

FIRST AMENDMENT TO MASTER TERMS AND CONDITIONS

THIS FIRST AMENDMENT TO MASTER TERMS AND CONDITIONS (herein "First Amendment") is made and entered into this ___ day of _____ 2015, by and between the Telx Entities (as more particularly set forth on the signature page of this First Amendment), each of which is a Delaware limited liability company (collectively hereinafter, "Licensor"), and City and County of San Francisco, a municipal corporation (hereinafter "Customer").

RECITALS

Reference is made to that certain agreement dated for reference purposes as of February 1, 2011 by and between Licensor and Customer, comprised of Master Terms and Conditions, Exhibit A, Exhibit B, Exhibit C and Addendum to Colocation Agreement (collectively, the "Original Agreement"). Reference is also made to Service Order # 120-118334, dated September 22, 2010 (the "Existing Service Order").

WHEREAS, Licensor and Customer entered into the Original Agreement, which governs the Existing Service Order for Services provided by Licensor to Customer in the Licensed Area and Meet-Me-Room located on the third (3rd) floor of the interconnection and collocation Facility located at 200 Paul Avenue, San Francisco, California, as more particularly described in the Original Agreement and the Existing Service Order; and

WHEREAS, the Initial Term of the Original Agreement commenced on February 1, 2011, and expired on January 31, 2013, and upon the expiration of the Initial Term, the Term of the Original Agreement was extended by three (3) twelve-month Renewal Terms, and, to the extent applicable in the event the Amendment Effective Date (as hereinafter defined) commences after February 1, 2016, upon the expiration of the third twelve-month Renewal Term, the Term of the Agreement was extended by consecutive Automatic Short Term Renewal Terms, as provided by Section 4.0 of the Master Terms and Conditions of the Original Agreement and Section 1 of the Addendum to the Original Agreement (the "Addendum"); and

WHEREAS, Licensor and Customer desire to: (i) modify the rate for the monthly recurring charges ("MRC") for the Services set forth on the Existing Service Order for the existing full locking cabinet, power, redundant power and fiber 24 pack (and cross connects) by executing contemporaneously with the execution hereof a new Service Order setting forth such Services at the modified rates (the "Replacement Service Order for Existing Equipment and Services"); (ii) execute contemporaneously with the execution hereof an additional new Service Order for an additional fiber 24 pack (12 fiber cross connects) (collectively, the "New Equipment") and a one-time set up fee, at the rates specified therein (the "Second New Service Order"); (iii) include in the Second New Service Order additional Services; (iv) amend the Original Agreement to extend the Term; and (v) to modify the Original Agreement in certain other respects, all as more particularly described herein;

NOW, THEREFORE, for and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto for themselves and their successors and assigns do hereby agree as follows:

1. ***Definitions.*** All capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Original Agreement. The Original Agreement, as amended by this First Amendment, is referred to herein as the “Master Agreement.”

2. ***Amendment Effective Date.*** This First Amendment shall be effective on the date (the “Amendment Effective Date”) which is the later of (i) the date on which Licensor and Customer have executed and delivered this Amendment contemporaneously with the Replacement Service Order for Existing Equipment and Services and the Second New Service Order, which shall be in the respective forms attached hereto as Exhibit A-1, or (ii) the effective date of a resolution by the City’s Board of Supervisors, in its sole discretion, approving this First Amendment and authorizing the City’s execution in compliance with applicable law.

3. ***Replacement Service Order for Existing Equipment and Services.*** Notwithstanding anything to the contrary set forth herein, the Replacement Service Order for Existing Equipment and Services shall be executed contemporaneously with this First Amendment and shall be effective and replace the Existing Service Order, and Customer shall commence paying the MRC set forth on the Replacement Service Order for Existing Equipment and Services, as of February 1, 2016.

4. ***Second New Service Order.*** Notwithstanding anything to the contrary set forth herein, the Second New Service Order shall be executed contemporaneously with this First Amendment. As soon as commercially reasonable following the Amendment Effective Date, Licensor shall provide the New Equipment and the required technical support for set up, as set forth in the Second New Service Order. Notwithstanding the provisions of the Second New Service Order regarding “Initial Payment” to the contrary, (i) Customer shall pay the NRC set forth on the Second New Service Order upon the Amendment Effective Date, and (ii) Customer shall commence paying the MRC set forth on the New Service Order as provided in Sections 2.2 and 2.5 of the Original Agreement upon the later of the Amendment Effective Date or delivery of the New Equipment.

5. ***Extension of Term.*** Effective as of the Amendment Effective Date, the Original Agreement shall be modified as follows: the Term shall be extended for a renewal term commencing on February 1, 2016 and expiring January 31, 2018 (the “24 Month Renewal Term”). Further, effective as of the Amendment Effective Date: (i) Customer shall have the option to extend the Term of the Master Agreement for up to three (3) additional successive one (1) year renewal terms (each a “New Renewal Term”) following the expiration of the 24 Month Renewal Term, on the same terms and conditions as provided in Section 1.1 of the Addendum with respect to the original Renewal Terms, in each such case subject to earlier termination or revocation for cause as provided in the Original Agreement; and (ii) following the expiration of the 24 Month Renewal Term or, if applicable, any New Renewal Term(s), the Master Agreement shall be automatically renewable for successive one-month renewal terms thereafter (“Automatic Short Term”).

Renewal Terms”), on the terms provided in Section 1.2 of the Addendum, provided that the MRC rate shall be as set forth in Section 5 of this First Amendment below. The Initial Term, as previously extended as described in the Recitals to this First Amendment, the 24 Month Renewal Term, any New Renewal Term(s), and any Automatic Short Term Renewal Terms shall collectively be referred to as the “Term”. References to “Renewal Term” in the Original Agreement shall include references to the “New Renewal Term”.

6. **Adjustment of Fees and Charges.** Effective as of the first day of the 24 Month Renewal Term, notwithstanding anything to the contrary set forth herein or in the Original Agreement, including the Addendum, Customer’s MRC for all Service Orders shall be adjusted on February 1, 2017 and annually thereafter (each, an “Adjustment Date”) to an amount equal to one hundred three percent (103%) of the MRC payable for the calendar month immediately preceding the Adjustment Date; provided, however, that during the Automatic Short Term Renewal Terms Customer’s MRC shall be charged at a rate equal to one hundred twenty-five percent (125%) of Customers’ MRC for the last month of the immediately preceding 24 Month Renewal Term, New Renewal Term or Renewal Term, as the case may be.

7. **Ratification.** Licensor and Customer hereby ratify and affirm the Original Agreement as amended hereby. In the event of any conflict between the terms of this First Amendment and the terms of the Original Agreement, the terms of this First Amendment shall prevail.

IN WITNESS WHEREOF, Licensor and Customer have caused this First Amendment to be executed as of the Amendment Effective Date.

LICENSOR:
Colo Properties Atlanta, LLC
telx – Charlotte, LLC
telx – Chicago Federal, LLC
telx – Chicago Lakeside, LLC
telx – Clifton, LLC
telx – Dallas, LLC
telx – Los Angeles, LLC
telx – Miami, LLC
telx – New York, LLC
Telx- New York II, LLC
telx – New York 111 8th, LLC
telx – Phoenix, LLC
telx – Santa Clara, LLC
telx – San Francisco, LLC
telx – Weehawken, LLC
Telx – Portland, LLC
Telx – Seattle, LLC
Telx- New York 6th Ave. LLC

Name:
Title:

CUSTOMER:
City and County of San Francisco

Name: JOHN UPDIKE
Title: Director of Real Estate

APPROVED AS TO FORM FOR CITY:

DENNIS J. HERRERA, City Attorney

By: _____
Anita L. Wood
Deputy City Attorney

EXHIBIT A-1
FORM OF NEW SERVICE ORDERS
(Attached)