



## Bandwidth.com Colocation Terms and Conditions

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This Service Agreement (the "Agreement") is between Bandwidth.com, Inc. ("Bandwidth.com") and the Customer. Services provided are based on the Terms and Conditions contained herein and are subject to change with updated versions of this document available for viewing and download on <http://www.bandwidth.com/content/legal>. Updated versions of this document will take effect on the first date of the month following posting of the updated version, with updated versions identified with the month and year they become effective. Customer should therefore check the site regularly for updated versions. Customer accepts said Terms and Conditions, as acknowledged by signature on the relevant Service Order Form ("SOF"), and agrees to be bound by them.

**1. Service Provided.** Bandwidth.com Colocation Service is Colocation Space within a Gateway licensed to the Customer for the purpose of colocating communications equipment.

**2. Grant of License.** Customer is granted the right to occupy the Colocation Space identified in the Service Order Form during the Service Term, except as otherwise provided in this Agreement. Bandwidth.com retains the right to access any Colocation Space for any legitimate business purpose at any time.

**3. Use of Colocation Space.** Customer shall be permitted to use the Colocation Space only for placement and maintenance of communications equipment. Customer may access the Colocation Space (and the Gateway and Colocation Area for the sole purpose of accessing the Colocation Space) twenty four (24) hours per day, seven (7) days per week, subject to any and all rules, regulations and access requirements imposed by Bandwidth.com governing such access.

**4. Bandwidth.com Maintenance.** Bandwidth.com shall perform janitorial services, environmental systems maintenance, power plant maintenance and other actions as are reasonably required to maintain the Colocation Area in which the Colocation Space is located in a condition that is suitable for the placement of communications equipment. Bandwidth.com shall maintain the Colocation Area in which the Colocation Space is located (but shall not be obligated to maintain the Colocation Space itself) with a relative humidity in the range of 50% (+ or - 10%) and a maximum ambient air temperature of 78 degrees Fahrenheit (26 degrees Celsius). Customer shall maintain the Colocation Space in an orderly and safe condition, and shall return the Colocation Space to Bandwidth.com at the conclusion of the Service Term set forth in the Service Order Form in the same condition (reasonable wear and tear excepted) as when such Colocation Space was delivered to Customer. EXCEPT AS EXPRESSLY STATED HEREIN OR IN THE SERVICE ORDER FORM, THE COLOCATION SPACE SHALL BE DELIVERED AND ACCEPTED "AS IS" BY CUSTOMER, AND NO REPRESENTATION HAS BEEN MADE BY BANDWIDTH.COM AS TO THE FITNESS OF THE COLOCATION SPACE FOR CUSTOMER'S INTENDED PURPOSE.

**5. Release of Landlord.** If and to the extent that Bandwidth.com's underlying leases so require (but only if they so require) Customer hereby agrees to release Bandwidth.com's landlord (and its agents, subcontractors and employees) from all liability relating to Customer's access to the Gateway and the Colocation Area and Customer's use and/or occupancy of the Colocation Space.

**6. Security.** Bandwidth.com will provide and maintain in working condition card reader(s), scanner(s) and/or other access device(s) as selected by Bandwidth.com for access to the Colocation Area of a Gateway. Customer shall under no circumstances "prop open" any door to, or otherwise bypass the security measures Bandwidth.com has imposed for access to, the Colocation Area. Bandwidth.com will provide a locking device on Customer's Colocation Space, which Customer shall be solely responsible for locking and/or activating such device. In the event that unauthorized parties gain access to the Gateway, Colocation Area and/or the Colocation Space through access cards, keys or other access devices provided to Customer, Customer shall be responsible for any damages caused by such parties. Customer shall be responsible for the cost of replacing any security devices lost or stolen after delivery thereof to Customer. In the event Customer has reason to believe that an unauthorized party has gained access to the Colocation Space, Bandwidth.com will, at Customer's request, make video surveillance records of the Colocation Area reasonably available to Customer for viewing by Customer in the presence of a Bandwidth.com or Level3 employee. In addition, Bandwidth.com will provide Customer with a copy of the access logs for the Colocation Area and/or the Gateway, as applicable, upon Customer's prior written request.

**7. Prohibited Activities.** Customer shall abide by any posted or otherwise communicated rules relating to use of, access to, or security measures respecting the Gateway, Colocation Area and/or the Colocation Space. Customer's rights of access and use will be immediately terminated in the event Customer or any of its agents or employees are in Bandwidth.com's Gateway with any firearms, illegal drugs, alcohol or are engaging in any criminal activity, eavesdropping or foreign intelligence. Persons found engaging in any such activity or in possession of the aforementioned prohibited items will be immediately escorted from the Gateway.

**8. Termination of Use.** Bandwidth.com shall have the right to terminate Customer's use of the Colocation Space or the Service delivered therein in the event that: (a) Bandwidth.com's rights to use the Gateway terminates or expires for any reason; (b) Customer is in default hereof; (c) Customer makes any material alterations to the Colocation Space without first obtaining the written consent of Bandwidth.com; or (d) Customer allows personnel or contractors to enter the Gateway, Colocation Area and/or the Colocation Space who have not been approved by Bandwidth.com in advance. With respect to items (b), (c) and (d), unless (in Bandwidth.com's opinion) Customer's actions interfere or have the potential to interfere with other Bandwidth.com or Level 3 customers, Bandwidth.com shall provide Customer a written notice and a ten (10) day opportunity to cure before terminating Customer's rights to the Colocation Space. Upon termination of Service or this Agreement not due to a material breach, Bandwidth.com will disconnect, or will cause to be disconnected, the Service, if notified by the Customer forty (40) days prior to termination of the agreement, such notice from Customer must be in the form of an email sent to [customer@bandwidth.com](mailto:customer@bandwidth.com).

**9. Removal of Equipment.** Within two (2) days following the expiration or termination of the Service Term for any Colocation Space, Customer shall remove all Customer equipment from the Colocation Space. In the event Customer fails to remove the equipment within such two (2) day period, Bandwidth.com may disconnect, remove and dispose of Customer's equipment without prior notice. Customer shall be responsible for any costs and expenses incurred by Bandwidth.com, or its agent, representative or contractor, resulting from disconnection, removal, disposal and storage of Customer's equipment, for which Customer agrees to pay such costs and expenses and all other charges due and owing by Customer to Bandwidth.com under the Agreement prior to Bandwidth.com returning any Customer equipment still in Bandwidth.com's possession. Bandwidth.com shall not be liable for any loss or damage incurred by Customer arising out of Bandwidth.com's disconnection, removal, storage or disposal of Customer's equipment.

**10. Sublicenses.** Customer may sublicense the use of Colocation Space under the following conditions: (a) all proposed sublicensees must be approved in writing by Bandwidth.com in Bandwidth.com's sole discretion, except Customer may sublicense the use of the Colocation Space to an Affiliate of Customer upon prior written notice to Bandwidth.com; (b) Customer hereby guarantees that all such parties shall abide by the terms of the Agreement and the applicable Service Order Form; (c) Customer shall indemnify, defend and hold Bandwidth.com harmless from all claims brought against Bandwidth.com arising from any act or omission of any sublicensee or its agents; and (d) any such party shall be considered Customer's agent and all of such party's acts and omissions shall be attributable to Customer for the purposes of the Agreement. In the event Customer sublicenses use of the Colocation Space without Bandwidth.com's prior written approval, Bandwidth.com may upon ten (10) days' prior written notice reclaim the sublicensed portion of the Colocation Space. Customer shall surrender such reclaimed Colocation Space and shall be subject to termination charges associated with the reclaimed Colocation Space as provided in Section 24 of the Agreement. No refunds shall be made to Customer regarding reclaimed Colocation Space.

**11. Changes.** Bandwidth.com reserves the right to change (at Bandwidth.com's cost) the location or configuration of the Colocation Space licensed to Customer within the Bandwidth.com Gateway; provided that Bandwidth.com shall not arbitrarily require such changes. Bandwidth.com and Customer shall work in good faith to minimize any disruption in Customer's services that may be caused by such changes in location or configuration of the Colocation Space.

**12. Insurance.** Prior to storage of equipment or occupancy by Customer of any Colocation Space and during the Service Term, Customer shall procure and maintain the following minimum insurance coverage: (a) Workers' Compensation in compliance with all applicable statutes of appropriate jurisdiction (including Employer's Liability with limits of \$500,000 each accident); (b) Commercial General Liability with combined single limits of \$1,000,000 each occurrence; and (c) "All Risk" Property insurance covering all of Customer's personal property located in the Gateway. Customer acknowledges that it retains the risk of loss for, loss of (including, without limitation, loss of use), or damage to, Customer equipment and other personal property located in the Bandwidth.com Gateway. Customer further acknowledges that Bandwidth.com's insurance policies do not provide coverage for Customer's personal property located in the Bandwidth.com Gateway. Customer shall, at its option, maintain a program of property insurance or self-insurance covering loss of or damage to its equipment and other personal property located in the Bandwidth.com Gateway. Customer's Commercial General Liability policy shall be endorsed to show Bandwidth.com (and any underlying property owner, as requested by Bandwidth.com) as an additional insured. Customer shall waive and/or cause its insurance carriers to waive all rights of subrogation against Bandwidth.com, which will include, without limitation, an express waiver in all insurance policies. Customer shall furnish Bandwidth.com with certificates of insurance demonstrating that Customer has obtained the required insurance coverages prior to use of the Colocation Space or the storage of equipment in the Gateway. Such certificates shall contain a statement that the insurance coverage shall not be materially changed or cancelled without at least thirty (30) days' prior written notice to Bandwidth.com. Customer shall require any contractor, customer or other third party entering the Gateway on Customer's behalf to procure and maintain the same types, amounts and coverage extensions as required of Customer above.

**13. Technical Support Service.** (A) Bandwidth.com may provide Technical Support Service on Customer's equipment within the Colocation Space from time to time as mutually agreed between the parties. Customer may order Bandwidth.com Technical Support Service by contacting Bandwidth.com Customer Care. For Bandwidth.com Technical Support Service that is scheduled support beyond the basic on-site, on-demand first-line maintenance and support, Bandwidth.com shall not be obligated to perform such Bandwidth.com Technical Support Service until a scope of such Bandwidth.com Technical Support Service to be provided has been mutually agreed by the parties in writing. Upon Bandwidth.com's acceptance of such order (and the parties' execution of a scope document, if required), Bandwidth.com will perform the Bandwidth.com Technical Support Service in accordance with Customer's directions. Unless otherwise agreed between the parties, pricing for Bandwidth.com Technical Support Service shall be at Bandwidth.com's then current rates. (B) ANY BANDWIDTH.COM TECHNICAL SUPPORT SERVICE IS

PROVIDED ON AN 'AS-IS' BASIS AND BANDWIDTH.COM MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. (C) As part of any Bandwidth.com Technical Support Service, under no circumstances will Bandwidth.com be responsible for performing any warranty-affecting work, and Bandwidth.com shall not be liable to Customer or any third party to the extent any work performed violates and/or voids, in whole or in part, any equipment, software and/or manufacturer's warranty. Notwithstanding any provision in this Agreement to the contrary but subject to the Service Level Agreement incorporated herein by reference, Bandwidth.com's cumulative liability for damages arising out of or related to Bandwidth.com's performance or failure to perform any Bandwidth.com Technical Support Service will be limited to direct damages in an amount not to exceed the total fees paid by Customer to Bandwidth.com for the particular Bandwidth.com Technical Support Service giving rise to the liability.

**14. Storage of Customer Equipment.** Bandwidth.com may, at its option, agree to store equipment that Customer intends to collocate in Customer's Colocation Space for not more than forty five (45) days prior to the applicable FOC Date. Storage of such equipment is purely incidental to the Service ordered by Customer and Bandwidth.com will not charge Customer a fee for such storage. No document delivered as part of such storage shall be deemed a warehouse receipt. Absent Bandwidth.com's gross negligence or intentional misconduct, Bandwidth.com shall have no liability to Customer or any third party arising from such storage. In the event Customer stores equipment for longer than forty five (45) days, Bandwidth.com may, but shall not be obligated to, return Customer's equipment to Customer without liability, at Customer's sole cost and expense.

**15. Promotional Signage.** Customer may display a single promotional sign with Customer's name and/or logo on the outside of any Customer Colocation Space; provided such signage does not exceed 8 inches by 11 inches. All other promotional signage is prohibited.

**16. Power.** (A) Unless otherwise agreed between the parties, the pricing for power shall be on a breakered amp load basis. (B) The standard available power in any Colocation Space is 180 watts/square foot (1800 watts/square meter) of breakered power. Any additional power required by Customer is subject to prior written approval by Bandwidth.com. (C) In the event the power utility increases the price paid by Bandwidth.com for power provided to any Colocation Space, Bandwidth.com may pass-through to Customer such price increase upon prior written notice to Customer.

**17. Service Activation.** The Service Activation Date shall be two (2) business days after Service is deemed ready for activation by Bandwidth.com. Bandwidth.com recognizes that Service is ready for activation after receiving confirmation from the underlying carrier that the Service is ready to be activated and after Bandwidth.com has notified Customer that the Service is ready for activation. The Service Activation Date will be used for the purpose of determining the start of the Customer's Service Term and Billing and Payment Schedule, said Schedule being defined in Section 20. Bandwidth.com has sole discretion in determining the Service Activation Date as defined above regardless of whether Customer has completed all necessary steps to activate Service.

**18. Service Term.** The initial Service Term for the Bandwidth.com Service provided to Customer shall be at least one (1) year and up to three (3) years from the Service Activation Date depending on the Service Term selected on said Service Order Form. After such initial term, Service shall continue to be provided on a month-to-month basis, unless terminated in writing by Bandwidth.com or by Customer via email pursuant to Section 8 or 25 of this Agreement, as applicable. The initial Service Term plus the continuation of Service as provided in this Section 18 are referred to collectively as the "Service Term." (The Agreement Term is coterminous with the Service Term.)

**19. Charges for Service.** The monthly recurring charge(s) ("MRC") and any non-recurring charge(s) ("NRC") for Service are stated in said Service Order Form. Service charges are exclusive of applicable taxes and surcharges, including the Federal Universal Service Fund surcharge that Bandwidth.com passes on to its Customers. At its sole discretion, Bandwidth.com may require a security deposit to continue provisioning of Service. Bandwidth.com shall not increase pricing during the initial Term of a Customer Order, but thereafter Bandwidth.com may increase pricing upon at least thirty (30) days written notice. All rates and charges are subject to change immediately in the event there are mandated surcharges imposed by federal, state or governmental agency. Notwithstanding the foregoing, in the event any Regulatory Activity, Bandwidth.com reserves the right, at any time with as much advance written notice as reasonably possible and without liability, to: (i) pass through to Customer all, or a portion of, any changes or surcharges directly or indirectly related to such Regulatory Activity; (ii) modify the Service, rates (including any rate guarantees), promotions, terms and/or conditions of this Agreement in order to conform to such action; or (iii) if such Regulatory Activity materially and adversely impairs the provision of Service under the Agreement, as reasonably determined by Bandwidth.com, terminate the Agreement.

**20. Billing and Payment.** Bandwidth.com shall bill Customer for Service rendered at the rates stated in said Service Order Form. Invoices shall include all applicable taxes, service charges, fees and surcharges. Bandwidth.com shall commence billing for the monthly recurring charges and usage (the Service) on the Service Commencement Date, as defined in Section 17. First and second month payments for the service are billed upon Service commencement. Payments are due within fifteen (15) days of the invoice date. Where applicable, service charges for the first partial month of service will be pro-rated and billed. After fifteen (15) days of non-payment, all fees will accrue interest at a rate of one and one-half percent (1.5%) per month or any part thereof, or the highest rate allowed by applicable law, and customer shall pay all collection costs incurred by Bandwidth.com (including, without limitation, reasonable attorney's fees). Some Customers installed prior to two-thousand-and-eight (2008) may be subject payment terms whereby payments are due within thirty (30) days from the invoice date. Additionally, Bandwidth.com reserves the right to amend said Customers to a fifteen (15) day payment term should they fail to make satisfactory payments pursuant to their current account payment term. At any point beyond provided invoice due date, where Customer has failed to make satisfactory payment as so judged by Bandwidth.com, then Bandwidth.com may give Customer written notification, by email, that Customer has committed a material breach of the Agreement due to non-payment. Said notification will be provided five (5) business days prior to Service suspension or termination. Customer must pay all outstanding charges, within said notice period, to avoid suspension or termination of Service. If Service is terminated due to non-payment, then the Termination fees described in Section 24 shall apply.

**21. Billing Disputes.** In the event Customer disputes any invoiced charges, Customer shall pay all undisputed charges and submit written notification of the dispute, with supporting documentation, within thirty (30) calendar days of receipt of the invoice in question. Bandwidth.com shall respond to Customer, in writing, within thirty (30) calendar days of receiving a dispute notification from Customer. Any dispute resolved in favor of Customer shall be credited as appropriate on the next available invoice. In the event that any disputed amounts are deemed to be correct as billed and in compliance with this Agreement, Customer shall be notified in writing that the charges have been deemed valid and legitimate and the charges in question shall be due and payable by Customer upon the original Due Date or immediately upon receipt of said notification if Due Date has passed.

**22. Resumption of Service.** If Customer requests that Service be restored after a suspension or termination, Bandwidth.com has the sole and absolute discretion to restore such Service and may condition restoration upon satisfaction of such conditions as Bandwidth.com determines necessary for its protection, including requiring Customer to execute a new agreement, pay all past due invoices in full, pass Bandwidth.com's credit approval, and/or make advance payments. New nonrecurring charges also may apply to restored Service.

**23. Additional NRC (if applicable).** In addition to the standard NRC listed above, the following NRC, if applicable, will apply:

Service Reinstatement Fee: \$200.00 plus any charges imposed by underlying carrier(s)

Missed Appointment Fee: \$200.00

Rejected Credit Card/Unpaid Check: \$40.00 (or legal limit)

Cancellation of Service prior to installation: one (1) month MRC plus any additional charges imposed by underlying carrier(s)

Upgrade Charge: Dependent on specific upgrade

Downgrade Charge: Dependent on specific downgrade

**24. Material Breach.** Bandwidth.com or Customer may terminate this Agreement and the Service provided hereunder in the event of a material breach that is not cured within thirty (30) days following the delivery of written notice specifying said breach, except in the case of serious material breaches, so judged by Bandwidth.com. Such notice from Customer must be in the form of an email sent to [customercare@bandwidth.com](mailto:customercare@bandwidth.com), with "Notice of Material Breach" in the subject line of the email and Customer's contact information in the body of the email. Such notice from Bandwidth.com shall be in the form of an email sent to the email address of the Customer Representative who signed this Agreement. In the event of an uncured material breach by Bandwidth.com, the Agreement and Service shall be terminated without liability to the Customer. In the event of an uncured material breach by Customer, the following termination fees shall apply, (a) the total MRC for the remainder of the Service Term, (b) one hundred percent (100%) of the past due balance at the time of termination, and (c) any non-recurring charges originally waived by Bandwidth.com.

**25. Termination.** Upon termination of Service or this Agreement not due to a material breach, Bandwidth.com will disconnect, or will cause to be disconnected, the Service, if notified by the Customer, in writing, to [customercare@bandwidth.com](mailto:customercare@bandwidth.com) forty (40) days prior to termination of the agreement.

**26. Acceptable Use Policy.** All use of Service must comply with Bandwidth.com's Acceptable Use Policy ("AUP"), which is posted at [www.bandwidth.com](http://www.bandwidth.com), and is incorporated herein by reference. By accepting Bandwidth.com Service, Customer agrees to comply with this AUP and any subsequent modifications thereto. Bandwidth.com reserves the right to modify this AUP from time to time, effective upon posting the AUP as modified at the URL shown above. Violation of the AUP shall be considered a material breach of this Agreement pursuant to Section 24.

**27. Limitation of Liability.** EXCEPT AS PROVIDED IN SECTION 28, IN NO EVENT WILL BANDWIDTH.COM OR CUSTOMER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) ARISING OUT OF OR IN RELATION TO THE SERVICE(S), CPE, AND/OR ANY PRODUCTS OR SERVICE PROVIDED BY THIRD PARTIES UNDER THIS AGREEMENT. BANDWIDTH.COM'S MAXIMUM LIABILITY UNDER THIS AGREEMENT IS LIMITED TO SERVICE CREDITS NOT TO EXCEED THE FEES PAID TO BANDWIDTH.COM BY CUSTOMER FOR THE SERVICE PROVIDED.

**28. Indemnity.** Customer shall indemnify and hold harmless Bandwidth.com from and against any loss, cost, claim, liability, damage, or expense (including reasonable attorneys' fees) to or by any third party, relating to or arising from (a) the use of the Service provided to Customer, whether or not Customer has knowledge of or has authorized access for such use, (b) any damage to or destruction of CPE not caused by Bandwidth.com or its agents, and (c) any material breach of this Agreement by Customer.

**29. No Warranties and Customer Assumption of Risk.** BANDWIDTH.COM MAKES SERVICE COMMITMENTS UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT ("SLA"), SAID SLA IS INCORPORATED HEREIN BY REFERENCE. HOWEVER, BANDWIDTH.COM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, FOR THE BANDWIDTH.COM SERVICE(S) (INCLUDING BANDWIDTH.COM CPE) PROVIDED UNDER THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BANDWIDTH.COM DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE SERVICE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. BANDWIDTH.COM EXERCISES NO CONTROL OVER, AND HEREBY DISCLAIMS ANY RESPONSIBILITY FOR, THE ACCURACY AND QUALITY OF ANY DATA OR CONTENT TRANSMITTED WITH THE USE OF THE SERVICE. CUSTOMER RECOGNIZES THAT BANDWIDTH.COM DOES NOT OWN THE LOCAL ACCESS CIRCUIT AND IS NOT RESPONSIBLE FOR ANY PERFORMANCE OR NON-PERFORMANCE THEREOF. CUSTOMER HEREBY EXPRESSLY ASSUMES THE RISK OF ITS OR ITS CUSTOMERS' USE OF ANY INFORMATION TRANSMITTED VIA THE SERVICE.

**30. Miscellaneous.** Customer acknowledges and understands that Customer is to receive the Service detailed in this Agreement and the Customer is not relying on any affirmation of fact, promise or description from any person or entity, nor any other oral or written representation other than what is contained in this Agreement. Handwritten alterations or additions to this agreement made by Customer will not be considered part of this Agreement. This Agreement may only be modified, or any rights under it waived, by a separate written document executed by both parties. This Agreement shall be governed by, construed under, and enforced in accordance with, the laws of the State of North Carolina without reference to its choice of law principles. For any action or suit to enforce any right or remedy of this Agreement, (except for actions to enter or collect on judgments) the parties consent to exclusive jurisdiction and venue in the courts for Wake County, North Carolina and the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees. In the event of a conflict between this Agreement and any applicable tariff, the tariff shall prevail. Customer may not assign this Agreement without Bandwidth.com's prior written consent. This Agreement shall be binding on the parties hereto and their respective personal and legal representatives, successors, and permitted assigns. If any provision of this Agreement is held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby. Agreement headings are provided for reference purposes only.

**31. Third Party Beneficiaries.** The Parties do not intend by the execution, delivery, or performance of this Agreement to confer any benefit, direct or incidental, upon any person or entity not a party to this Agreement.