



Edge Colocation Services

Early Access Terms

1. Definitions.

- 1.1. Customer Content means any data, information or material that Customer may receive, store or transmit while using the Services;
- 1.2. Equipment means Customer's network, computer and other information technology equipment and cabling used in connection with the Services and identified on the applicable Order;
- 1.3. Order means the form evidencing the initial subscription order for the Services and any subsequent Orders submitted online or in written form;
- 1.4. Portal means the Vapor Edge Portal;
- 1.5. Services means access to the Space and the Portal, subject to the terms of the Agreement;
- 1.6. Space means specified space or spaces, including one or more wedge racks, or portions thereof, in a Vapor Chamber located in the Site identified on the applicable Order.

2. Services.

2.1. Early Access Program. These Terms govern your use of any Services that have been identified as "early access," "beta," "test," "proof of concept," or on similar basis. Since the Services are still under development, functionality may not be complete and support may not be available for any issues you experience. Company reserves the right to make changes, modifications, reduction in functionality and enhancements to the Services, at any time, and from time to time without prior notice. Company makes no commitment to release a generally available version of any Services. Any generally available version of a Service may differ materially from the Services evaluated under the Agreement.

2.2. License to Space; Access to Services. From the Effective Date through the end of the Term set forth on the applicable Order (the "Early Access Period"), Company grants Customer a limited, non-exclusive, non-transferable right to (i) install, operate and maintain Equipment in the Space for its own internal evaluation and related test purposes and (ii) access the Portal. Customer acknowledges and agrees that it does not have, has not been granted and will not own or hold any real property interest in the Space, that Customer is a licensee not a tenant or lessee of the Space and that Company retains the right to access the Space at any time and from time to time to perform the Services. The License granted to Customer is subject and subordinate to any license, mortgage, deed of trust, or ground lease or prime lease by or from which either Company or the applicable licensor or landlord derives its rights in the Space and the premises in or on which the Space is located, and associated common areas and/or that contain(s) restrictions on the use of such Space, the premises or common areas. Company's interest in the Space, the premises and associated common areas may be that of a licensee or lessee rather than owner. This provision is hereby declared to be self-operative and no further instrument shall be required to effect such subordination of this Agreement.

2.3. Security and Installation. All Customer access rights to the Space are subject to Company's security policies and procedures and rules and regulations for the governing conduct at the premises where the Space is located, as may be updated from time to time in the Company's sole discretion. All Equipment is subject to the Installation Standards. Only the authorized users designated in Customer's Order may access the Space and use the Services.

2.4. Customer Equipment. Customer shall be responsible for obtaining and maintaining any Equipment and any ancillary gear or services needed to connect to, access or otherwise use the Services and for ensuring Equipment meets the Company's published standards for compatibility with the Chamber. All Equipment must be approved by the Company prior to installation. Except as set forth on the applicable Order, Company is not responsible for and will not be obligated to provide any assistance in configuration, installation, administration, troubleshooting, maintenance, or repair of Equipment, or their integration into Customer's internal network(s).



2.5. Customer Content. Customer shall retain exclusive care, custody and control over any Customer Content stored or transmitted using the Services and shall have sole responsibility for the accuracy, quality, integrity, legality, and intellectual property ownership or right to use all such Customer Content. Company's use of such Customer Data shall be limited to the purpose of providing the Services.

2.6. Support; Maintenance. Company shall use reasonable efforts to provide support for the Services upon Customer's request; provided such support is on an "AS-IS" basis. Company will only provide support to the authorized users designated in Customer's Order and will not provide support to any third parties, including Customer's end users. Any updates, corrective action, repairs, or modifications to the Services shall be at Company's sole discretion. Any regular maintenance activities that are reasonably expected to cause Customer downtime or the inability to access the Services will be scheduled at a mutually convenient time between the parties; provided that the Company reserves the right to perform emergency maintenance at any time in its sole discretion. There are no service level agreements or guarantees for the Services during the Early Access Period and Customer is not entitled to any credits or other remedy for downtime or other problems that may result from its use of the Services.

3. **Payment Terms.**

3.1. Fees. Fees are as set forth in the Order, and may be comprised of a monthly recurring charge ("MRC") and/or a non-recurring charge ("NRC"). Fees will accrue from the Service Commencement Date set forth in the Order and Customer will be liable for all Fees for the full term specified in each Service Order. All Fees shall be paid within 30 days of the date of invoice. Interest shall be charged on past due amounts at the lower of (i) one and a half percent (1.5%) per month; or (ii) the highest rate permitted by applicable law. Customer is responsible for all reasonable expenses (including attorneys' fees) incurred by Company in collecting such delinquent amounts. Company will invoice monthly in advance for all MRCs and in arrears for NRCs and any usage-based Fees.

3.2. Disputes. Customer may, in good faith, dispute any invoice or any part thereof (a "Disputed Amount") by submitting a written notice of such dispute along with reasonable supporting documentation within ninety (90) days of the date of the initial invoice on which the Disputed Amount appears, failing which Customer waives all rights to dispute such Disputed Amount and to file any claim. The Parties will work together in good faith to resolve the Disputed Amount within thirty (30) days after receipt of Customer's notice. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding.

3.3. Taxes. All Fees are stated and payable in U.S. dollars and are exclusive of sales, use, excise, transaction or any other applicable taxes, regulatory fees or surcharges, or duties (collectively, "Taxes"). Customer is responsible for payment of all Taxes.

4. **Acceptable Use.** Customer shall not access the Services for benchmarking purposes or in order to build a competitive product or service. Customer may not remove, alter, or use any trademarks, copyright notices, restricted rights legends, proprietary marks or other notices from the Services. Customer shall not use the Services to: (i) take any action that imposes or may impose (as determined by us in our sole discretion) an unreasonable or disproportionately large load on our (or our third party providers') infrastructure; (ii) interfere or attempt to interfere with or disrupt the integrity or performance of the Services or the activities conducted using such Services; (iii) attempt to gain unauthorized access to the Services (or other accounts, computer systems or networks connected to the Services); (iv) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (v) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (vi) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; or (vii) otherwise engage in illegal, abusive or irresponsible behavior. Customer shall not use the Services to provide any interconnection services, internet exchange, cloud on-ramp services, or any services that may be competitive to Vapor. Customer may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person or physical or environmental damage.

5. **Customer Responsibilities.**

5.1. Customer Use; Access. Customer is responsible for all activity occurring under Customer's designated user accounts, including by its employees, representatives, consultants, contractors or agents. Customer will enable



Company's reasonable method for access to the Equipment for the purpose of performing the Services and invoicing. Customer must cooperate with Company's reasonable investigation of outages, security problems, and any suspected breach of the Agreement. Customer is responsible for keeping its account permissions, billing, and other account information up to date. Customer shall also be responsible for maintaining the logical security of its Equipment, account, passwords and Customer Data.

5.2. Testing and Feedback. Customer agrees to act as a test site and provide feedback as to its operational and functional capabilities of the Services. Customer agrees to provide Company with timely feedback regarding Customer's experience and use of the Services, including information regarding the functions and operation of the Services, test results, any errors, failures or other malfunctions and information necessary to enable the Company to duplicate them (collectively, "Feedback"). Customer acknowledges and expressly agrees that all Feedback will be exclusively owned by Company and Company may use the Feedback for any purpose, including incorporating it into any commercial product or offering, without compensation or accounting and without retention by Customer of any proprietary claim.

5.3. Compliance: Security. Customer shall comply with all applicable laws and regulations in connection with Customer's use of the Services, including but not limited to those related to data privacy and export control. Customer shall: (i) notify Company immediately of any unauthorized use of any password or account or any other known or suspected breach of security with respect to the Services and (ii) use reasonable efforts to immediately stop any unauthorized use or access of the Services of which it becomes aware.

5.4. Backup of Customer Content. Customer is responsible for ensuring the integrity and security of Customer Content and shall regularly backup and validate the integrity of backups of Customer Content on an environment separate from the Services.

5.5. Insurance. Customer shall carry commercial general liability insurance on a form providing coverage at least as broad as the ISO CG 0001 10 01 policy form covering its occupancy and use of the Space. At a minimum, Customer and all parties accessing the Space for or on behalf of Customer (other than independent contractors of Customer, which must provide coverage as separately specified by Company) shall obtain the following insurance coverage: (i) statutory workers' compensation including employer's liability with limits of \$1,000,000 per accident; \$1,000,000 disease, each employee; \$1,000,000 disease policy limit; (ii) commercial general liability covering bodily injury, death and property damage including, but not limited to, coverage for explosion, collapse and underground exposures (XCU) and products/completed operations with limits not less than \$1,000,000 per occurrence, combined single limit with a \$2,000,000 general policy aggregate and a separate products/completed operations aggregate of \$2,000,000; (iii) automobile liability covering all owned, hired and non-owned vehicles with combined single limits not less than \$1,000,000 per accident; (iv) umbrella liability insurance of \$2,000,000; (v) commercial all risk of loss fire with extended coverage insurance covering all of Customer's Equipment and improvements at the Space. The insurance policies shall be endorsed to cover the Company as an additional insured on a primary and non-contributory basis on a form that does not exclude the concurrent negligence of the additional insured.

All insurers will carry a minimum A.M. Best A-(FSC VIII) or equivalent rating and must be licensed to do business in the state where the Space is located. All policies required to be provided pursuant to this Section 5.5 shall contain a waiver of subrogation in favor of Company. The insurance requirements in this Agreement shall not be construed to limit or otherwise affect the liability of the Customer. Customer shall provide certificates of insurance evidencing said coverage to Company upon execution of this Agreement and upon any renewal of policies that occurs during the Term or any extension thereof. Any failure on the part of Company to request the required certificates of insurance shall not in any way be construed as a waiver of any of these insurance requirements. Customer shall agree to provide a copy of said policies upon receipt of written request. Customer agrees to provide notice to Company within at least thirty (30) business days of receipt of any cancellation notice of any of the required insurance policies.

5.6. Indemnification by Customer. Customer shall indemnify and hold Company, its suppliers and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) to the extent arising out of or in connection with Customer's use of the Services or a claim alleging that use of Customer Content infringes a copyright, patent, or a trademark of, or has caused harm to the rights of, a third party; provided in any such case that Company (a) promptly gives notice of the claim to Customer; (b) gives Customer sole control of the defense and



settlement of the claim (provided that Customer may not settle such claim unless such settlement unconditionally releases Company of all liability and does not adversely affect Company's business or Service); and (c) provides to Customer all available information and reasonable assistance.

6. Confidentiality; Proprietary Rights.

6.1. Confidentiality. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose confidential business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). The Receiving Party agrees: (i) to protect such Proprietary Information using the same degree of care as it takes to preserve and safeguard its own confidential information of like nature, but no less than reasonable care; (ii) not to use such Proprietary Information except in performance or use of the Services or the exercise of its legal rights under the Agreement; and (iii) not to disclose the Proprietary Information to any third party except to its service providers, officers, directors, employees, contractors, or agents ("Representatives") who have a need to know such information, provided that such Representatives agree to confidentiality measures that are at least as stringent as these. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (i) is or becomes generally available to the public; (ii) was in its possession or known by it prior to receipt from the Disclosing Party; (iii) was rightfully disclosed to it without restriction by a third party; (iv) was independently developed without use of any Proprietary Information of the Disclosing Party; or (v) is required to be disclosed by law. The terms outlined in this section shall survive termination or expiration of the Agreement.

6.2. Proprietary Rights. All rights, title, and interest to, and all intellectual property rights in, the Services provided by Company under the Agreement and all information relating to the Services including but not limited to any Feedback, suggestions, improvements or other information provided by Customer with respect to the Services are proprietary to, and shall be and will remain the property of, Company. All rights not specifically granted to Customer are reserved by Company. Company shall own all intellectual property created as part of providing the Services. Customer acknowledges and agrees that the Portal access is provided as a service and this Agreement does not grant Customer any intellectual property rights or licenses, including without limitation licenses to software incorporated into or accessed through the Services, to logos or trademarks associated with the Services, or to other written or graphical content provided by or through the Services and the Company retains all its right, title, and interest in and to the Services, including without limitation all software and related materials.

7. WARRANTY DISCLAIMER. THE SERVICES AND THE SPACE ARE PROVIDED "AS IS" AND COMPANY MAKES NO WARRANTY, EXPRESS OR IMPLIED, BY STATUTE, CONDUCT, OR OTHERWISE AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT THE SERVICES ARE OR WILL BE UNINTERRUPTED, ERROR-FREE, WILL MEET CUSTOMER'S REQUIREMENTS, OR BE TIMELY OR SECURE OR THAT EQUIPMENT OR CUSTOMER CONTENT WILL BE SECURE. COMPANY EXPRESSLY REPRESENTS THE SERVICES ARE NOT FINAL PRODUCTS AND, AS SUCH, MAY CONTAIN VARIOUS ERRORS OR DEFECTS AND MAY BE UNSTABLE. THE SERVICES MAY BE SUBJECT TO INTERRUPTIONS, LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. USE OF THE SERVICES IS ENTIRELY AT CUSTOMER'S OWN RISK AND MAY VOID WARRANTY ON CUSTOMER'S OTHER PRODUCTS OR EQUIPMENT. CUSTOMER DOES NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF COMPANY TO ANY THIRD PARTY NOR TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE SERVICES.

COMPANY DISCLAIMS ALL LIABILITY FOR ANY ACT OR OMISSION OF ANY OTHER PARTY FURNISHING SERVICES AND/OR PRODUCTS, OR THE INSTALLATION AND/OR REMOVAL OF ANY AND ALL EQUIPMENT OR SUPPLIES IN CONNECTION WITH THE SERVICES. CUSTOMER AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES ASSUME ALL RISK WHILE AT THE SPACE, INCLUDING, WITHOUT LIMITATION, FALLS AND ELECTRIC SHOCKS, AND RELEASES COMPANY AND ITS AGENTS, EMPLOYEES AND REPRESENTATIVES FROM ANY LIABILITY WHATSOEVER ARISING OUT OF ANY DAMAGE, LOSS OR INJURY TO PERSON AND/OR PROPERTY.

8. LIMITATION OF LIABILITY. IN NO EVENT SHALL COMPANY BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES, OF WHATEVER NATURE AND REGARDLESS OF THE FORM OF ACTION, AS A RESULT OF THE AGREEMENT OR THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY,

INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE AGREEMENT OR THE SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICES, LOSS OF DATA OR DATA BEING RENDERED INACCURATE, LOSSES SUSTAINED BY YOU OR THIRD PARTIES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF A PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN. IN NO EVENT SHALL COMPANY'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE SERVICES IN THE SIX MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

9. **Term and Termination.** The Early Access Period and any extensions thereof shall be mutually agreed and set forth in an Order. Either party may terminate an Order, or any individual Service identified in an Order, on thirty days written notice to the other party. Company may terminate any Early Access Period prior to expiration at any time without cause on written notice, at Company's sole discretion. Company may modify, suspend or terminate any Services at any time in its sole discretion. Upon termination or expiration of the Services, Customer shall immediately discontinue using all Services and coordinate removal of any Customer Equipment and/or Customer Content within 30 days thereof.

10. **Miscellaneous.**

10.1. Assignment. Neither party may assign or otherwise transfer the Agreement without the prior written consent of the other party; except that either party may assign the Agreement without consent in connection with a merger, reorganization, consolidation, change of control, or sale of all or substantially all of the assets to which the Agreement pertains. Any assignment or transfer of the Agreement in violation of the foregoing shall be null and void. The Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns.

10.2. Publicity. Customer may not issue any press release or publicity regarding the Agreement, use the Vapor name or logo or other identifying indicia, or publicly disclose information regarding the Services or release to any third party the results of any test or evaluation of the Services performed by or on behalf of Customer without the prior written approval of Company. The parties shall work together in good faith to issue at least one or more mutually agreed press release(s) within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Company to serve as a reference account upon request. Customer agrees that Company may publicly disclose that it is providing Services to Customer and may use Customer's name and logo to identify Customer in promotional materials, including press releases, blog posts and Company website.

10.3. Force Majeure. Neither party will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond its control, such as significant failure of a part of the power grid, failure of the Internet, fiber cut caused by a third party unaffiliated with either Company or Customer, natural disaster or weather event, war, riot, insurrection, epidemic, strikes or labor action, terrorism, or other events beyond such party's reasonable control.

10.4. Governing Law; Jurisdiction. The Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions. All disputes, claims or actions arising out of the Agreement will be subject to the exclusive jurisdiction and venue of the state courts located in Travis County, Texas and the U.S. federal courts located in the Western District of Texas, and each party hereby consents to the personal jurisdiction thereof. The U.N. Convention on the International Sale of Goods shall not apply to the Agreement.

10.5. Miscellaneous. The provisions of the Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior oral or written, and all other communications relating to the subject matter hereof. Customer and Company are independent contractors and nothing contained in the Agreement is intended or shall be construed as creating a relationship of principal and agent, employer or employee, or joint venture between the parties. In the event of conflict between these Terms and the applicable Order, these Terms shall prevail. The Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by written amendment by the parties hereto. In the event that any one or more provisions contained in the Agreement should for any reason be held to be unenforceable in any respect, such unenforceability shall not affect any other provisions hereof, and the Agreement shall be construed as if such unenforceable provision had not been contained herein.