITH RESPECT TO ANY CLAIM ASSOCIATED WITH OR ARISING OUT OF THE AGREEMENT SHALL NOT EXCEED THE TOTAL LICENSE FEES PAID TO ISI UNDER THE AGREEMENT WITH RESPECT TO THE APPLICABLE SERVICE ORDER IN THE PRIOR THREE (3) MONTHS OF SUCH SERVICE ORDER.



20. Assignment. In addition to and without limiting any other provision of the Agreement, Customer shall not assign, transfer or otherwise encumber any interest it has hereunder or may have in the Equipment Space or the Agreement and/or any related License or delegate its duties hereunder without the prior, written consent of ISI, which consent will not be unreasonably withheld. The Agreement shall inure to the benefit of and be binding on all successors and permitted assigns. Any assignment in contravention of these provisions shall be null and void.

21. Nonwaiver. Any failure by ISI to enforce the Customer's strict performance of any provision of the Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of the Agreement.

The undersigned acknowledges receipt, understands and accepts the above terms and conditions. Along with the ISI Telco Collocation Request Form, this document attaches and is made part of the Agreement for Services between the parties below.

Customer

ISI Communications, Inc.

Signature

Signature

Name

Name

Title

Title

Date

Date

REV: 11/27/06