

SCHEDULE D

COLOCATION SERVICE

1. “Colocation Service” means the cumulative Services ordered by the Customer in the associated Service Orders (physical rack space, power etc). All Colocation Services are pending Company’s engineering approval based upon the information provided to Company by Customer in the Colocation Service Inquiry Form. Any approved facilities shall be designated on a Colocation Order Form.
2. Limited License.
 - 2.1. Company hereby grants Customer a limited, personal and terminable license to occupy certain designated space (each such designated space, a “Space”) within a designated Company premise (each a “Facility”) in which the Colocation Services will be provided. Separate Colocation Order Forms may be attached hereto from time to time for each location where Colocation Services will be provided. All Colocation Order Forms, upon execution by both parties, shall be incorporated herein and shall become a part hereof. By executing a Colocation Order Form, Customer accepts the Space exclusively on an “AS-IS”, “WHERE IS” basis. Customer may only use the Space to install, maintain, monitor, operate, replace, repair and remove certain of its Customer Equipment as specified on the applicable Colocation Order Form.
 - 2.2. Customer acknowledges that it has been granted only a license to occupy the Space and that it has no real property or other interest therein. Customer shall not utilize the Facility for any unlawful purposes, and shall not assign, mortgage, sublease, encumber or otherwise transfer any Space or the license granted herein. Any attempt by Customer to encumber the Space or permit the use or occupancy by anyone other than Customer shall be void unless approved in writing by Company in advance.
 - 2.3. Customer shall utilize the Space and the Customer Equipment only in conjunction with the Colocation Services provided by Company. Use of the Space or any Customer Equipment with any third party services or for interconnection to any third party is prohibited. Any party seeking to install any such equipment or establish any connection without the express written authorization of Company shall be denied entry to the Space.
3. Term.
 - 3.1 The term of any license shall be as set forth in the applicable Colocation Order Form and shall commence on the first day the Space is made available by Company (the “Commencement Date”), but shall be immediately terminable by Company upon the termination, expiration or cancellation for any reason of (i) any underlying agreement between Company and any third party with respect to the Company’s use or lease of the Facility, or (ii) this Agreement.
 - 3.2 Company shall not be liable to Customer if for any reason Company fails to permit access to the Space to Customer on or before the commencement date listed in the Colocation Service Order. Any delay in tendering access to the Space to Customer for any reason other than the acts or omissions of Customer shall relieve Customer of its obligation to pay the monthly recurring charges (“MRC’s”) set forth in the applicable Colocation Order Form until access to the Space is permitted. If Company fails to make any Space available within ninety (90) calendar days after the Scheduled Commencement Date, Customer’s sole remedy for the late delivery shall be to cancel the Colocation Order Form for the applicable Space prior to actual delivery of the Space upon at least ten (10) calendar days prior written notice to Company.
4. Make Ready. If applicable, Customer shall pay Company the amount set forth in each Order Form for the cost of engineering or improvements to the Space required to be made by Company in order to accommodate Customer’s Colocation into the Space (the “Make-Ready Fee”). The Make-Ready Fee shall be payable to Company upon Customer’s execution of the Colocation Order Form for the Space. Title to all such improvements shall remain exclusively vested in Company.
5. Maintenance.
 - 5.1. Company shall be responsible for maintenance of the Facility and the Space. Customer shall not make any alterations, changes, additions or improvements to either the Facility or the Space without Company’s prior written consent. Customer shall maintain and repair all Customer Equipment placed in the Space at Customer’s sole expense and shall be responsible for all costs associated with the configuration, installation, interconnection and operation of the Customer Equipment, including without limitation, transportation related costs and any electrical or other work which must be completed in order to interconnect the Customer Equipment.
 - 6.2 Customer’s maintenance responsibilities include, but are not limited to, the following:
 - 6.2.1 Customer shall arrange for the transit delivery of all Customer Equipment to the Space at its sole cost and expense.
 - 6.2.2 Customer shall provide Company with reasonable prior notice (not less than twenty four (24) hours) of the actual delivery date of the Customer Equipment.
 - 6.2.3 Customer shall not cause harm to the Space or the Facility of Company or any other property of the Company or any third party.
 - 6.2.4 Customer shall not interfere in any way with Company’s use or operation of the Facility or with the use or operation of any third party facilities.
 - 6.2.5 Customer shall not physically conflict or electrically interfere with the facilities or equipment of the Company or any third parties.

6.2.6 Customer shall fully comply with all telecommunication industry standards, NEC and OSHA requirements, and in accordance with Company's requirements and specifications. In addition and specifically power draw on circuits may not exceed 80% of circuit size.

6.2.7 All Customer Equipment must be mounted on racks, and using appropriate brackets, except where otherwise expressly permitted in writing by Company. Customer is solely responsible for assuring that the Customer Equipment is mounted in an efficient, safe and appropriate manner.

6.2.8 All cabling regardless of location, shall be tied and organized, run to the side of the rack, and labeled. All connectors must be secured in the interface socket.

6.2.9 If the Company determines that the Customer has not abided by either Section 6.2.7 or 6.2.8, then Company shall have the right to correct any deficiencies and charge Customer for the time and materials necessary to bring Customer into compliance with Sections 6.2.7 and

6.2.10 Customer shall, at all times, comply with Company's rules and regulations regarding access to the Facility, including without limitation, adequate notice before entry (not less than one business day except in emergencies), appropriate dress and professional conduct. Company may remove any personnel of Customer not in compliance with its rules and regulations and may prohibit access by any person at its discretion.

6.2.11 Customer shall utilize only Company's facilities and Company's network for the provision of its services; use of facilities of third parties or connections to third party facilities are expressly prohibited. Any party seeking to install any such facility or connection shall be denied entry to the Space. Customer may employ non-Company services when such services are not offered by Company.

6.2.12 Any Cross Connects shall only be installed by Company pursuant to an appropriate executed Order Form. Cross Connects shall be used for all interconnections within the facility, except for connections between Customer's cabinets that are adjacent.

6.3 Company may, with at least thirty (30) calendar days notice to Customer (except in the case of an emergency), relocate, substitute, or change the Space for another Space designated by Company at the same facility, provided that the substitute space is substantially equivalent in area and configuration to the original Space. In case of an emergency, Company's notice will be given as far in advance as practicable under the circumstances. The parties will use reasonable commercial efforts to accomplish relocation without excessive downtime, although Company can provide no guarantees to Customer. Company will pay or reimburse Customer's reasonable and actual expenses necessary to relocate its Customer Equipment.

6. Approvals.

7.1 Customer shall submit to Company in the Colocation Service Inquiry Form all building construction and electrical requirements and architectural and engineering drawings indicating the proposed installation for approval. Customer may not perform any construction or install any Equipment without written approval from Company. Company reserves the right to accept or reject Customer's design at its sole discretion. All costs of design work shall be the Customer's sole responsibility.

7.2 Company shall inspect the completed installation and must approve the same in writing before Customer is allowed to utilize the Equipment for any purpose. Any installations that do not comply with the approved drawings will be subject to rejection by Company. Company also reserves the right to require reasonable modifications to any installations.

7.3 Customer is solely responsible for obtaining any and all necessary building permits or other authorizations required for Colocation of its Customer Equipment.

7. Indemnity.

7.1 Customer shall be liable for and shall indemnify, defend and hold Company harmless from and against any claims, demands, actions, damages, liability, judgments, expenses and costs (including reasonable attorneys fees) arising from (i) Customer's use of the Space, or (ii) any damage or destruction thereto or to the Facility or any property therein caused by or due to (x) the acts or failures to act, negligent, willful or otherwise, of Customer, or any of its employees, agents or representatives, or (y) any malfunction of Customer's Equipment located in the Space.

7.2 Company does not warrant that the Space or the Facility will be free from any defects or disruptions and Company shall not be liable therefore. Company's entire liability for any such disruptions, or any other matter giving rise to a claim with respect to the Space or Facility, shall not exceed in any case the MRC's paid by Customer for the month in which such disruption or other matter occurred.

8. Damage to the Facility. If the Facility in which the Space is located is damaged by fire or other casualty, then Company shall give immediate notice to Customer of such damage. If Company's landlord or Company exercises an option to terminate the lease therefore due to such damage or Company's landlord or Company decides not to rebuild the Facility in which the Space is located, all Colocation Order Forms with respect to such Facility shall terminate as of the date of such exercise or decision as to the affected Space and the MRC paid by Customer shall be modified accordingly. If neither the landlord of the affected Facility nor Company exercises the right to terminate or not to rebuild, then the Company shall repair the Facility to substantially the same condition as prior to the damage, completing the same with commercially reasonable speed. If such repairs are not completed within a reasonable time, then Customer shall thereupon have the option to terminate the applicable Colocation Order Form, provided that such option shall be the sole remedy available to Customer against Company hereunder relating to such failure. If the Space or any portion thereof shall be rendered unusable by Customer by reason of such damage, the MRC for such Space shall proportionately abate for the period from the date of such damage to the date when

such damage shall have been repaired for the portion of the Space rendered unusable or until the decision to not repair such Space is communicated to Customer by Company.

9. Service Level Warranty. If Company fails to provide the Colocation Services, then Company will, upon Customer's request in accordance with Paragraph 10.3, credit Customer's account as described below (the "Service Level Warranty"). Notwithstanding anything to the contrary in this Schedule D, the Service Level Warranty set forth herein shall only be available to Eligible Customers.

10.1 Colocation Service Availability and Credits. Service Availability for Colocation is defined as availability of power and Cross Connects which were ordered and installed. If the Colocation Services are unavailable for over one (1) hour as a result of a failure of Company (Service Interruption), then Company will issue a credit based on the length of the outage. The Service Interruption Credit will equal one seven hundred twentieth (1/720) of the monthly recurring portion of the effected Colocation Service. Service Interruptions caused by any Company planned network maintenance activities, failure of any Customer hardware, any actions within the control of Customer, and circumstances or events beyond Company's control are ineligible for any Service Interruption Credit.

10.2 Service Credit Process.

10.2.1. Filing Period. Service Availability claims must be submitted to Company within seven (7) calendar days of the occurrence of the event.

10.2.2 Required Information. Each claim must be filed by Customer's Administrative Contact and the claim must include the following information, (a) Customer name and site name, (b) contact's name and contact information, (c) date and beginning/end time of outage or failed metric, and (d) the specific Company support ticket number opened about the performance issue and brief description of the characteristics of the outage or failed metric.

10.2.3 Claim Process. Customer must submit the required information by electronic mail to opps@bandcon.com. Company will acknowledge all claims within five (5) business days and will review all claims within ten (10) business days of receipt. Customer will be informed by electronic mail whether the appropriate service credit claim will be granted or rejected. If rejected, the notification will specify the basis for rejection.

10.2.4 Credit Process. Approved Service Level Guarantee credits will be applied to the Customer's billing during the billing cycle following the month in which the claim was approved.

10.2.5 Policy Change. Company reserves the right to change, amend, or revise this policy at any time with or without notice to Customer.

- 10.3 The Service Level Warranty set forth in this Schedule D shall only apply to the Colocation Services and does not apply to any other Services. This Schedule D states Customer's sole and exclusive remedy for any failure by Company to provide the Colocation Services.

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