



CO-LOCATION POLICY

Terms of Service

This agreement (“Agreement”) between ISI Communications, Inc., (“ISI”) and Customer (“itself, its parent company, subsidiaries and affiliates”) governs the provision of ISI’s co-location and related services (the “Services”). This Agreement is effective immediately, upon the Customer (a) signs up for Services through the ISI’S website or (b) establishes an account with ISI or uses the Services or any part thereof (“Effective Date”). ISI may revise this Agreement from time to time by posting a new version on the ISI website. Such revised terms will become effective thirty (30) days after the posted or revised date. Continued use of the Services after such date constitutes acceptance of the revisions to this Agreement.

1. The Services

This Agreement and the Services provide Customer with a license to occupy space (cabinet, rack, or cage) as ISI designates (the “Space”), and to interface with such cables, computers, or other equipment as ISI designates, at ISI’s facility (“Facility”). This Agreement conveys only a license to occupy the Space and only during the term set forth in Customer’s signup. Customer has no other rights to the Space or the Facility or to any cabinet, rack, cage, or other space therein, including without limitation any leasehold right or other real estate interest.

2. Service Interruptions

Interruption of Services may include denial of access, remote hands and tech support, internet connectivity, and/or power. Customers whose Services are interrupted for non-payment will pay [in addition to paying all past due amounts] a \$25.00 re-connect charge before Services are restored. If Customer fails to pay amounts invoiced by ISI within thirty (30) days of the invoice date, all such unpaid amounts shall accrue interest from the invoice date at the lesser of one and one half percent (1½%) per month or the maximum rate allowed by law. Fees or charges for any fractional portion of a month shall be computed as one thirtieth (1/30) of the basic monthly payment multiplied by the appropriate number of days.

3. Acceptable Use

(a) Customer asserts that it has read ISI’s Acceptable Use Policy (“AUP”) posted at <http://isicomunications.com>. Customer will adhere to the AUP and will not allow the Services or ISI equipment to be used for activities prohibited by such policies. ISI may revise the AUP from time to time by posting a new version thereof on the ISI website, and Customer is responsible for awareness of such revisions.

(b) Customer is responsible for preventing AUP violations and other violations of the terms of this Section 3 and this Agreement by hackers and other third parties. Third party violations of the provisions of this Section 3 will be considered violations by Customer. ISI is not responsible for protecting Customer from hackers or from other third parties.



(c) ISI may monitor the Service and disclose information regarding use of the Services for any reason, including to satisfy laws, regulations, or governmental, legal, or law-enforcement requests, to operate the Service properly; or to protect itself and its customers. ISI may grant law enforcement agencies access to its equipment or Customer's equipment to monitor Customer's use of the Service.

(d) Notwithstanding any provision to the contrary elsewhere in this Agreement, ISI may immediately and without notice terminate this Agreement, or suspend Service, in whole or in part, in the event of a violation or suspected violation of ISI's AUP.

(e) All software, hardware and Internet protocol ("IP") addresses provided by ISI are licensed to Customer and remain ISI's sole and exclusive property.

4. Maintenance, Security, & Service Interruption

(a) ISI may interrupt Service to perform maintenance on ISI equipment. ISI will exercise reasonable efforts (i) to inform Customer before interrupting Service and (ii) to restore the system promptly.

(b) Customer is responsible for maintaining security, for maintaining patches and disaster recovery systems, and for maintaining backups. ISI will not be liable for loss of data or for breaches in system integrity, even if Customer's Service includes firewalls, backups, denial of service protections, or other mechanisms to protect data and system integrity. In the event that ISI suspects that security of any of equipment has been breached, it may disable such equipment and the Service.

(c) In the event that Customer's use of Service causes a denial of service or in any other way injures the functioning of services ISI provides to other customers, ISI may interrupt Service or permanently disable it, even if such denial of service or injury occurred through no fault of Customer's.

(d) ISI will not be liable for service interruptions, including without limitation interruptions executed in order to investigate suspected AUP violations, whether or not such violations occurred.

5. Use of and Access to Space, Facility and Equipment

(a) Customer will place in the Space only such equipment as is approved by ISI. ISI may, in its reasonable discretion, restrict the time for any installation, removal, maintenance, or modification of Customer equipment and Customer will honor such restrictions. Customer will label all of its equipment with its name and contact information. Customer equipment will at all times be configured and run in compliance with its manufacturer specifications, including regarding power outlet, power consumption, and clearance requirements.

(b) Customer will not alter the Space or any cabinet, rack, cage, equipment, or fixture in the Facility, including without limitation ISI cabling and power supply, without prior written permission from ISI. Customer will not access or tamper with any equipment in



the Facility other than its own. Customer will keep its own Space clean and clear of debris.

(c) Customer will provide ISI with a list of all its principals, employees, agents, contractors, and other personnel (“Representatives”) authorized to enter the Facility, and ISI will have no obligation to grant admittance to anyone not so designated. ISI may refuse access to the Facility to any Representative who violates Facility rules or, in ISI’s opinion, behaves inappropriately or who creates a hazard of any kind. Customer will not provide Facility keys or access codes to any Representative not designated to ISI in advance or to any Representative refused by ISI. Representatives may be required to provide legally authorized photo identification to security personnel at front desk before entering the Facility.

(d) Customer warrants that itself and Representatives will operate Customer’s equipment and conduct any other operations in the Facility in a safe and workmanlike manner, in accordance with industry standards for such activities. Customer and its Representatives will remain in the Facility only so long as necessary to attend to Customer’s equipment.

(e) Customer will notify ISI immediately of any emergency or other situation threatening injury to persons or property, including data. Customer recognizes that, in the event of an emergency, ISI’s work will take precedence over any Customer operations. Without limiting the generality of the foregoing, in the event of emergency, ISI may remove or rearrange Customer equipment. Customer will cooperate fully with ISI during any emergency and will promptly assist ISI as requested.

(f) Customer accepts the Space and the Facility “as is.” Customer recognizes ISI’s right to operate and maintain the leased facility in such manner as it sees fit. Customer will honor all ISI rules and regulations for use of the Facility and Space.

6. Disclaimers and Warranties

(a) ISI will not be liable for any consequential, incidental, exemplary, punitive, or multiple damages, even if ISI was advised in advance of the possibility of such damages. ISI’s maximum liability arising out of or related to this agreement will not exceed the total amount of fees billed to customer during the twelve-(12) months preceding the claim.

(b) ISI will have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings resulting from: (i) other ISI customers or third parties accessing customer’s data or assigned computers; (ii) security breaches; (iii) eavesdropping; (iv) denial of service attacks; (v) interception of traffic sent or received using the equipment or Service; (vi) customer’s reliance on or use of the equipment or Service; (vii) mistakes, omissions, interruptions, deletions of files, errors, defects, delays in operation, or other failures of performance of the equipment or Service; (viii) the accuracy, completeness, and usefulness of the Service; (ix) loss of data or loss of access to data; or (x) loss of equipment or injury to equipment.



(c) ISI shall not insure or be responsible for any loss or damage to property of any kind owned or leased by Customer except to the extent such liability results from ISI gross negligence or willful misconduct. Any policy of insurance covering the property owned or leased by Customer against loss by physical damage shall provide that the underwriters have given their permission to waive their rights of subrogation against ISI, its affiliates and their directors, officers, partners, and employees, as well as their subsidiaries, and their respective directors, officers, partners, and employees.

(d) ISI's limitations and exclusions of liability set forth in this section 6 and in this agreement apply equally to ISI's officers, employees, agents, contractors, representatives, suppliers, subsidiaries, parents, and affiliated companies.

7. Indemnity & Third Party Claims

(a) Customer will defend and indemnify ISI, its officers, employees, agents, contractors, representatives, suppliers, subsidiaries, parents, and affiliated companies from any third party claim arising out of or related to: (i) alleged Customer conduct that would breach this Agreement, including without limitation alleged infringement of third party intellectual property or privacy rights; (ii) Customer's use, misuse, or failure to use the Service; and (iii) any action taken by ISI as part of an investigation into a suspected violation of this Agreement or as a result of its conclusion that a violation has occurred. Such Customer obligation includes payment of losses, expenses, damages, and costs, including without limitation attorneys' fees.

(b) Upon ISI's request, Customer will immediately notify any third party that ISI is not responsible for (i) any content or materials posted on any Customer website or otherwise disseminated through Customer's use of the Service or (ii) any use or abuse of the Service whatsoever by Customer or any third party.

8. Term and Termination/Removal of Equipment/Forfeiture and Confiscation

(a) This Agreement will continue from the Effective Date through that period affirmed at sign-up subject to the following terms and conditions:

(b) Month-to-month Service, when authorized, renews monthly (upon ISI's receipt of advance payment) and may be terminated by Customer upon thirty (30) days' notice.

(c) Services that are prepaid for a predetermined period [typically six (6) months or one (1) year] renew for successive periods equal to the predetermined period (upon ISI's receipt of advanced payment) and may be terminated by Customer upon Sixty (60) days' notice.

(d) Customer's notice of termination must be submitted via ISI's website.

(e) Customer will be allowed to remove equipment from the Facility if and only if Customer has paid all amounts due under this Agreement. Customer hereby grants ISI a security interest in any and all equipment, computer programs, and other property (collectively, the "Property") Customer places in the Space or elsewhere in the Facility,



to secure Customer's payment and performance of its obligations under this Agreement. Customer recognizes that such security interest is perfected by ISI's possession of the Property.

(f) Within ten (10) days following the termination (or the effective date of expiration) of this Agreement, Customer will remove all of its equipment from the Facility and any other Customer property in the Facility and return the Space to ISI in the same condition as it was prior to Customer's installation of its equipment. Should Customer or any permitted assignee, sub lessee or licensee of Customer fail to vacate the Space or any part thereof within such ten (10) day period after the expiration or sooner termination of this Agreement (or cannot remove such property because of payments due to ISI), such failure to vacate, unless otherwise agreed to by ISI in writing, shall automatically increase the fees payable under this Agreement to 150% of the amount payable immediately prior to such breach. Customer shall also be liable to ISI for all damages that ISI suffers because of any holding over by Customer and Customer shall indemnify ISI from and against all claims made by any other customer or prospective customer against ISI resulting from delay by ISI in delivering possession of the Space.

(g) Notwithstanding anything herein to the contrary, ISI may move any and all such property to storage. If Customer does not pay all amounts due to ISI and remove such property from the Facility or storage within Sixty (60) days of ISI's request, ISI may liquidate the property in any reasonable manner. Customer will defend and indemnify ISI (including its officers, employees, agents, contractors, representatives, suppliers, subsidiaries, parents, and affiliated companies) from any third party claim arising out of or related to storage, disposal, sale, donation, or destruction of, or damage to, the equipment or any data stored therein or connected therewith, or any other ISI action taken in furtherance of its rights pursuant to this Section 10. Such Customer obligation includes payment of losses, expenses, damages, and costs, including without limitation attorneys' fees.

9. Account Charges

(a). Current account charges, including billing methods, rates, and surcharges associated with Services rendered, may be obtained by contacting ISI's billing department via email at billing@isicommunications.com.

(b) All charges are considered valid unless disputed in writing within days (30) days of the billing date. Adjustments will not be made for charges that are more than sixty (60) days old. ISI shall not responsible for any additional charges or expenses (e.g., for overdrawn accounts, exceeding credit card or debit card limits, etc.) resulting from charges billed by ISI.

(c) Customer is responsible for all activities and charges associated with their account or contracted Service. If any unauthorized charges are made on or through Customer's account; Customer is responsible for such charges until notifying ISI of a security breach by contacting ISI Billing. Please be advised that the contact person or listed owner of an account is solely responsible for activities conducted through, on or with their account,



including activities by other persons (including minors) whether or not authorized by such contact person or listed owner. If Customer or Authorized Representative to whom Customer has given access to the primary account(s); violates the terms of this Agreement, ISI, shall reserve the authority to terminate all contracts.

(d) Should Customer pay by credit card; Customer expressly authorizes ISI to charge the credit card account number associated with Customer's account for any Service charges that accrue from month to month. This authorization will remain valid until Customer terminates this authorization in writing. ISI may immediately terminate your account, at ISI's sole discretion, for declined credit cards, debit cards or any other non-payment of account charges.

(e) All recurring charges shall be due and payable in advance, without offset, deduction or prior demand on or before the first (1st) day of the month for Service provided during that month, or for the predetermined period, whichever may apply. Invoices or notices of invoices for recurring charges are issued as a courtesy.

(f) Non-recurring charges including remote hands and tech support, excess bandwidth usage and overages or purchases of equipment or supplies, will be due and payable upon Customer's receipt of invoice or notice of invoice. Customer is responsible for monitoring transfer, bandwidth and power utilization, and other services provided under this Agreement, and maintaining awareness of the applicable charges due.

(g) Credit card payments for recurring charges will be processed on the first business day of the month; payments for non-recurring charges will be processed within ten (10) days of issuance of invoice or notice of invoice. Customers paying by credit card are responsible for maintaining a valid credit card on file with ISI. ISI may immediately interrupt Service In the event a charge is denied.

(h) Payments by check, wire transfer or any other payment method must be received on or before the due date or ISI may immediately interrupt Service. A returned check will constitute a material breach of this Agreement, and Customer will incur a \$35.00 returned check fee due to insufficient funds, in addition to any other remedies available to ISI.

10. Abandonment of Account Balance

Failure to pay charges invoiced may result in discontinuance of service, the physical removal of all equipment under contract and/or the imposition of a late payment or service charge. In the event collection activities are required, an additional collection charge may be imposed. All abandoned accounts which are more than Sixty (60) days past due are subject to item 8, "Term and Termination / Removal of Equipment / Forfeiture and Confiscation".

11. General Provisions

(a) Customer shall not, and has no power, authority or right, to create, and shall not permit, any lien or encumbrance, including, without limitation, tax liens and mechanics' liens, on the Equipment, Space or Facility. In no event shall ISI subordinate or be



required to subordinate its interest in the Facility to any person.

(b) This Agreement constitutes the entire Agreement between ISI and Customer pertaining to the subject matter and geographic locations set forth in this Agreement, and supersedes any prior Agreements, whether written or oral.

(c) ISI and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between ISI and Customer. Neither ISI nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided in this Agreement.

(d) ISI and Customer warrant that their respective undertakings will be performed in a professional and workmanlike manner in accordance with this Agreement.

ISI MAKES NO OTHER WARRANTY UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(e) This Agreement shall be governed by and construed under the substantive laws of the State of Illinois. Jurisdiction and venue for purposes of any litigation in connection herewith shall be in Cook County, Chicago, Illinois. In the event of litigation hereunder, the prevailing party shall be entitled to an award of reasonable attorney's fees and court costs at all trial and appellate court levels.

(f) All written communications to Customer will be deemed delivered if sent to the contact information provided to ISI at the time of signup, unless Customer provides some alternate contact information in writing. All written communications to ISI and all charges will be mailed to 5235 Central Avenue, Western Springs, IL 60558, unless ISI posts alternate contact information at its website.

12. Non Competition

Customer agrees on behalf of itself, its parent company, subsidiaries and affiliates that during the term of this Agreement, the Customer shall not, directly or indirectly, perform, market or otherwise provide or enter into an agreement to provide co-location services, in whole or in part, for or on behalf of itself as a business entity or in whole or in part, for or on behalf of ISI without expressed written consent from ISI. Customer may not perform or agree to perform any service, substantially similar service or provide any materials or information, directly or indirectly, nor assign or utilize any individual assigned to perform like services for profitable use.

ISI and the Customer acknowledge and agree that in the event of a breach or threatened breach of any of the provisions of Section 12, Customer will have no adequate remedy in damages and, accordingly, ISI shall be entitled to seek injunctive relief; provided, however, no specification of a particular legal or equitable remedy shall be construed as a waiver, prohibition or limitation of any legal or equitable remedies in the event of a breach hereof.



13. Marketing

During the term of this Agreement, Customer hereby grants to ISI a nonexclusive, nontransferable, non-sub licensable license to use its name; all service marks, trademarks and logos owned by it from time to time; and any other marks designated by Customer to ISI during the Contract Agreement Term (Customer's name and such marks and logos being referred to herein as the "Marks").

14. Force Majeure

Except for the obligation to pay money, any delay in or failure of performance by ISI will not be considered a breach of this Terms of Service Agreement if and to the extent caused by events beyond its reasonable control, including, but not limited to, acts of God, embargoes, governmental restrictions, strikes, lockouts, work stoppages or other labor difficulties, riots, insurrection, wars, or other military action, acts of terrorism, civil disorders, rebellion, fires, floods, vandalism, or sabotage. ISI's obligations hereunder will be suspended to the extent caused by the Force Majeure so long as the Force Majeure continues.