



PAETEC

CENTRAL OFFICE COLOCATION SERVICES SCHEDULE

This Central Office Colocation Services Schedule (“Colocation Schedule”) between PAETEC and Customer is dated . In addition to the general terms and conditions contained in the Service Agreement between PAETEC and Customer (the “Agreement”), of which this Colocation Schedule is a part, Customer agrees that the following terms and conditions apply to Central Office Colocation Services provided to Customer by PAETEC.

1. GRANT OF LICENSE:

(a) Customer desires to install, operate and maintain certain communications equipment at the facility located at the address set forth in the attached Appendix A (the “Facility”) for the purpose of interconnecting Customer’s network with PAETEC’s network in order to utilize the Services provided under the Agreement. Subject to the terms and conditions contained herein, PAETEC hereby grants to Customer a nonexclusive license to install, operate, and maintain certain communications equipment of Customer as specified on Appendix A (hereinafter the “Equipment”) in the Facility. Customer shall have certain use of the equipment space within the Facility as described in Appendix A (the “Equipment Space”). Customer accepts the Equipment Space on an “AS IS, WHERE IS” basis. Customer may use the Equipment Space only as specified in Section 4 of this License Agreement.

(b) PAETEC hereby reserves all rights not specifically granted to Customer, including, without limitation, the right to: (1) access to and use of the Facility for its own use and for the use of its agents and Customers; (2) grant additional licenses to other users; and (3) exercise or grant other rights not inconsistent with the rights granted hereunder. Customer acknowledges that it has only been granted a license to occupy the Equipment Space and that the license granted herein does not create or vest in Customer any leasehold estate, easement, ownership interest or other property right of interest of any nature in any part of the Facility. Customer expressly disclaims any right, title or interest in or any perpetual right to use, the Facility or the Equipment Space. Customer expressly disclaims any right, title, or interest in or to any of PAETEC’s equipment or property or that of any of PAETEC’s affiliates, Customers, agents or licensees, whether located in the Facility, the Equipment Space, or elsewhere.

(c) This License is expressly made subject and subordinate to the terms and conditions of any underlying ground or facilities lease or other superior right by which PAETEC has acquired its interest in the Facility. If the consent of the holder of such superior right is required in order for the parties to enter into this License, then this License shall not become effective until such consent is obtained.

(d) On not less than sixty (60) days prior notice to Customer, PAETEC may relocate the Facility or all or any portion of the Equipment Space designated for Customer’s equipment. Following receipt of such notice, Customer shall relocate the Equipment, at Customer’s cost, to the new Facility or Equipment Space. The parties will cooperate in good faith to prevent any interruption of the Services.

2. TERM AND TERMINATION:

(a) The License granted pursuant to this Colocation Schedule shall be effective on the date Customer occupies the Equipment Space and shall continue in full force and effect, subject to early termination pursuant to the provisions of this Colocation Schedule, for the remaining Term of the Agreement such that this Colocation Schedule shall be co-terminus with the Agreement. In the event Customer fails to occupy the Equipment Space within forty five (45) days of the scheduled date, PAETEC shall be released from any obligations to Customer and may license the Equipment Space to another party.

(b) This Colocation Schedule shall immediately terminate (i) upon the termination, expiration or cancellation of any reason of the underlying arrangement between PAETEC and any other party involving PAETEC’s continued use or occupation



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of the Facility; (ii) upon the termination (as a result of breach or notice), expiration, or cancellation of the Agreement; (iii) for an event of default under this Colocation Schedule. This Colocation Schedule may be terminated by a party in the event the other party defaults in the performance of any of its material obligations hereunder and fails to cure the default within thirty (30) days of its receipt of written notice from the terminating party specifying the nature of the default. In the event of any termination of this Colocation Schedule by PAETEC for Customer's uncured default, Customer agrees to pay PAETEC an amount equal to the Colocation Fees times the remaining months in the Term of the Agreement. Any termination of this Colocation Schedule shall have no effect on the parties' respective rights and obligations under the "Agreement." PAETEC shall not be liable to Customer in any way as a result of PAETEC's failure (for any reason) to tender possession of the Equipment Space to Customer on or before the scheduled delivery date.

3. **CENTRAL OFFICE COLOCATION FEES:**

(a) For use of the Equipment Space and the Facility during the term of the License, Customer shall pay to PAETEC the Colocation Fees set forth on Appendix A (the "Colocation Fees"). The Colocation Fees shall be due and payable in advance, without abatement, deduction or set off, on the first day of each calendar month during the term, commencing on installation of equipment in the Equipment Space. If the Term commences or ends on a day other than the first day of a calendar month, then the Colocation Fees for the month in which the Term commences or ends shall be prorated (and paid at the beginning of the month) in the proportion that the number of days this Colocation Schedule is in effect during such month bears to the total number of days in the month. If the Colocation Fees are not paid when due, the amount due and payable shall be subject to a late payment charge as set forth in the Service Agreement.

(b) In addition, Customer shall pay to PAETEC, within ten (10) days of receipt of an invoice from PAETEC, all costs incurred by PAETEC in making modifications or improvements to the Facility or the Equipment Space for Customer, or for fire suppression, energy sources or other utilities, and the costs of any work or service performed for, or facilities furnished to, Customer to a greater extent or in a manner more favorable to Customer than that performed for or furnished to others within the Facility (the "Special Construction"). A preliminary estimate of these types of costs which PAETEC will initially incur, and for which Customer shall reimburse PAETEC, is set forth on the attached Appendix B. If any such costs are not paid when due, the amount due and payable shall be subject to a late payment charge as set forth in the Service Agreement.

(c) The Colocation Fees may be increased by PAETEC at any time by reason of: (i) any increases payable by PAETEC to its landlord(s) under the lease for the Facility; (ii) any increases incurred by PAETEC in the cost of any of the services to the Facility procured by PAETEC directly from the provider thereof, or (iii) any increases in real property taxes or other taxes assessed against the Facility which PAETEC is liable to pay. Customer's share of any such increases shall be prorated appropriately.

(d) In addition, Customer shall be liable for and shall pay all taxes and/or surcharges related to the grant of this License to Customer and all taxes and/or surcharges levied against the personal property owned by Customer and located in or about the Facility.

4. **USE OF THE FACILITY:** Customer shall use the Facility and the Equipment Space solely for the purpose of installing, maintaining and utilizing the communications equipment and other personal property of Customer installed in the Facility pursuant to the terms of this License for interconnection with the facilities of PAETEC and for no other purpose, without PAETEC's prior written consent. Customer shall not use the Facility or the Equipment Space or allow access thereto or use thereof, except in accordance with the terms of this License. In its use of the Facility and the Equipment Space, Customer shall not interfere with, or connect its Equipment to that of any customer of PAETEC or any other tenant or customer within the Facility, without PAETEC's prior written consent. All cross connections between Customer's Equipment and the equipment of any other party other than PAETEC located in the Equipment Space or the Facility shall be subject to PAETEC's prior approval, which approval shall not be unreasonably withheld, delayed or conditioned. Each cross connect shall be performed solely by PAETEC and shall be subject to a monthly recurring charge in the amount set forth on Appendix D.

5. **ACCESS TO FACILITY; INSTALLATION AND MAINTENANCE OF EQUIPMENT:**



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(a) Procedure for Access. Customer shall contact PAETEC's Network Operations Center at 1-877-340-2555 to obtain access to the Facility. PAETEC may make exceptions to the procedure for access for select facilities that have been designated by PAETEC as supporting un-escorted access. For such facilities, Customers will be provided an access card.

(b) Access When PAETEC Is Present. Customer shall be provided access to the Facility only when a representative of PAETEC is present. Customer must present the PAETEC issued security badge and official picture identification (e.g., drivers license or passport) in order to gain entry to the Equipment Space. If Customer requires access to the Facility during a period of time when a representative of PAETEC is working at the Facility, such access will be given without charge. However, such access must be scheduled by Customer at least twenty-four (24) hours in advance. PAETEC's normal business hours are 8:00 a.m. to 6:00 p.m., local time, Monday to Friday, exclusive of holidays.

(c) Access When PAETEC Not Present. If Customer requires access at a time when a representative of PAETEC is not present at the Facility, the cost to Customer for such access shall be the technician call out charge of \$90.00/half hour. All access required by Customer during such periods must be scheduled through PAETEC's Network Operations Center. PAETEC will use commercially reasonable efforts to accommodate Customer's scheduled requirements.

6. **MAINTENANCE:** Customer, at its own cost and expense, shall protect, maintain and keep in good order the Equipment Space and any Equipment in the Equipment Space, and shall ensure that neither Customer nor its employees, agents, contractors or invitees damage any part of the Facility, the Equipment Space, and/or any Equipment located in or about the Facility. Customer shall provide PAETEC with reasonable prior notice (not less than two business days) of the actual delivery date of the Equipment. Customer shall not cause damage to, or interfere with, the use or operation of the Facility by or the equipment of PAETEC or any third party(ies). Customer shall at all times comply with PAETEC's rules and regulations regarding Facility access and use and any rules and regulations imposed by the owner or operator of the Facility, as either may be amended from time to time. Without limiting the foregoing, Customer shall not maintain or permit any nuisances or violations of governmental laws, rules, regulations, or ordinances with respect to the Facility. Customer shall ensure that neither it nor its employees, agents, contractors, or invitees shall permit any explosive, flammable, or combustible material or any hazardous or toxic materials, as defined under applicable state, federal or local laws, rules, regulations, or ordinances to be located in or about the Facility, except in compliance with all applicable laws, rules, regulations, and ordinances.

7. **INSTALLATION AND ALTERATIONS:** Without the prior approval of PAETEC, Customer shall not commence any installation, interconnection, addition or alteration to the Facility, the Equipment Space, or Customer's equipment, or undertake any upgrade or modification to the Equipment, that would in any way result in an increased cost to PAETEC, or that might affect the use of the Facility or other equipment by PAETEC or any other Customer. Whenever PAETEC's approval of work is required, Customer shall deliver a written request for consent to PAETEC, specifying the names and addresses of the desired contractors or subcontractors, along with a description of the services to be performed, and the desired dates and times of service. PAETEC shall have the right to approve or disapprove any contractor or subcontractor selected for work in the Facility. If PAETEC does not respond to Customer's written notice requesting approval within ten (10) business days, approval is deemed to have been given. In addition, if approval of any contractor or subcontractor is required by the terms of an agreement with a lessor or other party holding a superior interest in the Facility, PAETEC shall also submit the written request to such other party for approval, and Customer's use of contractors shall be subject to the landlord's approval as set forth in the underlying lease.

Customer shall pay or cause to be paid all costs and charges (a) for work done by Customer or caused to be done by Customer in or about the Facility; (b) for all materials furnished for or in connection with such work; and (c) for alterations or additions to the Facility or equipment that require PAETEC to incur costs. Customer shall indemnify PAETEC against and hold PAETEC and the Facility free and clear of and from all mechanics' liens and claims of liens, and all other liabilities, liens, claims, demands, costs and expenses of any kind on account of such work done by or on behalf of Customer. If any such lien is filed at any time against the Facility, or any part thereof, Customer shall cause such lien to be discharged of record within ten (10) days after the filing thereof, except that if Customer desires to contest such lien, it will furnish PAETEC, within such ten-day period, security reasonably satisfactory to PAETEC of at least 150% of the amount of the claim, plus estimated costs and interest. If a final judgment establishing the validity or existence of a lien for any amount is entered, Customer shall pay and satisfy the same without delay. If Customer fails to pay any charge for which a lien has been filed, and has not given PAETEC security as described above, PAETEC may, at its option, pay such charge and related costs and interest, and the amount so



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paid, together with reasonable attorneys' fees incurred in connection with such lien, will be immediately due from Customer to PAETEC. Nothing contained in this Colocation Schedule shall be deemed to constitute a consent or agreement of PAETEC to subject the Facility to liability under any mechanics' or other lien law. If Customer receives notice that a lien has been or is about to be filed against the Facility, or any action affecting title to the Facility has been commenced on account of work done by or on behalf of, or materials furnished to or for Customer, Customer will immediately give PAETEC written notice of such notice. At least fifteen (15) days before commencement of any work (including but not limited to any maintenance, repairs, alterations, additions, improvements or installations) in or to the Facility or the Equipment Space by or for Customer, Customer will give PAETEC notice of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work. PAETEC shall have the right to post notices of non-responsibility or similar notices at the Facility in order to protect the Facility against any such liens.

8. **COMPLIANCE WITH LAWS:** Customer shall, at Customer's sole cost and expense, comply with all federal, state, and local laws, rules, regulations, ordinances and requirements, whether now in force or hereinafter enacted, relating to Customer's use of the Facility and the Equipment Space. Customer will obtain all required permits and licenses pertaining to the installation, operation, maintenance and repair of its equipment in the Facility and the Equipment Space.

9. **LIABILITY: INDEMNIFICATION:**

(a) EXCEPT FOR ANY DAMAGES ARISING OUT OF THE GROSS NEGLIGENCE OR INTENTIONAL WRONGFUL ACTS OF PAETEC, PAETEC SHALL NOT BE LIABLE FOR (i) LOSS OF OR DAMAGE TO ANY PROPERTY OF THE CUSTOMER OR OF ANY OTHER PERSON BY THEFT OR OTHERWISE; (ii) ANY INJURY OR DAMAGE TO ANY PERSON OR PROPERTY RESULTING FROM FIRE, EXPLOSION, FALLING PLASTER, STEAM, GAS, ELECTRICITY, INTERRUPTION OF SERVICE OR POWER, DUST, WATER OR SNOW, OR LEAKS FROM ANY PART OF THE BUILDING OR FROM THE PIPES, APPLIANCES OR PLUMBING SYSTEM, OR FROM THE ROOF, STREET OR SUBSURFACE OF ANY OTHER PLACE OR BY DAMPNESS, OR FROM ANY OTHER CAUSE WHATSOEVER; (iii) ANY DAMAGE OR LIABILITY CAUSED BY OTHER OCCUPANTS, CUSTOMERS OR PERSONS IN THE BUILDING OR BY CONSTRUCTION OF ANY PRIVATE OR PUBLIC WORK; OR (iv) ANY LATENT DEFECT IN THE FACILITY AND/OR THE EQUIPMENT SPACE. PAETEC SHALL HAVE NO DUTY TO MONITOR, MAINTAIN, OR CARE FOR THE EQUIPMENT INSTALLED BY OR FOR CUSTOMER. IN NO EVENT SHALL PAETEC BE LIABLE TO CUSTOMER OR ANY OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOSS OF PROFITS OR CONSEQUENTIAL DAMAGES.

PAETEC SPECIFICALLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES RELATING TO THE FACILITY, THE EQUIPMENT SPACE, AND ANY MAINTENANCE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) Customer agrees to indemnify and hold harmless and defend PAETEC, its employees, officers, directors, contractors, and agents from and against any and all demands, claims, causes of action, fines, penalties, damages, losses, liabilities, and expenses (including without limitation attorneys' fees and court costs) incurred in connection with or arising from:

- (1) the use or occupancy of the Facility and/or the Equipment Space by Customer or any person claiming under Customer;
- (2) any activity, work, or thing done or permitted by Customer in or about the Facility and/or the Equipment Space;
- (3) any act, omission, negligence, or willful misconduct of Customer or any person claiming under Customer, or the employees, agents, contractors, invitees, or visitors of Customer;
- (4) any breach, violation, or nonperformance by Customer or any person claiming under Customer, or the employees, agents, contractors, invitees, or visitors of Customer of any term, covenant, or provision of this License, or any law, statute, ordinance or governmental requirement of any kind;



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- (5) any injury or damage to the person, property, or business of Customer, its employees, agents, contractors, invitees, visitors, or any other person entering the Facility and/or the Equipment Space under the express or implied invitation of Customer.

If any action or proceeding is brought against PAETEC, its employees, officers, directors, contractors or agents by reason of any such claim, Customer shall, on notice from PAETEC, defend the claim at Customer's sole cost and expense with counsel reasonably satisfactory to PAETEC. The obligations of this section shall survive the expiration or other termination of this License.

10. INSURANCE:

(a) During the Term of this Colocation Schedule, Customer shall, at Customer's sole cost and expense, keep in full force and affect the following insurance:

- (1) Standard form property insurance insuring against the perils of fire, vandalism malicious mischief, extended coverage ("all-risks") and sprinkler leakage. This insurance policy shall be on all property owned by Customer, for which Customer is legally liable, or that was installed at Customer's direction or expense, and which is located in the Facility, in an amount which comprises full replacement cost.
- (2) Commercial general liability insurance insuring Customer against any liability arising out of the license, use, occupancy, or maintenance of the Facility and all areas appurtenant thereto. Such insurance shall be in the amount of \$2,000,000 combined single limit for injury to or death of one or more persons in an occurrence and for damage to tangible property (including loss of use) in an occurrence. The policy shall insure the hazards of the Facility, Customer's operations thereon, and the operations of all independent contractors, and shall include contractual liability (covering the indemnity of Customer contained in this License).
- (3) Workers' compensation as required by applicable state law, and employers liability insurance with minimum limits of \$1,000,000 per occurrence. If the Facility is located in a "monopolistic" state, Customer shall carry "stop gap" coverage with minimum limits of \$1,000,000 per occurrence.
- (4) Business automobile insurance in an amount not less than \$1,000,000 per occurrence covering all autos used at the Facility, including owned, non-owned and hired autos.

(b) All the insurance required of Customer under this Agreement shall:

- (1) Be issued by an insurer with an A M Best rating of VII or better;
- (2) Contain a provision that the insurance provided to Customer shall be primary and noncontributing with any other insurance available to PAETEC;
- (3) Contain an endorsement requiring thirty (30) days written notice from the insurance company to both Customer and PAETEC before cancellation or material reduction in the coverage, scope or amount of any policy. Each liability insurance policy shall list PAETEC, its, officers, directors and employees as additional insureds. Each policy, or a certificate of the policy acceptable in form and content to PAETEC, shall be deposited with PAETEC prior to execution of this Colocation Schedule and delivery of Equipment Space and/or use of the Facility, and on renewal of the policy not less than thirty (30) days after expiration of the initial term of the policy. Customer waives any property damage claim which it may have in the future against PAETEC to the extent Customer's damages are covered by Customer's insurance and Customer agrees to obtain, for the benefit of PAETEC, a policy or endorsement waiving Customer's insurance carrier's right of subrogation.



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11. **ASSIGNMENT AND SUBLICENSING:** Customer shall not sublicense, sell, assign, pledge, encumber or otherwise transfer by operation of law or otherwise all or any part of Customer's rights or obligations under this License, nor permit any other person to occupy or use the Facility or the Equipment Space or any portion thereof, without first obtaining PAETEC's prior written consent, which consent may be withheld in PAETEC's sole discretion.

12. **TERMINATION IN THE EVENT OF CASUALTY OR CONDEMNATION:** In the event of any damage, destruction, or condemnation of the Facility that renders the Facility or the Equipment Space unusable or inoperable, PAETEC shall have the right to terminate this License and all of its duties and obligations hereunder by giving written notice to Customer within ninety (90) days after such damage, destruction, or condemnation.

13. **EVENTS OF DEFAULT**

(a) The occurrence of any one or more of the following events shall constitute a default and breach of this License by Customer ("Event of Default"):

- (1) Customer's failure to pay when due any recurring monthly Colocation Fee or charge, any initial installation charges, or any other amount, if any such failure continues for five (5) days after notice of nonpayment has been given to Customer.
- (2) Customer's failure to perform or observe any other term, covenant or condition of this License, if the failure continues for thirty (30) days after notice has been given to Customer.
- (3) The installation by Customer of any Equipment in the Facility without first obtaining PAETEC's written consent.
- (4) Customer's assignment without prior consent or abandonment of the Facility and/or the Equipment Space.

(b) Upon the occurrence of any Event of Default, PAETEC may, without notice or demand and in addition to any other right or remedy available at law or equity, terminate this License and remove all of the Equipment from the Facility and store the same at Customer's sole cost and expense. Any damages occasioned by such removal and/or storage are expressly waived by Customer. Any Equipment so removed will be returned to Customer upon payment in full of all removal and storage costs, all past due Colocation Fees and charges, and all applicable late payment charges. If within thirty (30) days following such Equipment removal, Customer has not requested the return of the Equipment and paid any sums owed, then PAETEC may exercise all rights of ownership over such Equipment including the right to sell same and retain possession of any sale proceeds. PAETEC's exercise of any remedies provided for in this section shall be without prejudice to any other remedies PAETEC may have available herein or by law.

14. **SURRENDER OF THE PREMISES:** Within fifteen (15) days of expiration or earlier termination of this Colocation Schedule, Customer shall remove the Equipment from the Facility at Customer's sole cost and expense. Customer shall surrender the Equipment Space in good condition, reasonable wear and tear accepted. If Customer fails to remove its equipment and other personal property from the Facility within fifteen (15) days after the date of expiration or other termination, PAETEC may remove and store such items at Customer's sole cost and expense. In addition, upon expiration or other termination of this Colocation Schedule for any reason, Customer shall, at its sole cost and expense, remove all alterations, additions, and improvements made or installed by Customer and restore the Facility to the same good condition as existed when Customer first installed the Equipment, reasonable wear and tear excepted.

15. **RULES AND REGULATIONS:** Customer and its employees, agents, contractors, and invitees shall abide by and observe all reasonable rules and regulations as may be promulgated by PAETEC or PAETEC's lessor for the maintenance and use of the Facility. Notice of the rules and regulations will be posted or provided to Customer. PAETEC may periodically amend or supplement the rules and regulations at its sole discretion.



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16. **AMENDMENT AND MODIFICATION:** This Colocation Schedule may be amended, changed, or modified only by an instrument in writing signed by duly authorized representatives of the parties hereto. Customer expressly agrees to execute any amendment to the Agreement which may be required by a holder of a superior interest in the Facility, which does not materially and adversely affect Customer's rights under this License, within fifteen (15) days of a written request by PAETEC or PAETEC may terminate this Colocation Schedule on notice to Customer.

17. **COUNTERPARTS:** This License may be executed in several counterparts, each of which shall constitute an original but all of which shall constitute one and the same instrument.

Customer:	PAETEC
By:	By:
Print Name:	Print Name:
Title:	Title:
Date:	Date:



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Appendix A
CO-LOCATION APPLICATION



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Appendix B

REQUESTED VARIANCES AND ESTIMATED SPECIAL CONSTRUCTION COSTS TO BE REIMBURSED BY CUSTOMER

List Variance and / or miscellaneous work.

Direct costs (To Be Completed by PAETEC)

<u>ITEM</u>	<u>QUANTITY</u>	<u>AMOUNT</u>	<u>EXTENDED</u>
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Labor

Engineering

Project management (5%)

TOTAL BUILD OUT COST FOR ALL OF THE ABOVE

Signed: _____

Date: _____