

EPB CO-LOCATION SPACE RENTAL TERMS AND CONDITIONS

Grant of Right; Term. EPB owns Space as described in the Proposal. Subject to the terms and conditions of this Agreement, EPB hereby grants to Tenant the right to access (24 hours a day, 7 days a week), occupy and use certain prepared rack space in the EPB Co-Location facility located at 1401 Oak Street in Chattanooga, Tennessee. This Agreement shall become effective on the date of equipment installation by Tenant and shall remain in effect for the term indicated in the Proposal. After the expiration of the initial term, this Agreement shall continue month to month until either party terminates the Agreement by providing sixty (60) days prior written notice of its intent to terminate. If Tenant chooses to continue occupying the Space on a month to month basis at the expiration of the initial term, Tenant's pricing shall increase by ten percent 10% or to EPB's then-current pricing, whichever is higher.

Acknowledgement. Tenant acknowledges that this Agreement grants only a right to occupy, place and install its equipment subject to the terms and conditions contained herein. Without limiting the generality of the foregoing, Tenant stipulates, acknowledges and agrees that it does not have any right to occupy or use any part of the space other than for the limited purposes set forth herein or to control the functionality or routing capabilities of EPB transmission or switching facilities. Subject only to the rights granted to Tenant in this Agreement, nothing contained in this Agreement shall be construed to limit EPB's right to maintain and operate its own facilities as EPB shall determine in its sole discretion, or limit or restrict EPB in any way with respect to any agreement or arrangement which EPB has previously entered into, or may hereafter enter into, with any third party.

Condition of Presence; Use. The Space shall be accepted "AS-IS" by Tenant. Tenant shall provide to EPB an inventory of all equipment and related appurtenances which it installs in the space and other reasonable technical information about Tenant's equipment. Tenant may use the space for the purposes of installing, maintaining, repairing, replacing and operating the equipment as set forth in the referenced inventory of equipment in connection with its telecommunication activities, which may include interconnection with EPB. Title to, and all risk of loss for, such equipment shall remain with Tenant. All decisions concerning location of the equipment and installation of the equipment will be at the sole discretion of EPB. Tenant shall not use the space or equipment contrary to the limitations of these Terms and Conditions or permit anything to be done in or about the space or bring or keep anything therein which will in any way increase the rate of insurance upon EPB's property or any of its contents or cause a cancellation of said insurance or otherwise adversely affect said insurance in any manner.

Fees. This Agreement is made for and in consideration of the covenants herein contained and the payments described in the Proposal. Nothing contained in this Agreement shall obligate EPB to provide additional space, and the parties understand and agree that the fees and rates for other and additional space are subject to negotiation in the future. Tenant shall make all payments due within thirty (30) days after receipt of an invoice for same (the "Due Date").

Technical Specifications. Tenant's equipment and any subsequent modifications thereto which is utilized for interconnection with EPB shall be Network Equipment Building Standards ("NEBS") level 3 compliant.

Maintenance and Repair. Tenant shall be responsible for the proper maintenance and repair of the equipment, including any maintenance or repair that EPB reasonably determines is necessary to eliminate any potentially unsafe or undesirable conditions. If Tenant fails to rectify the condition to EPB's reasonable satisfaction within ten (10) days after notification, EPB may undertake or arrange for the required maintenance and/or repair, without first giving notice to Tenant and without subjecting itself to any liability for damage to any equipment or for any interruption of Tenant's services. Tenant shall then reimburse EPB for all costs relating to such maintenance or repair, including the costs of all labor and materials plus an additional administrative fee of twenty percent (20%) of the total bill over and above the costs for any maintenance that EPB may perform on Tenant's behalf. Such maintenance and repair costs shall be at EPB's then-current Carrier Rates plus the actual costs incurred by EPB for third party vendors for such maintenance and repairs. EPB may change the rates upon sixty (60) days' notice to Tenant. Upon notification of a change in rates, Tenant may terminate this Agreement upon thirty (30) days' prior notice.

Insurance: Tenant shall provide, and shall at all times during the term of this Agreement, carry at its own expense, the following minimum insurance:

i. Statutory workers' compensation insurance and policies of liability insurance covering the risks assumed in performance of work under this Agreement. General liability and vehicle liability insurance with minimum policy limits of \$1,000,000.00 for personal injury to or death of any one person, and \$2,000,000.00 aggregate for any one accident. Such insurance shall include, without limitation, Products/Completed Operations, Broad Form Property Damage Coverage, and Blanket Contractual Liability Coverage to insure the indemnity and hold harmless provisions of this Agreement. The general liability and vehicle liability insurance shall have minimum policy limits of \$1,000,000.00 for property damage. In addition, Tenant shall maintain an umbrella policy with minimum limits of \$3,000,000.00 over and above any other forms of insurance required under this Agreement. All certificates of insurance shall list EPB as an additional insured and shall contain a provision requiring thirty (30) days prior notice to EPB in the event of cancellation or material change in coverage.

ii. Prior to installation of its equipment under this Agreement, and from time to time thereafter, Tenant shall submit to EPB certificates evidencing the minimum insurance coverage required under this Agreement.

iii. In the settlement or compromise by Tenant or its insurer of any claims arising out of Tenant's performance under this Agreement, Tenant shall obtain and provide to EPB properly executed written releases, in a form satisfactory to EPB and Tenant or its insurer, releasing EPB from any and all liability if EPB was not in any way liable for same.

Removal. At the Expiration Date, Tenant (and any person claiming through Tenant, including any vendor or financier of any equipment, together with Tenant, the "Remover") will have thirty (30) days ("Removal Period") to remove the equipment at the sole cost and expense of Tenant, and provided, further, that Remover shall repair any damage to the space resulting from such removal. Any items of equipment which remain in the space after the Removal Period may, at EPB's option exercised at any time after not less than five (5) days' notice to Tenant, be deemed to be abandoned, and subject to any third party rights in such equipment in such case either be retained by EPB as its property or may be disposed of, without accountability, in such manner as EPB may see fit at Tenant's expense. Tenant hereby waives any claims to such abandoned equipment and shall indemnify EPB against all reasonable costs and expenses incurred by EPB in storing, removing and disposing of such equipment after expiration of the Removal Period.

Surrender. Tenant shall surrender the space upon the expiration or termination of this Agreement in as good a condition as received, subject to normal wear and tear. In the event of damage or alteration of the space, Tenant shall be responsible for any costs incurred by EPB in order to restore the space to its previous condition.

Interference. Tenant shall not use the Space in any way that will interfere with EPB's use of the site; provided, however, that Tenant's use of the Space and site in accordance with this Agreement shall at no times be construed to be interfering with EPB's use of the site.

Access. EPB shall provide Tenant with twenty-four (24) hour access, subject to compliance with such reasonable security procedures as EPB may from time to time adopt and communicate in writing to Tenant, to the extent that such access is related to the operation, maintenance or repair of Tenant's equipment. All of Tenant's rights of access under this section shall terminate upon the Expiration Date; provided that Tenant shall continue to have access after such expiration or termination to remove its equipment in accordance with these terms and conditions.

Power. EPB will provide Tenant with power as described in the Proposal and as required for the equipment; provided, however, that EPB shall incur no liability to Tenant whatsoever should any power become unavailable from any public utility company, public authority or any other person, firm or corporation supplying, distributing or responsible for such utility or service.

Installation and Inspection. EPB may (a) provide a representative to observe and inspect Tenant's installation of the equipment, and (b) make periodic inspections of any equipment upon reasonable advance notice of such inspections; and Tenant shall have the right to be represented during such

inspections; provided, however, if in the sole judgment of EPB, safety considerations require an inspection without the delay of providing notice, EPB may make such inspection immediately but shall provide notice of such inspection to Tenant. The making of periodic inspections or the failure to do so shall not operate to impose upon EPB any liability of any kind whatsoever, or relieve Tenant of any responsibility, obligation or liability assumed under this Agreement.

Interruptions. EPB will use reasonable efforts to ensure that the space will be free of interruptions of services provided by other third parties, provided, however, that EPB does not warrant that the use of the space will be free from such interruptions.

Limitation of Liability. If Customer has purchased an SLA, the remedies provided in the SLA shall be Customer's sole and exclusive remedy under this Agreement. Otherwise, in the event of an outage that lasts more than eight (8) hours, Tenant shall be entitled to a pro-rated credit of its monthly service fee provided for in this Agreement which pro-rated credit represents the sole liability of EPB for any interruption or failure of service. The credit shall be a pro-rata share of Tenant's monthly charge, not to exceed Tenant's total monthly charge. Any claim for such a credit must be made within thirty (30) days following such outage or malfunction. The foregoing shall represent the sole liability of EPB for damages resulting from or arising in connection with this Agreement. In no event shall EPB be liable to any user of Tenant's service for loss of profits or for special, indirect, incidental, exemplary, consequential or punitive damages arising from the relationship or the conduct of business under this Agreement, even if EPB has been advised of the possibility of any such damages. Without limiting the foregoing, EPB shall have no liability for any claims, losses, actions, damages, suits or proceedings resulting from other's accessing Tenant's computers and equipment, security breaches, viruses, eavesdropping, interception of traffic sent or received using the services or any use of the equipment or services of EPB that infringes upon any patent, trademark, trade secret, confidentiality, privacy or intellectual property or contractual or other rights of one or more third parties.

Indemnification. Tenant shall indemnify, defend and hold EPB harmless from and against any claims, actions or causes of action losses, damages, liabilities (including injury or damage to any person or property, or death), costs and expenses arising out of any negligent act or omission, in whole or in part, by Tenant or any of its directors, officers, agents, servants, subsidiaries, affiliates, employees, and/or attorneys related to the fulfillment of this Agreement, including payment of EPB's reasonable attorney's fees and costs.

Taxes; Indemnification Against Taxes. Tenant shall be fully responsible for the prompt payment of all federal, state or local taxes, however denominated, based on or calculated with respect to the amounts payable by Tenant pursuant to this Agreement (including but not limited to sales/use, rental and gross receipts taxes or surcharges) and all taxes (including but not limited to franchise, income and miscellaneous taxes) which are the liabilities of Tenant under (1) appropriate standard industry practices (including telecommunications, fiber optic and rental industries), (2) applicable law and (3) as otherwise agreed at any time between Tenant and EPB notwithstanding that the incidence thereof may be on EPB; provided, however, the taxes on EPB's franchises, rent, income and property shall be the sole responsibility of EPB. Tenant shall also be responsible for all property taxes assessed against the equipment. EPB and Tenant shall cooperate in taking all reasonable actions necessary to minimize or to qualify for exemptions from any such taxes, duties or liabilities. Tenant shall provide all information to EPB of any exemption of property, sales, use or other tax claimed by Tenant, and shall ensure that its tax-exempt status, if any, remains current. Tenant shall also indemnify and hold EPB harmless against any and all taxes described in this Section I, however denominated, which may be assessed against EPB for Tenant's equipment or EPB's grant to Tenant under this Agreement. This Section I shall survive termination of this Agreement.

Default. Tenant shall be considered in default of this Agreement if: Tenant fails to make an undisputed payment when due and fails to cure same within ten (10) days' notice from EPB; (B) Tenant violates any provision of this Agreement, or fails to cause any repair or modification to the equipment required by EPB within thirty (30) days' notice; or (C) Tenant undergoes bankruptcy; dissolution; financial failure or insolvency; or receivership..

Successors and Assigns. The rights and obligations of Tenant and EPB under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Tenant and EPB. Tenant shall not delegate its obligations and responsibilities hereunder without the prior written consent of EPB.

Governing Law. This Agreement shall be governed by and interpreted and enforced under the laws of the State of Tennessee, without regard to conflicts of law provisions.

Forum Choice. Tenant hereby submits to the personal jurisdiction of the courts of Hamilton County, Tennessee and agrees that they shall be the exclusive venue for resolution of any disputes that may arise out of this Agreement Entire Agreement. This Agreement constitutes the final, complete, and entire written agreement of the parties and supersedes all previous communications, representations, agreements, promises, statements, proposals, and specifications, whether written or oral, by or between the parties, except as expressly referenced and adopted herein. This Agreement may be modified only in writing signed by each of the parties to this Agreement.

Force Majeure. EPB shall not be liable for any failure of performance under this Agreement due to causes beyond its control, including without limitation, acts of God, fire, flood or other catastrophe, adverse weather conditions, material or facility shortages or unavailability, lack of transportation, imposition of law, regulation, ordinance, restriction, governmental code or rules, national emergencies, insurrections, riots, wars, strikes, lock-outs, work stoppages or other labor difficulties.

Notice. Any notices required to be provided hereunder shall be provided in writing. All notices to Tenant shall be delivered or mailed to the address on the Proposal. All notices to EPB shall be delivered to EPB Legal Services Division, P.O. Box 182255, Chattanooga, TN 37422. All notices shall be delivered or mailed. If mailed, the notices shall be deemed given when deposited, postage prepaid, with the United States Postal Service.

Confidentiality. Each party agrees that it will treat as confidential all information which may be disclosed to it by the other under this Agreement. Confidential Information shall not include any information that the receiving party can demonstrate by written records the information (i) is or becomes generally available to the public without breach of this Agreement, (ii) was in the possession or known by the receiving party prior to receipt from the disclosing party, (iii) was rightfully disclosed to the receiving party by a third party not under an obligation of confidentiality, or (iv) was independently developed without reference to or use of any confidential information of the disclosing party. Each party agrees not to disclose confidential information to third parties, and agrees to make no use thereof except as necessary for the proper performance of this Agreement. Each party shall afford confidential information the same security and care in handling and storage as each party provides for its own confidential information. All confidential information shall remain the property of the disclosing party and the original and copies thereof, in whatever form, shall be returned to the disclosing party within ten days upon request. Each party agrees that any breach of the obligations in this Section will cause irreparable harm to the disclosing party for which money damages will not be an adequate remedy. Therefore, the disclosing party shall, in addition to any other legal or equitable remedies, be entitled to seek an injunction or similar equitable relief against such breach or threatened breach of this Section without the necessity of posting any bond. The parties' obligations hereunder shall not extend to information which is required to be disclosed by operation of law, court order, or pursuant to the lawful requirement of a government agency. The parties' obligations under this Section shall continue after the termination or expiration of this agreement.

No Waiver. No delay or failure of EPB in exercising any right or power under this Agreement shall operate as a waiver of such right or power to prevent the future exercise of such right or power.

Relationship of Parties. EPB and Tenant hereby certify that they are independent parties, acting as independent contractors and independent employers. Nothing herein shall be construed to create a partnership, joint venture, or agency relationship between EPB and Tenant, and neither party shall have the authority to bind the other party in any respect.

No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed as creating rights in third parties, and the parties hereby express their intent that this Agreement is not intended to benefit third parties in any manner.

Government Tort Liability. Nothing contained in this Agreement or in bond or in any certificate or policy of insurance or in any provision of indemnity shall be construed to constitute a waiver by EPB of any provision, of the Tennessee Governmental Tort Liability Act, as amended, Tenn. Code Ann. § 29-20-101 et seq., or of any other provision of federal, state, or local law affording EPB protection from or limitation of tort or other liability.