

ARTICLE V
SURETY REQUIREMENTS

1. Tenant shall furnish satisfactory evidence of financial security as set forth in paragraph 5, below, or if it cannot, Tenant shall furnish a letter of credit, surety bond, cash deposit or annually in an amount sufficient to guarantee the payment of all sums which may become due for Tenant's Occupancy of Bonded Conduit and Bonded Innerducts, and any outstanding balance for Custom Work performed for Tenant, including but not limited to, the removal of Tenant's Facilities upon termination of any authorization issued hereunder. Termination of this Agreement shall not release the Tenant from any liability or surety obligation under the Agreement.
2. If the financial security provided is in the form of a bond or irrevocable letter of credit, such instrument shall be issued by a surety company or bank satisfactory to ECS. The instrument shall contain a provision that the surety company or bank will pay ECS within the dollar limits of the instrument any sum demanded by ECS as due under this Agreement, whether or not Tenant contests its liability to pay such sum, and whether or not ECS exercises or has exercised any option it may have to terminate. If any such amounts are paid by the surety company or bank, Tenant shall restore the surety bond letter of credit to the full amount required under this Article, within thirty (30) days after notice of such payment is sent to Tenant.
3. If the financial security provided is in the form of a cash deposit, interest at the rate of four (4) percent per annum shall be credited to Tenant's account during the continuance of the deposit. If at any time Tenant fails to pay any sum demanded by ECS as due under the provisions of this Agreement, ECS shall have the right, without prior notice to Tenant, to apply any or all amounts on deposit to payment of the sum due, whether or not Tenant contests its liability to pay such sum, and whether or not ECS exercises or has exercised any option it may have to terminate. If any such amounts are applied to payment of sums due to ECS, Tenant shall restore to its deposit the amounts so applied within thirty (30) days after notice to Tenant of such application.
4. The amount of the letter of credit, surety bond or deposit shall not operate as a limitation upon the obligations of Tenant under this Agreement.
5. In lieu of furnishing a letter of credit, surety bond or deposit in the amount specified above, Tenant may: (i) certify that, within the last 12 months, Tenant has paid all undisputed bill amounts within sixty (60) days of the date of invoice, and (ii) provide written documentation that it has an S&P, Moody's or Fitch bond rating of A, or better.
6. Failure to provide one of the above surety requirements shall be grounds for stopping work on Bonded Conduit construction for Tenant.