

File No. 101496

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: January 19, 2011

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ethics Form 126                              |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
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#### OTHER

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Completed by: Victor Young

Date: January 14, 2011

Completed by: Victor Young

Date: \_\_\_\_\_

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [License with Telx to Use Property - 200 Paul Street]

2  
3 **Resolution authorizing the license of space and services with Telx at 200 Paul Street**  
4 **for the Department of Technology.**

5  
6 WHEREAS, The Department of Technology requires connectivity to the internet and  
7 the fiber network to operate the City's mission critical data operations; and

8 WHEREAS, THE TELX GROUP, INC., a Delaware Corporation ("Licensor" or "Telx"  
9 provides the only interconnectivity services at 200 Paul Street; and

10 WHEREAS, The Department of Technology recommends the proposed lease; and;  
11 now, therefore, be it

12 RESOLVED, That in accordance with the recommendation of the Director of the  
13 Department of Technology, the Director of Property is hereby authorized to take all actions on  
14 behalf of the City and County of San Francisco, as tenant, to execute a license (copy of the  
15 proposed license is on file with the Clerk of the Board) with THE TELX GROUP, INC., a  
16 Delaware corporation, on behalf of itself and its wholly-owned subsidiaries (collectively,  
17 "Licensor"), for server rack and space in the building commonly known as 200 Paul Street,  
18 San Francisco, California, for the 24 pair connectivity housed in cabinet 521 on the third floor  
19 as more particularly described in the license on the terms and conditions set forth herein, and  
20 on a form approved by the City Attorney; and, be it

21 FURTHER RESOLVED, That the Lease shall be for a term of two (2) *years*  
22 commencing on February 1, 2011 and terminating on January 31, 2013. The lease shall be  
23 include three (3) options to extend the term for one (1) year each on the same terms and  
24 conditions except the base rent shall be increased for each option period by three percent

1 (3%) by providing 9 months advance notice. The base rent during the initial term shall be  
2 \$6,000 per month. The Landlord shall pay for utilities, janitorial services, and building  
3 maintenance and repairs; and, be it

4 FURTHER RESOLVED, That the License shall include a clause, indemnifying, holding  
5 harmless, and defending Telx, other related parties, and its agents from and against any and  
6 all claims, costs and expenses, including without limitation, reasonable attorneys' fees,  
7 incurred as a result of any default by the City in the performance of any of its material  
8 obligations under the License, or any negligent acts or omissions of the City or its agents, in,  
9 on, or about the Premises or the property on which the Premises are located, excluding those  
10 claims, costs and expenses incurred as a result of the negligence or willful misconduct of the  
11 Telx or its agents; and, be it

12 FURTHER RESOLVED, That all actions heretofore taken by the officers of the City  
13 with respect to such Lease are hereby approved, confirmed and ratified; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
15 Property to enter into any amendments or modifications to the Lease (including, without  
16 limitation, the exhibits) that the Director of Property determines, in consultation with the City  
17 Attorney, are in the best interest of the City, do not increase the rent or otherwise materially  
18 increase the obligations or liabilities of the City and are necessary or advisable to effectuate  
19 the purposes of the Lease or this Resolution, and are in compliance with all applicable laws,  
20 including the City Charter; and, be it

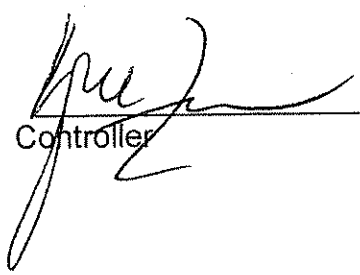
21 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of  
22 Property to exercise any or all of the options to extend the term if the Director of Property  
23 determines, in consultation with the Director of the Department of Technology and the City  
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Attorney, that such extended term is in the best interest of the City and are in compliance with all applicable laws, including the City Charter; and, be it

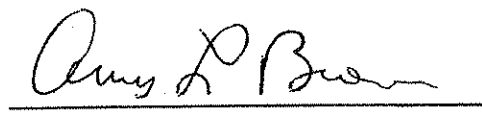
FURTHER RESOLVED, That the City use the License for the full term of the License unless funds for the Department of Technology's rental payments are not appropriated in any subsequent fiscal year at which time the City may terminate the License. Said Lease shall be subject to certification as to funds by the Controller, pursuant to Section 6.302 of the City Charter.

\$30,000 Available (5 mos.@ \$6,000 per month)  
Project: PTI001  
Index Code: 750600

  
Controller

**RECOMMENDED:**

  
Department of Technology

  
Director of Property  
Real Estate Division

\*\*Real Estate Division\*\*

**CITY AND COUNTY OF SAN FRANCISCO**  
**BOARD OF SUPERVISORS**  
**BUDGET AND LEGISLATIVE ANALYST**

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292  
FAX (415) 252-0461

January 13, 2011

**TO:** Budget and Finance Committee  
**FROM:** Budget and Legislative Analyst  
**SUBJECT:** January 19, 2011 Budget and Finance Committee Meeting

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**Items 1 and 2**  
**Files 10-1495, 10-1496**

**Department:**  
 Department of Technology (DT); Real Estate Division

## EXECUTIVE SUMMARY

### Legislative Objective

- File 10-1495: The proposed resolution would approve a five-year license agreement, from February 1, 2011 through January 31, 2016, between the City, on behalf of the Department of Technology (DT), as licensee, and UnitedLayer, as licensor, for the lease of a co-location data facility<sup>1</sup>, where several clients situate their servers and related equipment in a common area in order to share support services, at 200 Paul Street. The facilities to be leased at 200 Paul Street would house the City Data Center and consist of (1) 30 server cabinets on the first floor and (2) two caged areas of approximately 1,500 square feet on the fifth floor for the City's mainframe, servers and data equipment.
- File 10-1496: The proposed resolution would approve a two-year license agreement between the City, on behalf of DT, as licensee, and the Telx Group (Telx), as licensor, a second company that manages the data connectivity function for servers housed at 200 Paul Street. DT would license 24-pair wired connections<sup>2</sup> for the City Data Center in the building's connectivity hub, known as the Meet Me Room, at 200 Paul Street, from February 1, 2011 through January 31, 2013, including three one-year options to renew, without subsequent Board of Supervisors approval.

### Key Points

- The City Data Center consists of the City's mainframe, servers, and related equipment that support the City's computing needs, with back-up systems for power, fire suppression, and air conditioning, to ensure the continued operation of the City Data Center during emergency situations. Since 1993, the City Data Center has been located at One Market Plaza. The existing lease agreement between DT and EOP-One Market, LLC, the landlord for One Market Plaza, expired on July 31, 2008. Since then, DT has continued on a month-to-month basis, at a total cost of \$91,226 per month, which includes \$81,725 for rent, \$5,956 for power, and \$3,545 for maintenance.
- In June 2006, DT commissioned a consultant study that found that One Market Plaza was not adequate for the City Data Center and recommended relocation. The consultant reported that to ensure proper protection of the City Data Center, One Market Plaza would have (1) needed \$1,878,000 in air conditioning and power system repairs and (2) seismic and power capacity upgrades that the consultant reported could be cost prohibitive.
- DT solicited bids for new City Data Center facilities and assistance with the move through a competitive bid process, and selected a facility located at 200 Paul Street, a co-location facility, to replace One Market Plaza. To manage a phased move and to begin leasing space at 200 Paul Street, DT entered into a 23-

<sup>1</sup> In a co-location facility, several clients situate their networks, servers, data storage, and related equipment at one facility in order to share (a) 24/7 maintenance and security services, (b) Uninterrupted Power Supply (UPS) systems, (c) emergency power generators, (d) fire suppression, and (e) air conditioning systems, to allow for economies of scale.

<sup>2</sup> The 12-pair and 24-pair wired connections signify the number of data links that can be made between the City's servers and the connectivity hub, known as the Meet Me Room. 24-pair wired connections have double the number of connections that can be made and carry twice the amount of data, compared to 12-pair wired connections.

month agreement, at a cost of \$1,785,275, with Xtech, a firm selected through the DT Request for Quote process. That services agreement was not subject to Board of Supervisors approval. The services provided by Xtech include (1) project management services for the relocation of the City Data Center from One Market Plaza to 200 Paul Street, (2) design and build-out of the server cabinets and networks on the first floor of 200 Paul Street, and (3) lease of 30 server cabinets on the first floor at 200 Paul Street to begin to house the City Data Center equipment as it was gradually moved from One Market Plaza over the 23 month period. DT estimates that the build-out and move to 200 Paul Street will be completed by the end of February, 2011. Now, with the move nearly complete, the agreement with Xtech will terminate and DT is proposing to enter into a license agreement with UnitedLayer, which currently operates the co-location data facility space<sup>3</sup>, and with a second company, Telx Group, which currently operates the data connectivity function at 200 Paul Street through a facility known as the Meet Me Room.

- During the 23 month transition period, the City Data Center has had functioning servers and equipment at both One Market Plaza and 200 Paul Street, both connected to various City departments at various locations and to the Internet via the connectivity hub known as the Meet Me Room (MMR) at 200 Paul Street, using 12-pair wired connections. The proposed license (File 10-1496) would double the existing 12-pair wired connections to 24-pair wired connections.

#### **Fiscal Impact**

- Approval of the two proposed resolutions would result in combined annual rent payable by DT to UnitedLayer, Inc. (File 10-1495) and the Telx Group (File 10-1496) of \$161,534 per month, or \$1,938,408 annually, (a) for DT to license 30 server cabinets on the first floor and two caged areas of approximately 1,500 square feet on the fifth floor of 200 Paul Street, including estimated power for the two caged areas, at \$155,534 per month, or \$1,866,408 annually, and (b) for DT to license data connectivity services through the Meet Me Room at 200 Paul Street at \$6,000 per month or \$72,000 annually. The total costs for the old City Data Center at One Market Plaza were \$91,226 per month, or \$1,094,712 per year. The proposed total monthly costs at 200 Paul Street represent an increase of \$70,308 per month, or 77.1 percent, from \$91,226 per month at One Market Plaza to \$161,534 at 200 Paul Street. DT representatives explain that the increase of 77.1 percent in costs is due to the fact that the 200 Paul Street facility is a superior facility and significant costs would have had to have been incurred to upgrade One Market Plaza to meet the standards of the 200 Paul Street facility.
- The proposed resolutions would be funded from monies previously appropriated by the Board of Supervisors in DT's FY 2010-2011 budget. The proposed licenses between (a) DT and UnitedLayer would increase four percent each year over the five year license agreement and (b) DT and Telx would increase three percent in each of the three one-year option periods over the base monthly fee of \$6,000. Therefore, additional monies will be required in DT's future annual budgets to fund such rate increases.
- In addition to the \$161,534 total monthly rent, effective February 1, 2011 for the new 200 Paul Street facility, as a result of a one-month delay to complete the move from One Market Plaza to 200 Paul Street, DT will also be required to pay \$91,226 in additional rental costs for February 2011 at One Market Plaza. DT explains that this \$91,226 cost can be covered from surplus FY 2010-2011 monies as a result of lower

<sup>3</sup> In a co-location facility, several clients situate their networks, servers, data storage, and related equipment at one facility in order to share (a) 24/7 maintenance and security services, (b) Uninterrupted Power Supply (UPS) systems, (c) emergency power generators, (d) fire suppression, and (e) air conditioning systems, to allow for economies of scale.

than estimated costs for moving servers and related equipment from various City public safety agencies to 200 Paul Street.

### Recommendations

- 1.B Because the proposed total estimated costs of leasing 200 Paul Street is \$161,534 per month, which is \$70,308 per month or 77.1 percent more than the total existing costs of leasing One Market Plaza at \$91,226 per month, approval of the proposed resolution (File 10-1495) is a policy matter for the Board of Supervisors.
- 2.B Because, as of the writing of this report, DT has not provided data to the Budget and Legislative Analyst to determine that the bandwidth capacity for the existing 12-pair wired connections will be exceeded such that the need for the 24-pair wired connections is warranted, approval of the proposed resolution pertaining to the Telx license for data connectivity services (File 10-1496) is a policy matter for the Board of Supervisors.
- 3.Due to the high cost increase for the two proposed licenses for the City Data Center to lease space and 24-pair wired connections at 200 Paul Street, and the potential for cost reductions over time as more of the City's servers and equipment are consolidated either at 200 Paul Street or at a facility presently being prepared to house servers at the Airport, amend the proposed resolutions (Files 10-1495 and 10-1496) to require that DT provide reports to the Board of Supervisors every six months on progress made toward consolidation of information technology facilities, equipment and staff and the associated documented efficiencies and cost savings.



**MANDATE STATEMENT / BACKGROUND****Mandate Statement**

In accordance with Section 23.27 of the City's Administrative Code, leases and licenses, in which the City is the lessee, require approval by the Board of Supervisors.

**City Data Center**

The City Data Center supports the City's overall computing needs with (a) approximately 300 servers<sup>4</sup> in 30 server cabinets, (b) mainframe computer, (c) routers and switches, (d) T-1 and T-3 data lines<sup>5</sup>, and (e) other computer hardware equipment. Mr. David German, Deputy Director at the City's Department of Technology, states that the City's mainframe computer, servers, and other hardware equipment support the City's payroll system, email system, the Financial Accounting Management Information System (FAMIS), various City websites, backup data storage, as well as specific public safety systems, such as the (a) California Law Enforcement Telecommunications System (CLETS), the law enforcement database for criminal records, (b) Automated Fingerprint Identification System (AFIS), which law enforcement officers can use to obtain, store, and analyze fingerprint data, and (c) Justice Information Tracking System (JUSTIS), which allows public safety agencies to share information. According to Mr. German, the City Data Center must be operational 24 hours per day, seven days per week, even during emergencies, such that the Data Center has dedicated Uninterrupted Power Supply (UPS) systems, emergency power generators, fire suppression, and air conditioning units.

In addition to the City Data Center, several City departments have their own servers, data storage equipment, and mainframe computers located in a number of data centers, data rooms, and data closets throughout the City. Mr. German states that with the Committee on Information Technology (COIT) consolidation plan, approved by COIT on December 16, 2010, COIT intends to relocate these other City department servers and related hardware equipment to the City Data Center at 200 Paul Street over the next two years. The current move does not consolidate any of the City's servers and related equipment; it merely relocates equipment that was previously located at One Market Plaza to 200 Paul Street.

**One Market Plaza**

On May 12, 1993, the Board of Supervisors approved Resolution 246-93, on behalf of the Department of Technology (DT), as lessee, to enter into a seven year and eight month lease agreement, ending January 31, 2001, with EOP-One Market, LLC, as lessor, for DT to lease space for the City Data Center at One Market Plaza. Under that lease agreement, DT leased approximately 20,000 square feet at One Market Plaza for the City Data Center, office space, storage, network operations center, check printing, air conditioning units, Uninterrupted Power

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<sup>4</sup> A server is a computer, or series of computers, that link other computers together through a network. The Department of Technology anticipates housing approximately 300 servers in 30 server cabinets (approximately 10 servers per server cabinet) at 200 Paul Street.

<sup>5</sup> T-1 and T-3 data lines are high-speed fiber optic wires that transmit large amounts of data.

Supply (UPS) system, and emergency generator<sup>6</sup>. The lease included two five-year options for extension. On January 22, 2001, the Board of Supervisors approved the first five-year option to extend the lease (File 00-2186), from February 1, 2001 through January 31, 2006.

Mr. German states that beginning in 2006, DT entered into shorter-term lease agreements with EOP-One Market, LLC because DT was evaluating sites to relocate the City Data Center. Therefore, on February 28, 2006, the Board of Supervisors approved a two-year lease extension, changing the second five-year option to a two-year option, for DT to continue leasing the space at One Market Plaza, retroactive from February 1, 2006 through January 31, 2008 (File 06-0096). Then on October 16, 2007, the Board of Supervisors approved a six-month lease extension for the space at One Market Plaza, from February 1, 2008 through July 31, 2008, to enable the City Data Center to remain at that location (File 07-1361).

Since August 1, 2008, DT has continued to occupy the approximately 20,000 square feet of space at One Market Plaza on a month-to-month holdover lease, at a current monthly rent of \$81,725 per month (\$980,700 annually). In addition, DT pays for all utilities and maintains the air conditioning units, UPS system, and the emergency generator at One Market Plaza for an estimated additional cost of \$9,501 per month, including \$5,956 for power and \$3,545 for maintenance, or \$114,012 annually. Overall, DT is currently expending a total of \$91,226 (\$81,725 plus \$9,501 per month), or \$1,094,712 annually at One Market Plaza for the City to lease space for the City Data Center. Mr. German states that One Market Plaza included the costs of connectivity services, as described below, in the monthly rental rate.

Due to DT's concerns about (a) operability after a major earthquake, (b) security, (c) equipment cooling, and (d) power capacity and reliability at One Market Plaza, DT retained a consultant to assess the ongoing viability of the City Data Center at One Market Plaza. On June 20, 2006, the consultant issued a report that (1) detailed \$1,878,000 of required repairs to One Market Plaza's air conditioning and power systems, (2) stated that seismic and power capacity upgrades for One Market Plaza could be cost prohibitive, but did not estimate such costs, and (3) recommended that the City relocate the City Data Center to another location.

Although not a part of this proposed legislation, in November 2008, DT issued a Request for Quotes (RFQ) through the City's Computer Store to obtain (1) project management services for the relocation of the City Data Center from One Market Plaza, (2) design services and build-out of the server cabinets and networks to handle the various hardware equipment in the City Data Center, and (3) lease of server cabinets to house the City Data Center equipment. Mr. German advises that only two firms responded by the due date, which was seven days from the RFQ issuance date. The winning bidder, Xtech, at a cost of \$1,785,275, proposed using server cabinet space at a co-location facility<sup>7</sup> operated by UnitedLayer, Inc.<sup>8</sup> at 200 Paul Street. The agreement

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<sup>6</sup> Mr. German states that the network operations center, which consists of DT staff to monitor the City Data Center, has been moved to One South Van Ness Avenue, and the check printing operations have been moved to 875 Stevenson Street. Mr. German states that the air conditioning units, Uninterrupted Power Supply system, and emergency generator will be left at One Market Plaza, discarded, or recycled to the extent possible, since such equipment is either outdated or in need of major repairs.

<sup>7</sup> In a co-location facility, several clients situate their networks, servers, data storage, and related equipment at one facility in order to share (a) 24/7 maintenance and security services, (b) Uninterrupted Power Supply (UPS) systems,

between DT and Xtech was not subject to Board of Supervisors approval because the agreement was primarily a purchase of services and did not exceed ten years or \$10,000,000. One other bidder, to provide project management services, design services, and the lease of space, OnPointe, proposed using server cabinet space provided by Navisite, Inc. at 650 Townsend Street. According to Mr. German, based on DT's staff review of the two proposals, Xtech was selected. According to Mr. German, DT entered into an agreement with Xtech, for the 23-month period from March 1, 2009 through January 31, 2011, at a total cost of \$1,785,275 to manage relocation of the City Data Center from One Market Plaza to 200 Paul Street and to pay for the use of some of the facilities and equipment and for connectivity services at 200 Paul Street as the phased move from One Market Plaza to 200 Paul Street took place.

Mr. German states that in November 2008, DT staff, in consultation with the City Attorney's Office, the Office of Contract Administration, and the Real Estate Division, determined that the purchase of services through Xtech, including the use of space in order to relocate the City Data Center to 200 Paul Street, was primarily a purchase of services, rather than a lease, and therefore did not require approval by the Board of Supervisors. The Budget and Legislative Analyst notes that Section 23.27 of the City's Administrative Code requires that leases and licenses in which the City is the lessee must be approved by the Board of Supervisors. In contrast, Section 9.118 (b) of the City's Charter only requires Board of Supervisors approval of professional service agreements that exceed ten years or \$10,000,000. As noted above, the Xtech agreement was for a period of 23 months at a total cost of \$1,785,275. Mr. German advises that, although the Board of Supervisors did not specifically approve the agreement with Xtech, the Budget and Finance Committee was involved in the decision to relocate the City Data Center to 200 Paul Street, because on March 18, 2009 the Budget and Finance Committee approved the release of \$754,129 on reserve to allow DT to purchase new networking equipment to be incorporated into the move of the City Data Center at 200 Paul Street (File 09-0208).

According to Mr. German, DT anticipated completing the relocation of the City Data Center from One Market Plaza to 200 Paul Street during the 23-month period between March 1, 2009 and January 31, 2011. However, Mr. German advises that due to the complicated nature of relocating all of the City's equipment, without causing significant downtime to critical systems, the relocation will not be completed until February 28, 2011, a delay of one additional month.

### **200 Paul Street**

Mr. German states that, in contrast to One Market Plaza, the 200 Paul Street facility contains several backup systems for the power, air conditioning, and fire suppression systems to ensure the operability of the City Data Center at all times, even during emergencies, since the failure of one such system could cause significant and irrecoverable data and productivity losses for the City.

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(c) emergency power generators, (d) fire suppression, and (e) air conditioning systems, to allow for economies of scale.

<sup>8</sup> According to Mr. Charlie Dunn, Senior Real Property Officer at the Real Estate Division, 200 Paul Street is owned by Digital Realty Trust, which leases portions of the building to co-location service providers, including UnitedLayer, which in turn provides built-out, maintained, and secured space for clients seeking to locate their networks, servers, data storage, and related hardware equipment.

At 200 Paul Street, Mr. German states that server cabinets containing servers from various UnitedLayer clients<sup>9</sup> are commingled on the first floor in a large secured area, in order to share (a) 24/7 maintenance services, (b) Uninterrupted Power Supply (UPS) systems, (c) emergency power generators, (d) fire suppression, (e) air conditioning systems, and (f) security. In addition, the fifth floor of 200 Paul Street contains multiple caged areas, each of which contains server cabinets and data equipment for various clients and requires access codes and fingerprint identification to gain entry. Unlike the first floor, in which UnitedLayer pays for all utilities costs, each caged area on the fifth floor has its own power meter to measure power usage which the licensee is responsible for paying to UnitedLayer.

Currently, under the Xtech Agreement, DT occupies 30 server cabinets on the first floor of 200 Paul Street to house the servers and other hardware equipment of the City Data Center, in addition to the connectivity hub known as the Meet Me Room, as explained below. Mr. German states that while the City Data Center is being fully relocated from One Market Plaza to 200 Paul Street, DT has been paying (1) rent on all 20,000 square feet of space at One Market Plaza, and (2) rent for the use of the 30 server cabinets on the first floor at 200 Paul Street, since March 2009, paid out of the surplus funds previously budgeted for the Xtech agreement.

### **Connectivity Hub (Meet Me Room)**

According to Mr. German, all City servers located at 200 Paul Street must connect to a connectivity hub, known as the Meet Me Room (MMR), in order to connect to other City departments located throughout the City and to the Internet. The new City Data Center at 200 Paul Street currently connects through the Meet Me Room using 12-pair wired connections<sup>10</sup>, which, Mr. German advises, will no longer provide sufficient bandwidth. As of the writing of this report, DT has not provided any details, as had been requested by the Budget and Legislative Analyst, as to the needs for the additional capacity. Currently, DT licenses the 12-pair wired connections from the Telx Group<sup>11</sup> (Telx), which is the sole provider of the connectivity services for the Meet Me Room at 200 Paul Street, for \$4,967.60 per month or \$59,611 annually<sup>12</sup>.

### **Committee on Information Technology (COIT) Recommendation**

A COIT Consolidation Report, dated December 9, 2010, states that the City currently houses its servers, data storage equipment, and mainframe computers in a number of data centers, data rooms, and data closets throughout the City. As a result, the scattered storage of such equipment leads to duplicated support costs and greater exposure to risks such as power failures, excessive

<sup>9</sup> Due to security agreements between UnitedLayer and its clients, UnitedLayer cannot release the names of the clients sharing the large secured area on the first floor with the City.

<sup>10</sup> The 12-pair and 24-pair wired connections signify the number of data links that can be made between the City's servers and the connectivity hub, known as the Meet Me Room. 24-pair wired connections have double the number of connections that can be made and carry twice the amount of data, compared to 12-pair wired connections.

<sup>11</sup> Mr. Dunn states the Telx Group operates the connectivity hub, known as the Meet Me Room, at 200 Paul Street, which is owned by Digital Realty Trust. Telx provides the wired connections to and from the Meet Me Room, in order for all City servers at 200 Paul Street to connect to City departments located throughout the City and the Internet.

<sup>12</sup> Under the City's Administrative Code, Section 23.26, the existing license agreement between DT and Telx did not require Board of Supervisors approval because the agreement was (1) under \$5,000, and (2) year-to-year.

heat, and security break-ins. At the December 16, 2010 COIT meeting, COIT approved DT's consolidation plans for the City's servers, recommending two sites, 200 Paul Street and the San Francisco International Airport (Airport), to house all of the City's servers and related equipment. Mr. German states that such consolidation will occur over the next two years and include (a) moving servers and related equipment to the City Data Center at 200 Paul Street, (b) reducing the number of servers and related equipment through virtualization<sup>13</sup>, and (c) decreasing the number of duplicated network functions.

## DETAILS OF PROPOSED LEGISLATION

### Proposed License Agreement with UnitedLayer for the City Data Center (File 10-1495)

The proposed resolution (File 10-1495) would approve a five-year license<sup>14</sup> agreement between the City, on behalf of the Department of Technology, as licensee, and UnitedLayer, as licensor, at 200 Paul Street to (1) continue licensing 30 server cabinets on the first floor, and (2) license two dedicated caged areas totaling approximately 1,500 square feet on the fifth floor for the City's mainframe, servers and data equipment. The proposed license agreement would be for five years from February 1, 2011 through January 31, 2016, with the City's option to terminate the license agreement without penalty anytime after January 31, 2013, by providing nine months advance written notice to UnitedLayer.

According to Mr. Charlie Dunn of the Real Estate Division, the option to terminate after January 31, 2013 provides DT with the flexibility to react to (a) technological changes and (b) possible future relocation and consolidation of an undetermined number of City servers from 200 Paul Street to a City-owned facility at the Airport, construction of which is anticipated to be completed in 2013. Additionally, under the proposed license agreement, DT is allowed to increase or decrease the number of server cabinets by up to six server cabinets from the initial 30, at \$1,145 per month per server cabinet, plus the costs of the electrical circuit connections for each server cabinet.

Under the proposed license, the base rent for the 30 server cabinets on the first floor and the two caged areas of approximately 1,500 square feet on the fifth floor is \$147,515 per month, or \$1,770,180 annually, and includes all janitorial services, building maintenance, equipment repairs, and utilities for the first floor equipment. UnitedLayer would be responsible for providing Uninterrupted Power Supply (UPS) systems, emergency power generators, fire suppression, air conditioning systems, and security at 200 Paul Street. However, under the

<sup>13</sup> Virtualization is the more efficient use of computing equipment, such that power usage and space savings are realized.

<sup>14</sup> Mr. Dunn, in consultation with the City Attorney's Office, states that a lease involves the right to occupy space, such that the lessee controls the property. In contrast, Mr. Dunn advises that a license involves the right to use space or equipment but does not confer control over the property to the licensee. Mr. Dunn states that in the proposed resolution (File 10-1495), UnitedLayer is responsible for operating 200 Paul Street, including maintaining the exterior, Uninterrupted Power Supply systems, emergency power generators, fire suppression, and air conditioning systems. Mr. Dunn states that in the second proposed resolution (File 10-1496), Telx is providing equipment, specifically the 24-pair wired connections, to the City.

proposed license, DT would be responsible for the power costs for the two caged areas on the fifth floor, which are estimated to cost \$8,019 per month or \$96,228 annually, based on maximum power usage. Therefore, the total estimated rent and power costs for DT at 200 Paul Street is \$155,534 per month (\$147,515 base rent plus \$8,019 estimated power costs) or \$1,866,408 annually. Under the proposed license, the base rent would increase by four percent each February 1 over the five year term of the license agreement.

Under the proposed license, DT is responsible for maintaining and repairing the City's servers and other hardware equipment in the City Data Center. UnitedLayer is responsible for any repairs and maintenance to the exterior and structural portions of 200 Paul Street, in addition to the Uninterrupted Power Supply (UPS) systems, emergency power generators, fire suppression, and air conditioning systems.

According to Mr. German, DT intends to license two caged areas on the fifth floor and pay the power costs associated with the two caged areas for (1) the servers for public safety agencies, including the (a) California Law Enforcement Telecommunications System (CLETS), (b) Automated Fingerprint Identification System (AFIS), and (c) Justice Information Tracking System (JUSTIS), and (2) the City's mainframe<sup>15</sup>, which handles payroll processing and the Financial Accounting Management Information System (FAMIS). According to Mr. German, much of this equipment must be stored in secured and isolated areas.

#### **Proposed License Agreement with Telx for the Meet Me Room (File 10-1496)**

The proposed resolution would approve a two-year license agreement between the City, on behalf of the Department of Technology, as licensee, and the Telx Group (Telx), a separate company that operates the connectivity hub known as the Meet Me Room, as licensor, for 24-pair wired connections from the City Data Center to the Meet Me Room at 200 Paul Street, from February 1, 2011 through January 31, 2013, with three one-year options to renew, without Board of Supervisors approval that could extend the proposed license through January 31, 2016, or a total maximum term of five years.

Currently, the City has connectivity services at One Market Plaza, the costs of which are included in the monthly rental rate. Because the City Data Center has been gradually relocated to the 200 Paul Street facility over the past 23 months, the City currently has connectivity services, via 12-pair wired connections<sup>16</sup> at a cost of \$4,967.60 per month, from the City Data Center at 200 Paul Street to the Meet Me Room, to connect the City Data Center to the various City departments and to the Internet. The proposed license agreement would double the capacity for data connectivity between the City Data Center to City agencies and the Internet.

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<sup>15</sup> According to Mr. German, the software for payroll processing and FAMIS is outdated and can only be run on the City's mainframe computer. Mr. German states that in the next few years, payroll processing and FAMIS will transition onto individual servers, which are a fraction of the size of the City's mainframe, therefore allowing DT to discard the mainframe. However, Mr. German does not anticipate the City's mainframe to be discarded within the five-year term of the proposed license.

<sup>16</sup> Mr. Dunn states that the existing agreement between DT and Telx for Telx to provide 12-pair wired-connections at the 200 Paul Street facility was not subject to Board of Supervisors approval because the existing agreement was (1) under \$5,000 and (2) year-to-year.

Mr. German states that a competitive bid process was not conducted for the proposed Telx connectivity license since that company is presently the sole provider of data connections for the 200 Paul Street facility. Under the proposed license, DT would pay Telx rent of \$6,000 per month, or \$72,000 annually, in the initial two-year license period, for 24-pair wired connections to the Meet Me Room. In each of the three one-year options to renew, the rental rate would increase by three percent on the \$6,000 base amount every February 1. Under the proposed license, Telx is responsible for all utilities, janitorial services, maintenance and repairs in the Meet Me Room.

According to Mr. Dunn, the City desires to have both the proposed Telx and UnitedLayer licenses be coterminous, since the wired connections to the Meet Me Room under the proposed Telx license are required as long as the City Data Center is located at 200 Paul Street under the proposed UnitedLayer license. Mr. Dunn states that during the negotiations with Telx, the City proposed the same five-year term with a termination right after two years, as negotiated with UnitedLayer. However, Telx would not consider a five-year term with the City's option to terminate after two years, but instead agreed to a two-year term with three one-year options to renew at the \$6,000 base monthly amount plus three percent per year. According to Mr. Dunn, the proposed Telx license accomplishes the same objective of flexibility as the proposed UnitedLayer license. Both of the proposed licenses provide (i) a minimum two-year term, (ii) a maximum five-year term, and (iii) the flexibility to end the licenses between two and five years, if that is in the best interests of the City. Mr. Dunn states that since the proposed Telx license is required for as long as the City Data Center is located at 200 Paul Street, DT and the Real Estate Division believe that it is more efficient to seek only one approval by the Board of Supervisors for the proposed Telx license for up to a five-year term, including the three one-year options.

## FISCAL IMPACTS

As previously noted, DT is currently paying a total of \$91,226 per month to lease the One Market Plaza facility for the City Data Center.

Approval of the two proposed resolutions would result in combined annual rent payable by DT, as licensee, to UnitedLayer, Inc. (File 10-1495) and the Telx Group (File 10-1496), as licensors, totaling \$161,534 per month, or \$1,938,408 annually, (a) for DT to license server cabinet space on the first floor and two caged areas of approximately 1,500 square feet on the fifth floor of 200 Paul Street, including estimated power costs for the two caged areas, at \$155,534 per month or \$1,866,408 annually, and (b) for DT to license connections from the City Data Center to the Meet Me Room at 200 Paul Street at \$6,000 per month or \$72,000 annually.

According to Mr. German, the proposed licenses would be funded from monies previously appropriated by the Board of Supervisors in the Department of Technology's FY 2010-2011 budget. However, the proposed license between DT and UnitedLayer would increase four percent each year, and the proposed license between DT and Telx would increase three percent each year commencing on February 1, 2013, if the options to renew are exercised. An increase

of four percent in the UnitedLayer license agreement totals \$5,901 per month or \$70,812<sup>17</sup> annually for the first year increase, and an increase of three percent in the Telx license agreement is \$180 per month or \$2,160 annually. As such, additional appropriations of monies will be required in the Department of Technology’s future annual budgets to fund such annual rate increases.

**Proposed License Agreement with UnitedLayer for the City Data Center  
(File 10-1495)**

Table 1, shown below, compares the monthly costs of (a) the existing lease agreement at One Market Plaza and (b) the proposed license agreement with UnitedLayer at 200 Paul Street.

	Current Monthly Costs at One Market Plaza	Proposed Monthly Costs at 200 Paul Street	Difference	Percent Change
Rental Rate	\$81,725	\$147,515	\$65,850	81%
Power Costs <sup>18</sup>	5,956	8,019	\$2,063	35%
Maintenance Charges	3,545	0	(\$3,545)	-100%
Connectivity Services <sup>19</sup>	0	6,000	6,000	100%
<b>Total</b>	<b>\$91,226</b>	<b>\$161,534</b>	<b>\$70,308</b>	<b>77.1%</b>

As shown in Table 1 above, the total monthly costs would increase by \$70,308 per month, or 77.1 percent, from \$91,226 per month at One Market Plaza to \$161,534 per month under the proposed licenses. However, Mr. German states that a direct comparison of the costs between One Market Plaza and 200 Paul Street does not reflect that 200 Paul Street is a superior data facility to One Market Plaza because 200 Paul Street has greater earthquake protection, improved air conditioning system redundancies, and upgraded power capacities.

Further costs of at least \$1,878,000 would be required to upgrade One Market Plaza into a suitable facility for the City Data Center. DT’s consultant also stated that seismic and power capacity upgrades for One Market Plaza could be cost prohibitive, but did not estimate such costs.

As previously discussed, DT anticipated completing the relocation of the City Data Center from One Market Plaza to 200 Paul Street by January 31, 2011. However, DT now anticipates completing the relocation of the City Data Center by the end of February 2011, a one-month

<sup>17</sup> Under the proposed license between DT and UnitedLayer, the power costs are not subject to the annual four percent increase.

<sup>18</sup> Under the current and proposed licenses at 200 Paul Street, except for the two caged areas on the fifth floor, all power costs are paid by UnitedLayer. The estimated power costs of \$8,019 are only for the two caged areas on the fifth floor, which are the responsibility of DT.

<sup>19</sup> Mr. German states that connectivity services at One Market Plaza are included in the monthly rental rate of \$81,725; However, the connectivity services at 200 Paul Street are not included in the proposed license with UnitedLayer (File 10-1495), but instead are included under a separate proposed license agreement with Telx (File 10-1496).



delay. As a result, in addition to the \$161,534 total monthly rent, effective February 1, 2011, being paid for the 200 Paul Street facility, DT will be required to pay \$91,226 in additional rent for the One Market Plaza facility. Mr. German advises that DT will pay the \$91,226 to rent One Market Plaza for February 2011 from cost savings as a result of lower than expected costs for moving servers and related equipment from various City public safety agencies to 200 Paul Street.

Mr. German reports that DT requested the California Data Center Design Group (CDCDG), which is a consultant group that evaluates the feasibility of buying, leasing, or building a data center, to review the rental rates under the proposed license with UnitedLayer. The attached January 3, 2011 letter, provided by Mr. German, states that CDCDG concluded that the proposed rental rates and terms were "reasonable and representative of market value." CDCDG provided this assessment at no cost to DT or the City, according to Mr. German.

### **Proposed License Agreement with Telx for the Meet Me Room (File 10-1496)**

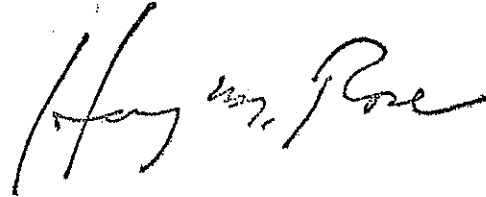
The Budget and Legislative Analyst cannot verify the need for additional capacity for the connectivity hub, known as the Meet Me Room. While Mr. German states that the expanded capacity to the Meet Me Room is necessary due to the pending relocation of the remaining equipment from One Market Plaza, which would exceed the current bandwidth capacity, as of the writing of this report, data has not been provided by DT to the Budget and Legislative Analyst that would indicate the existing connections have reached their capacities and are therefore hampering the City Data Center's operations.

Because the Budget and Legislative Analyst cannot determine that the current bandwidth capacity will be exceeded such that the need for additional connections is warranted, approval of the proposed license between DT and Telx for the 24-pair wired connections, instead of continuing to use the less expensive 12-pair wired connections, is a policy matter for the Board of Supervisors.

## **RECOMMENDATIONS**

1. Because the proposed total estimated costs of leasing 200 Paul Street is \$161,534 per month, which is \$70,308 per month or 77.1 percent more than the total existing costs of leasing One Market Plaza at \$91,226 per month, approval of the proposed resolution (File 10-1495) is a policy matter for the Board of Supervisors.
2. Because, as of the writing of this report, DT has not provided data to the Budget and Legislative Analyst to determine that the bandwidth capacity for the existing 12-pair wired connections will be exceeded such that the need for the 24-pair wired connections is warranted, approval of the proposed resolution pertaining to the Telx license for data connectivity services (File 10-1496) is a policy matter for the Board of Supervisors.
3. Due to the high cost increase for the two proposed licenses for the City Data Center to lease space and 24-pair wired connections at 200 Paul Street, and the potential for cost reductions over time as more of the City's servers and equipment are consolidated either at 200 Paul Street or at

a facility presently being prepared to house servers at the Airport, amend the proposed resolutions (Files 10-1495 and 10-1496) to require that DT provide reports to the Board of Supervisors every six months on progress made toward consolidation of information technology facilities, equipment and staff and the associated documented efficiencies and cost savings.



Harvey M. Rose

cc: Supervisor Chu  
Supervisor Mirkarimi  
Supervisor Kim  
President Chiu  
Supervisor Avalos  
Supervisor Campos  
Supervisor Cohen  
Supervisor Elsbernd  
Supervisor Farrell  
Supervisor Mar  
Supervisor Wiener  
Clerk of the Board  
Cheryl Adams  
Controller  
Greg Wagner

1/3/11

Jon Walton  
Department of Technology  
City & County of San Francisco  
1 South Van Ness Ave., #2214  
San Francisco, CA 94103

Re: 200 Paul lease terms

Per your request, California Data Center Design Group (CDCDG) has reviewed the lease terms and related materials provided to us for the proposed transaction with United Layer at 200 Paul St. CDCDG works with many clients as well as data center operators to negotiate lease terms for collocation data center space.

Given the current market for data center space in San Francisco, we believe the rent and terms to be reasonable and representative of market value

Please call me if you have any questions

Sincerely,



Ron Hughes, President  
California Data Center Design Group  
RonHughesh

**FORM SFEC-126:**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Governmental Conduct Code § 1.126)

<b>City Elective Officer Information</b> (Please print clearly.)	
Name of City elective officer(s):  Members, SF Board of Supervisors	City elective office(s) held:  Members, SF Board of Supervisors
<b>Contractor Information</b> (Please print clearly.)	
Name of contractor: <b>THE TELX GROUP INC., A Delaware corporation</b>	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. 1) Members of the contractor's board of directors: Howard Park, Eric Shepcaro, Christopher W. Downie, J. Todd Raymond, William Kolman, Michael Terlizzi, Bradley T. Hokamp, Eric Harrison, Daniel H. Schulman 2) CEO: Eric Shepcaro, Pres & CFO: Christopher Downie 3) Ownership of 20 percent or more in the contractor: GI Partners 4 & 5) None	
Contractor address: 1 STATE STREET SUITE 2100 NEW YORK NY 10004	
Date that contract was approved:	Amount of contract: \$6,000.00 per month for up to 5 years
Describe the nature of the contract that was approved: License to use data connections and equipment for 2 years with options to extend by 3 years for the Dept of Technology	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors  
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

Print Name of Board

<b>Filer Information</b> (Please print clearly.)	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: 415-554-5184
Address: 1 Dr. Carlton B. Goodlett Pl. Room 244 San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

\_\_\_\_\_  
Signature of City Elective Officer (if submitted by City elective officer)

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

\_\_\_\_\_  
Date Signed



*Amy L. Brown*  
*Director of Real Estate*

RECEIVED  
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BY \_\_\_\_\_



November 19, 2010

**Department of Technology**  
**License for use of Property**  
**Telx - 200 Paul Street**  
**Assignment #6472**

Through Edwin Lee,  
City Administrator

Honorable Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102

Dear Board Members:

Attached for consideration is a Resolution authorizing a second license at 200 Paul Street, for use by the Department of Technology (DT) with THE TELX GROUP, Inc. (Telx).

According to the Department of Technology, the proposed license provides the necessary connections to the City's internet providers and to the City's fiber network. The proposed license area is generally referred to as the Meet Me Room (MMR). The City has had a 12 pair connection in the MMR since 2006. The proposed license expands those connections (from 12 pair to 24 pair) to provide not only the internet access but also to provide the required connectivity for the City's web sites, server hosting and other related services.

According to DT, Telx is the sole provider of this connectivity at 200 Paul Street. The license is for the use of a routing cabinet and 24 pair connections to the internet providers and to the City's fiber network.

The proposed term is for two (2) years, also commencing upon February 1, 2011 and expires on January 31, 2013. For flexibility, the City has three (3) one (1) year options to extend the license by providing nine months advance written notice. Since option rents are fixed and the license is integral to the data operations of the City, the proposed Resolution provides the Director of Property, in consultation with DT and the City Attorney's Office, with authority to exercise the option to the extend termination date, if that is in the best interests of the City.

The proposed base rent is \$6000 per month and is fully serviced. The base rent is flat for the initial term and increases by the three percent (3%) for each of the option terms. The

proposed lease does not include a typical annual pass though of increases in the landlord's operating expenses.

The Department of Technology recommends approval of the proposed lease.

If you have any questions regarding this matter, please contact Charlie Dunn of our office at 554-9861.

Very Truly Yours,



Amy Brown  
Director of Property

cc. Chris Vein, DT  
Jon Walton, DT  
David German, DT

**MASTER TERMS AND CONDITIONS**

This Agreement, dated for reference purposes only as of February 1, 2011, for a Term Commencing on February 1, 2011 (the "Agreement Effective Date"), by and between the Telx Entities and CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation. All orders for services placed after the Agreement Effective Date shall be governed by the terms and conditions set forth herein. Capitalized terms not defined herein shall have the meaning ascribed to them in the applicable Service Order or in the "Certain Definitions" attached hereto as "Exhibit A".

**Certain Required Information**

**Customer Notice Information:**

Customer Full Legal Name: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

Customer Notice Address: City and County of San Francisco  
Department of Technology  
One South Van Ness, 2nd Floor  
San Francisco, CA. 94103  
Attn: Deputy Director - Telephony, Facilities & Publishing

with a copy to: Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Amy L. Brown,  
Director of Property  
Re: 200 Paul - Telx

and a copy to: Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate/Finance Team  
Re: 200 Paul - Telx

Customer 24 hr Notice Tel Number: (415) 581-7100

Customer Notice Fax Number: (415) 581-3970 AND (415) 552-9216

Customer Email Address: dtis.helpdesk@sfgov.org AND noc@sfgov.org

**Customer Billing Information (if different from Notice Information set forth above):**

Customer Billing Entity Name: \_\_\_\_\_

Customer Billing Address: \_\_\_\_\_

Customer Billing Tel Number: \_\_\_\_\_

Customer Billing Fax Number: \_\_\_\_\_

Customer Email Address: \_\_\_\_\_

This Agreement is comprised of the following:

- Master Terms and Conditions
- Exhibit A – Certain Definitions
- Exhibit B – Insurance Provisions
- Exhibit C – Environmental SLA
- Exhibit D – Facilities Rules ([http://www.telx.com/index.php?option=com\\_content&task=view&id=108&Itemid=129](http://www.telx.com/index.php?option=com_content&task=view&id=108&Itemid=129))
- Addendum to Master Terms and Conditions (City Requirements)

## Recitals

**WHEREAS**, Licensor controls a leasehold or ownership interest in portions of each telecommunications interconnection Facility described in the Service Order(s).

**WHEREAS**, Licensor operates each interconnection and collocation Facility, for the placement, operation and interconnection of communications and information technology equipment.

**WHEREAS**, Customer has requested that Licensor allow it access to certain portions of the Premises as more specifically identified on each Service Order for the purposes of locating certain communications and information technology equipment, cabling and other related activities in such designated portion of the Premises.

**WHEREAS**, Licensor is willing to provide specified services to Customer in the form of (i) a grant to Customer of a revocable license for the access to and use of the Licensed Area; (ii) non-exclusive access to the Premises for ingress and egress to and from the Licensed Area; and (iii) the provision of other specified support services, all on the terms and conditions set forth herein and on the Service Order(s) attached hereto and as may be placed by Customer from time to time.

## Construction

Each Service Order shall incorporate by reference these Terms and Conditions and shall constitute a separate and independent contractual obligation of Licensor and Customer. In the event of a conflict between the Terms and Conditions and any Service Order, the language of the Service Order shall prevail.

### **1.0 Grant of License; General Terms of Use**

1.1 **License Grant.** By executing this Agreement, Licensor grants to Customer, on the terms and subject to the conditions set forth in this Agreement, a License for access to and use of the Licensed Area for the Permitted Purpose. The License shall be revocable in accordance with the terms of this Agreement. Customer acknowledges that other licensees of Licensor will be using the Premises and that Licensor reserves the right to install and maintain conduits, cables and wiring along and adjacent to the ceiling above the Licensed Area and, in the case of raised flooring, the floor below the Licensed Area.

1.2 **Access to Premises and Licensed Area.** During the Term, provided that Customer is current in its payment obligations and has not breached any material term under this Agreement beyond the applicable notice and cure period, Customer's Authorized Personnel shall have access to the Premises and be permitted to enter onto the Premises and shall have access to the Licensed Area to perform the work or services permitted by this Agreement twenty-four (24) hours per day, seven (7) days per week. Customer shall be liable for the actions of any Authorized Personnel. Authorized Personnel must carry photo-identification for presentation to Licensor or Licensor's agents, employees or representatives when entering the Premises. Customer shall keep the list of Authorized Personnel updated and accurate. In addition to the Authorized Personnel, Customer shall designate one person as the primary account contact and shall provide the name and contact information for the primary account contact on the Contact Information page appended to the end of this Agreement. Customer shall ensure at all times that the primary account contact information is accurate and complete. In no event shall Customer or any agent, representative, contractor or invitee of Customer, including without limitation, Authorized Personnel, have the right to access any portion of the Premises, other than the common areas and the Licensed Area. Licensor shall have the right to refuse access to the Premises and Licensed Area to anyone in its reasonable sole discretion if it determines that such person presents a hazard or security threat to Licensor or its other customers or if the License granted hereunder has been suspended or terminated.

### **1.3 Equipment-Installation/Removal.**

1.3.1 **Installation.** Any delivery, installation, replacement or removal work with respect to Customer's Equipment shall be subject to review and approval by Licensor, such approval not to be unreasonably withheld or delayed. From time to time Licensor may request and Customer shall promptly provide information regarding Customer's Equipment, systems, proposed rack/cabinet layout and interconnections/cross-connect diagrams, and the identification of Customer's suppliers or contractors. Equipment and Equipment installments shall strictly adhere



to the "Equipment Specifications" section of the Facility Rules. Approval by Licensor is not an endorsement of Customer's supplier or contractor, and Customer will remain solely responsible for the selection of the supplier or contractor and all payments for construction work. Licensor recommends that Customer account for ceiling heights, existing duct work within the Premises and floor load limits when designing Equipment installations. Licensor shall have the right to reject cabinets extending higher than seven feet from the floor due to their potential to restrict the air flow in the Premises or extend too close to existing duct work and ladder racking. Customer shall not make, or cause to be made, any construction changes or material alterations to the interior or exterior portions of the Premises or Licensed Area, including any cabling or power supplies for the Equipment, without obtaining Licensor's written approval for Customer to have the work performed and otherwise complying with the terms of this Agreement. Licensor shall have no responsibility for any loss or damage to Customer's Equipment, except to the extent resulting from Licensor's gross negligence or willful misconduct.

- 1.3.2 **Removal.** Customer agrees that, upon the expiration or termination of the License, Customer (or, at Licensor's election, the contractor designated by Licensor) shall promptly remove, at Customer's sole cost and expense, all cable, wiring, connecting lines, and other installations, equipment or property installed or placed by or for Customer in the Premises from and after the date of this Agreement (except the Meet-Me-Area, connections within which shall be removed by Licensor), and restore those portions of the Premises damaged by such removal to their condition immediately prior to the installation or placement of such items. If Customer fails to promptly remove all such items pursuant to this Section 1.3.2, then, after written notice to Customer, Licensor may, at Customer's expense, remove and store such items and restore those portions of the Premises damaged by such removal to their condition immediately prior to the installation or placement of such items. Any Customer Equipment not claimed by Customer within 60 days of the date City receives written notice of the expiration or termination of the License shall be deemed abandoned and ownership of such equipment shall automatically transfer to Licensor. Notwithstanding anything to the contrary contained in this Agreement, Customer shall not be permitted to remove any Equipment from the Licensed Area at a time when Customer is delinquent in meeting its undisputed payment obligations under this Agreement.
- 1.4 **Cross-Connections.** Only upon the prior express written consent of Licensor, which shall not be unreasonably withheld or delayed, may Customer cross-connect its Equipment with equipment or services of any other customer or tenant of Licensor, including any sub-tenant/sub-licensee within the Premises. Failure to obtain the prior written consent of Licensor shall constitute a material breach of this Agreement and Licensor may pursue any legal or equitable remedy available to it, including immediate removal of such impermissible cross-connections and/or the immediate termination or suspension of the License granted by this Agreement without any liability. All installation and other work relating to the establishment of cross-connections with any party for which Licensor gives explicit written permission shall be established under the control and direction of Licensor and shall be carried out in the Meet-Me-Area.
- 1.5 **Licensed Area Relocation.** Licensor shall not arbitrarily or discriminatorily require Customer to relocate the Equipment to a relocated Licensed Area; however, Licensor shall have the right to relocate the Licensed Area within the Premises, at no cost to Customer, upon sixty (60) days' advance written notice to Customer or, in the event of an emergency, as determined by Licensor in its sole discretion, with such notice as Licensor may deem reasonable under the circumstances, to a location within the Premises designated by Licensor and reasonably acceptable to Customer. Licensor shall use commercially reasonable efforts to effect such relocation in a manner that minimizes to the extent practical any interruption or adverse effect on Customer's equipment or systems. Specifically, Lessor will, to the extent practical, schedule work materially impacting such service during non-business hours and/or other hours designated by Customer. Licensor shall reimburse Customer for all of the reasonable, out-of-pocket costs actually incurred by Customer in connection with such relocation.
- 1.6 **Compliance with Laws, Facility Rules & Regulations.** Each of Licensor and Customer, at its sole cost and expense, shall comply with (a) all laws, ordinances, orders, rules and regulations of state, federal, municipal or other agencies or bodies having jurisdiction relating to its specific use or manner of use of the Licensed Area, and (b) all industry standards, practices and procedures. Customer's use of the Licensed Area, installation of Equipment and access to the Premises shall at all times be subject to and conditioned upon the strict adherence to the Facility Rules.
- 1.7 **Inspections.** Licensor may conduct reasonable inspections of the Equipment and Licensed Area as Licensor deems necessary or appropriate. Licensor will use commercially reasonable efforts to give Customer reasonable

notice of such inspection, but under no circumstances will Licensor be required to notify Customer or obtain Customer's consent before entering the Licensed Area.

**2.0 Commencement Procedures; Fees and Charges; Security Deposit.**

**2.1 Commencement Procedures.** Licensor acknowledges that Customer will be occupying the Licensed Area at the commencement of this Agreement pursuant to a lease, dated March 26, 2006, between Customer and 200 Paul, LLC (the "Direct Lease"). The Direct Lease shall terminate concurrently with the commencement of the term of this Agreement. On or before the Start Date designated in the Service Order, or as soon thereafter as reasonably possible, Customer shall deliver to Licensor the: a) executed Agreement and Service Order(s), Tax Exemption Certificate (if applicable) and completed Contact Information page attached hereto, b) Initial Payment c) Certificate of Insurance (if required by Section 13 of these Terms and Conditions), and d) such other information and documents as are required by the Agreement.

**2.2 Recurring and Non-Recurring Fees and Charges.** Customer shall pay Licensor in advance the MRC, which shall include without limitation: charges for use and occupancy of the Licensed Area, power, interconnectivity, all as set forth in more detail below and quantified in the applicable Service Order(s). In addition to any MRC, Customer shall be charged certain NRC for Customer-ordered non-recurring charges, Licensed Area installation services, cross-connect installation and technical support, as agreed to in advance and quantified in the applicable Service Order. All orders for space, services and technical support shall be filled at such rates as are in effect at the time of the provision of service, which rates shall be disclosed to Customer in writing, and Customer shall be responsible for any taxes that legally apply to Customer's order. All Customer payments of Fees and Charges shall be made without setoff against any claims or obligations which may arise between Customer and Licensor under any other agreement or other contractual arrangement.

**2.3 Ordering; Use of Customer Portal.** Each order is a commitment for the Term set forth herein, and may not be cancelled unless the cancelled Services are replaced with new Services of equal or greater value or Licensor agrees to the cancellation in writing. Customer may place orders for Services by only by executing a Service Order in accordance with the provisions of Section 2 of the Addendum. Customer shall have the right to access Licensor's electronic system referred to as the "Customer Portal" to check available inventory and check the status of orders and trouble tickets. In order to access the Customer Portal, the following requirements must be met: (a) this Agreement must be in full force and effect and (b) Customer must have contacted customer service to create a Customer profile and secure a username and password. Customer shall maintain the confidentiality of its account and password and shall restrict and grant access thereto. Customer is responsible and liable for all activities by parties accessing Customer's account through the password protected Customer Portal (other than placing new orders or changing existing orders, which shall only be binding on Customer if placed with an executed Service Order in accordance with the provisions of Section 2 of the Addendum, and other than amendments to this Agreement), and Licensor does not have any obligation to verify that anyone using Customer's account and password has Customer's authorization. For the avoidance of doubt, except with respect to a provision on the Customer Portal evidencing an intent to be bound by the terms and conditions of the Agreement, any terms and conditions on the Customer Portal shall be disregarded and of no force or effect.

**2.4 Taxes.** Customer agrees to pay or reimburse Licensor for any applicable taxes which are or may be levied based on the transactions contemplated hereby and the services provided hereunder, excluding only Licensor's real estate and income taxes. Any such tax shall be invoiced and payable in accordance with the payment terms of the Agreement. Licensor agrees to provide Customer with reasonable documentation to support invoiced amounts for taxes within thirty (30) calendar days of receipt of Customer's written request. If appropriate, upon execution of this Agreement and as often thereafter as reasonably requested by Licensor, Customer shall provide Licensor with a properly executed certificate of tax exemption, a form of which is attached hereto and can also be found at [http://www.telx.com/?q=contact/customer\\_support](http://www.telx.com/?q=contact/customer_support). Licensor shall give effect to such certificate on a prospective basis from the date of receipt, subject to applicable law.

**2.5 Invoices; Late Charges.** All payments from Customer for MRC shall be due and payable on the Payment Date. Any payments that remain unpaid ten (10) business days after written notice that such sum was not received on the Payment Date shall be subject to a monthly late fee equal to 5% of the outstanding payment amount, provided that the notice period with respect to the first payment of MRC in each fiscal year (commencing on each July 1), with respect to the first payment of MRC following any adjustment in the payment amount, and with respect to any NRC shall be thirty (30) days (rather than 10 business days). Invoices for NRC shall be sent to Customer at the

address indicated below and shall contain agreed-upon payment terms. All amounts are due in US dollars and all fees associated with the transfer or collection of funds shall be the responsibility of the Customer.

- 2.6 **Adjustment of Fees and Charges.** Except as may be provided in any Service Order, Customer's MRC shall be subject to change following the second year of the Initial Term of any License granted hereunder, as provided in the Addendum to this Agreement. Customer's NRC shall be charged in accordance with the terms of each Service Order on which they are set forth.
- 2.7 **[Intentionally Omitted.]**
- 2.8 **Invoice Disputes.** Customer shall provide Licensor with notice of any disputed invoiced amount in writing in accordance with the "Notice" provisions of this Agreement. Except in accordance with a Controller's Audit as described in the Addendum, Licensor shall not consider any dispute notice which is sent by Customer more than sixty (60) days following the date of the invoice in question. The parties will work together to resolve all disputes within thirty (30) calendar days of the date of the dispute notice. If Customer was billed in error, Licensor will promptly provide Customer with a credit for the amount billed incorrectly, or will promptly refund such amount to Customer. If the amount was billed correctly, Customer will pay the amount within thirty (30) calendar days of confirmation.
- 2.9 **Service Commitment Period.** The License granted pursuant to the Agreement constitutes a committed term license. Interconnection Facility Services ordered pursuant to a signed Service Order shall not be cancelable by Customer except in accordance with the terms set forth below.
- 2.9.1 **Interconnection Facility Services Commitment.** Licensor shall not permit cancellation of Interconnection Facility Services except as set forth herein.
- 3.0 **Cancellation of Individual Interconnection Facility Services.** During the Initial Term, Customer may cancel a particular Interconnection Facility Service (but not all Interconnection Facility Services) prior to the expiration of the Initial Term by providing Licensor with thirty (30) days prior written notice provided, however, that Customer must either (a) pay to Licensor the aggregate MRC for the cancelled Services which would come due and payable for the duration of the then-current Term or (b) replace the terminated Interconnection Facility Service with Interconnection Facility Services of equal or greater value in any Telx Facility. The preceding sentence shall not apply to individual cross connects which are not purchased as part of a pack. Licensor shall be entitled to treat cancellation of Interconnection Facility Services during the Initial Term without a corresponding replacement order for Interconnection Facility Services as a de facto termination of the Agreement effective as of the date upon which the first Interconnection Facility Service was cancelled and all acceleration amounts shall apply as of that date. During the Renewal Term, Customer may request cancellation of a particular Interconnection Facility Service (but not all Interconnection Facility Services) and Licensor shall evaluate and respond to such requests on an individual case basis. In the event that Customer's Interconnection Facility Service cancellations during a Renewal Term, when taken in the aggregate over a twelve-month period, result in a 50% or greater reduction in Customer's MRC, Licensor shall be entitled to treat such reductions as a de facto termination of the Agreement. A de facto termination shall be deemed effective as of the earliest Interconnection Facility Service cancellation during the relevant twelve-month period, and all acceleration amounts shall apply as of that date. This Section is subject to the provisions of Section 7.4 of the Addendum.
- 4.0 **Term; Initial Term; Renewal Terms; Automatic Renewal.** The License granted pursuant to this Agreement for use of a Licensed Area is a committed term license. The Initial Term of this Agreement shall be twenty-four (24) months commencing on the Agreement Effective Date. Customer shall have the option to extend the term of this Agreement for three (3) additional twelve-month Renewal Terms as provided in the Addendum, in each such case subject to earlier termination or revocation for cause, as provided herein. Following the expiration of the Initial Term or, if applicable, the Renewal Term(s), this Agreement shall be automatically renewable for monthly renewal terms thereafter ("Automatic Short Term Renewal Terms"), as provided in the Addendum. While Customer has no right to use the Services after the end of the Term (as extended pursuant to the terms hereof), if Customer does so, Customer will remain bound by the terms and conditions of this Agreement and shall be obligated to pay for such Services at Licensor's then-current rates for so long as the Services are used by Customer.
- 4.1 **[Intentionally Omitted.]**

- 5.0 **Termination for Cause.** Either party may terminate this Agreement by giving written notice of termination to the other party if the other party breaches any material term or condition of this Agreement as set forth in Section 7 below and fails to cure such breach after written notice of the same.
- 6.0 **Interconnection Facility Services.**
- 6.1 **Licensor Services.** Licensor shall provide the following Interconnection Facility Services to Customer in addition to specific services described in any Service Order. Provided that the License granted hereby has not otherwise been terminated, revoked or suspended, and provided further that Customer is not in material breach or default in the performance of any of its obligations under this Agreement, and is otherwise current in fulfilling its payment obligations under this Agreement:
- 6.1.1 **Access.** Licensor shall provide Customer access to the Premises and Licensed Area consistent with Section 1.2 of this Agreement.
- 6.1.2 **Power.** Licensor shall provide DC power and/or AC power to the Licensed Area as per the allotment specified in the applicable Service Order and in accordance with the provisions of Exhibit C to this Agreement. Licensor shall be responsible for repairing and maintaining the electrical system of the Premises and shall provide a generator to back up the power supply. Licensor makes no representation or warranty with respect to the generator and shall be responsible for repairing and maintaining the generator and for supplying fuel to the generator.
- 6.1.3 **Facility Maintenance Services.** Licensor shall maintain the Premises (but shall not have an obligation to maintain the Licensed Area) and shall provide maintenance services in a professional workmanlike manner consistent with telecommunications industry standards, and sufficient, at a minimum, to meet the environmental standards specified in items 2 and 3 of Exhibit .
- 6.1.4 **Interconnection/Cross-Connect Services.** Upon acceptance of a Customer-executed Service Order, Licensor shall provide Interconnection Services at the pricing and rates provided in the applicable Service Order. Unless otherwise agreed to by Licensor, all Interconnection Services shall be performed in the Meet-Me-Area. In the event a conduit build is required for the purpose of extending connectivity to termination points outside of the Premises or the Meet-Me-Area (e.g. to other carriers within the Building not in the Meet-Me-Area), such conduit build-outs shall be on mutually agreed terms and shall be set forth on the applicable Service Order.
- 6.1.5 **Air Conditioning.** Licensor shall provide air conditioning service to the Premises consistent with telecommunications industry standards and shall be responsible for repairing and maintaining the air conditioning equipment.
- 6.1.6 **Fire Suppression.** Licensor shall supply a fire suppression system for the Premises consistent with telecommunications industry standards and shall be responsible for repairing and maintaining the fire suppression system in compliance with telecommunications industry standards.
- 6.1.7 **Lighting.** Licensor shall provide common overhead lighting for the Premises and shall be responsible for repairing and maintaining the common overhead lighting system.
- 6.1.8 **Access Control.** Licensor shall maintain physical security measures for Meet-Me-Room that provide monitoring controls and procedures for the security and safety of Customer systems and equipment that are consistent with customary industry standards. If at any time Licensor becomes aware that any of the security measures in place for any portion of the Meet-Me-Room are compromised or otherwise violated or may be inadequate, Licensor shall provide notice of such event as soon as reasonably practicable to Customer in accordance with such notification call lists as Customer shall have, from time to time, provided to Licensor. In the event of a breach of the Meet-Me-Room security measures, upon reasonable request, (i) Licensor shall permit Customer to inspect the automatic security logs maintained for the Meet-Me-Room within twenty-four (24) hours following the receipt of such notice, (ii) Licensor shall promptly meet with a representative of Customer or Customer's designee to discuss reasonable modifications to the security measures to minimize the chances of future security breaches, and (iii) Licensor shall credit Customer for the cost of reasonable security measures made by Customer on account of the security breach or inadequate security measures, such as rekeying locks on Customer's cabinets or cages.

- 6.2 **Service Level Agreement; Support Services.** If Licensor fails to provide any of the above Interconnection Facility Services under the terms defined by this Agreement, Licensor agrees to provide a credit for service equal to the prorated Licensor billing for the portion of the MRC relating to the outage in question, provided Customer notifies Licensor within two (2) business days of Customer's inability to use the Interconnection Facility Services and further provided that the Interconnection Facility Services do not become unusable as a result of the actions or omissions of Customer or Customer's Authorized Personnel. Such notice may be given by Customer through the Customer Portal or, at Customer's election, via email at the address specified below. Customer acknowledges that the preferred and most effective manner of notice is the Customer Portal. Licensor shall use commercially reasonable efforts to restore any interrupted Interconnection Facility Service or cause the same to be restored in any circumstance in which such restoration is within the reasonable control of Licensor. Licensor shall provide 24/7 customer and technical support services to Customer through the Customer Portal and via e-mail through submissions to telxtechsupport@telx.com and telephone through calls made to 1-888-835-9832. Customer has provided Licensor with a twenty-four (24) hour telephone contact number for Customer for maintenance or other trouble notification and resolution by including such telephone number on the first page of this Agreement. In instances in which Licensor must contact Customer regarding maintenance, service disruption or security trouble or resolution, Licensor shall attempt to contact Customer using such primary twenty-four (24) hour contact numbers and the email addresses provided. Upon receipt of email or telephone notice of an outage, Licensor shall immediately (a) perform a root-cause analysis to identify the cause of any such deficiency or failure, (b) provide Customer with a report detailing the cause of, and procedure for correcting, such deficiency or failure, and (c) implement such correction procedure. Licensor will respond to Customer within fifteen (15) minutes of any outage report, providing the identity of the person assigned to resolve the outage and any status information that has been gathered.
- 6.3 **Repairs & Maintenance.** Licensor confirms that Licensor does not anticipate that periodic maintenance or upgrade work will result in a suspension of access to the Licensed Area or a suspension of the services to provided under this Agreement. Licensor shall use its good-faith efforts to provide Customer a week's prior notice and shall in all events provide not less than twenty four (24) hours prior notice (except in the case of emergency, in which event Licensor shall use reasonable efforts, but shall not be required, to provide Customer with such prior notice as is reasonable under the circumstances) of Licensor's intent to conduct facility maintenance services and planned repairs (including, but not limited to electrical, mechanical or plumbing work) that may disrupt the provision of Licensor's services to Customer. In the event such work will materially disrupt and/or interfere with the business of Customer within the Premises, Licensor and Customer will cooperate to determine an appropriate maintenance window to conduct such work. However, in emergency situations Licensor shall use reasonable care and precaution in order to minimize the disruption in Customer's business without the creation of a maintenance window.
- 7.0 **Breach of Agreement; Revocation of License.**
- 7.1 **Breach by Customer.** Each of the following shall constitute a material breach by Customer of this Agreement and all Service Orders related thereto (an "Uncured Material Breach"): (a) failure by Customer to make when due payment to Licensor of any amounts due under the Agreement, including late fees and any other charges, and failure to make such payment within ten (10) business days of a Breach Notice identifying such failure [provided that the notice period with respect to the first payment of MRC in each fiscal year (commencing on each July 1), with respect to the first payment of MRC following any adjustment in the payment amount, and with respect to any NRC shall be thirty (30) days]; (b) violation by Customer of any provision of the Agreement (other than a provision related to payment) and failure to cure such violation within ten (10) business days of a Breach Notice identifying the same; (c) material breach by Customer of any other agreement, including the terms of any Service Order, between Licensor (or any of its affiliate companies) and Customer and failure to cure such violation within ten (10) business days of a Breach Notice identifying the same; (d) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Customer if such proceeding is not dismissed within thirty (30) days of filing; or (e) cessation of operations by Customer without payment to Licensor of all amounts owed or owing to Licensor through the date upon which Customer ceased operations.
- 7.2 **Breach by Licensor.** Each of the following shall constitute a breach by Licensor of this Agreement and any Service Orders related thereto: (a) any material breach by Licensor of any provision of the Agreement that is not cured within thirty (30) days of a Breach Notice identifying the same; or (b) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Licensor if such proceeding is not dismissed within thirty (30) days of filing.

- 7.3 **Licensor's Remedies.** In the event of an Uncured Material Breach in accordance with Sections 7.1(a), 7.1(b) or 7.1(c) above, Licensor shall have the right (without limitation of any other remedies hereunder or under applicable law or in equity) in its sole discretion, upon provision of a Default Notice to Customer, to revoke or suspend (in whole or in part) the revocable License granted hereby. Each of 7.1(d) and 7.1(e) above shall result in the automatic termination of this Agreement and all Service Orders related thereto and the aggregate MRC otherwise due for the remainder of the then-current Term shall become immediately due and payable to Licensor. In addition to the foregoing, and without limiting any other remedies of Licensor hereunder, or under applicable law or in equity, in the event of an Uncured Material Breach and Customer's failure to cure any non-payment of fees and/or charges described in the related Breach Notice and subsequent Default Notice, Licensor shall be entitled to immediately or at any time thereafter prior to receipt of payment from Customer therefor, terminate the Agreement, and the Agreement shall be deemed to have been terminated upon receipt by Customer of written notice of such termination. Upon such termination, Licensor shall be entitled to recover from Customer as damages suffered by Licensor by reason of such termination, all arrearages in Fees and Charges and other costs, charges, assessments, and reimbursements, the cost (including, without limitation, court costs and attorneys' fees) of recovering possession of the Licensed Area, and, in addition thereto, an amount equal to the aggregate MRC and other charges and assessments that would otherwise become due and payable during the four (4) month period following such termination, or, if less, during the remainder of the Term (in the absence of the termination of the Agreement) (the "Liquidated Payment"). Upon notice from Licensor of termination and the amount of the Liquidated Payment, Customer agrees to pay the same at once, and further agrees such Liquidated payment shall not constitute a penalty or forfeiture, but shall constitute liquidated damages for Customer's failure to comply with the terms and provisions of this Agreement (Licensor and Customer agreeing that Licensor's actual damages in such event are impossible to ascertain and that the amount set forth above is a reasonable estimate thereof). Furthermore, and without limiting any other remedies of Licensor hereunder, under applicable law or in equity, in the event of such termination, Licensor shall be entitled to remove the Equipment in accordance with Section 1.3.2.
- 7.4 **Customer's Remedies.** In the event Licensor breaches this Agreement in accordance with Section 7.2(a) or 7.2(b) above, Customer shall have the right (without limitation of any other remedies hereunder or under applicable law or in equity), ten (10) days after submission of a Default Notice to Licensor, to terminate this Agreement and the Service Order(s) related to Licensor's uncured breach.
- 8.0 **Representations and Warranties.**
- 8.1 **Customer Representations.** Customer represents and warrants to Licensor that at all times (a) the performance of Customer's obligations under this Agreement and the use of the Interconnection Facility Services does not violate any applicable laws, rules, regulations, codes or ordinances; (b) Customer is not under investigation by any governmental authority for, and has not been charged with or convicted of, money laundering, drug trafficking, terrorist related activities and (c) Customer shall at all times conduct its business in a reputable manner and shall comply with all federal, state and municipal laws, rules, regulations and codes of ethics that are binding upon or applicable to Customer's business, equipment or personnel under or related to this Agreement.
- 8.2 **Licensor Representations.** Licensor represents and warrants to Customer that at all times (a) the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized and that this Agreement is a valid and legal agreement binding upon it and enforceable in accordance with its terms; (b) Licensor has the legal right and authority and will maintain the legal right and authority during the Term of this Agreement, to provide access to the Licensed Area and the Interconnection Facility Services as contemplated under this Agreement; (c) the performance of Licensor's obligations under this Agreement does not violate any applicable laws, rules, regulations, codes or ordinances; (d) Licensor is not under investigation by any governmental authority for, and has not been charged with or convicted of, money laundering, drug trafficking, terrorist related activities and (e) Licensor shall at all times conduct its business in a reputable manner and shall comply with all federal, state and municipal laws, rules, regulations and codes of ethics that are binding upon or applicable to Licensor's business, equipment or personnel under or related to this Agreement.
- 9.0 **Eminent Domain.** In the event of a taking by eminent domain of all or any portion of the Premises so as to prevent, in Licensor's sole reasonable judgment, the utilization by Customer of the Licensed Area, the License shall terminate as of the date of such taking or conveyance with respect to the Licensed Area which is affected by such taking or conveyance, and the MRC to be paid by Customer shall be adjusted accordingly. Customer shall have no claim against Licensor for the value of the unexpired Term of this Agreement or the applicable Service Order affected thereby (or any portion thereof, other than any prepaid period) or any claim or right to any portion

of the amount that might be awarded to the landlord of the Premises or Licensor as a result of any such payment for condemnation or damages.

- 10.0 **Damage to Premises.** If the Premises are damaged by fire or other casualty, Licensor shall give notice to Customer of such damage as quickly as practicable under the circumstances. Licensor shall have the option to terminate the License due to damage or destruction of the Premises and the License shall terminate as of the date of such exercise or decision as to the affected Licensed Area, and the MRC to be paid by Customer shall be adjusted accordingly. If Licensor does not exercise the right to terminate, then Licensor shall restore the Premises to substantially the same condition it was in prior to the damage, completing the same with reasonable speed considering all of the facts and circumstances. In no event shall Licensor have any obligation to repair or replace Equipment. In the event that Licensor shall fail to complete the repair within a reasonable time period under the circumstances, Customer shall thereupon have the option to terminate the relevant License and applicable Service Order(s) with respect to the affected Licensed Area, which option shall be the sole remedy available to Customer against Licensor under this Agreement relating to such failure. If the damage such that the Licensed Area or any portion thereof or any portion of the Premises required for Customer's Interconnection Services shall be rendered unusable by reason of such damage, the MRC for such Licensed Area shall proportionately abate, based on extent of interference with the conduct of Customer's activities in the Premises, for the period from the date of such damage to the date when such damage shall have been repaired for the portion of the Licensed Area rendered unusable.
- 11.0 **Limitation of Liability; No Warranty.** In no event shall either party, its members, managers, officers, directors, employees or representatives be liable for any special, incidental, direct, indirect, punitive, reliance or consequential damages, whether foreseeable or not.
- 11.1 EXCEPT AS SPECIFICALLY SET FORTH HEREIN AND IN ANY APPLICABLE SERVICE ORDER, THE LICENSED AREA IS ACCEPTED "AS IS" BY CUSTOMER. LICENSOR DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES RELATING TO THE PREMISES, AND THE PROVISION OF ALL INTERCONNECTION SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED IN THIS AGREEMENT, IT IS SPECIFICALLY UNDERSTOOD AND AGREED, SUCH AGREEMENT BEING A PRIMARY CONSIDERATION FOR THE EXECUTION OF THIS AGREEMENT BY LICENSOR, THAT IF LICENSOR SHALL FAIL TO PERFORM ANY COVENANT, TERM OR CONDITION OF THIS AGREEMENT UPON LICENSOR'S PART TO BE PERFORMED AND, AS A CONSEQUENCE OF SUCH DEFAULT, CUSTOMER SHALL RECOVER A MONEY JUDGMENT AGAINST LICENSOR, SUCH JUDGMENT SHALL BE SATISFIED ONLY OUT OF AN AMOUNT EQUAL TO THE TOTAL FEES ACTUALLY PAID BY CUSTOMER IN CONNECTION WITH THE APPLICABLE SERVICES AND NEITHER LICENSOR NOR ANY OF ITS MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES SHALL BE LIABLE FOR ANY DEFICIENCY. IT IS UNDERSTOOD THAT IN NO EVENT SHALL CUSTOMER HAVE ANY RIGHT TO LEVY EXECUTION AGAINST ANY PROPERTY OF LICENSOR OTHER THAN THE TOTAL FEES ACTUALLY PAID IN CONNECTION WITH THE APPLICABLE SERVICES AS HEREINBEFORE EXPRESSLY PROVIDED. IN THE EVENT OF THE SALE OR OTHER TRANSFER OF LICENSOR'S RIGHT, TITLE AND INTEREST IN THE PREMISES, LICENSOR SHALL BE RELEASED FROM ALL LIABILITY AND OBLIGATIONS UNDER THIS AGREEMENT THEREAFTER ACCRUING, PROVIDED THAT LICENSOR'S SUCCESSOR IN INTEREST SHALL ASSUME THE RIGHTS AND OBLIGATIONS OF LICENSOR UNDER THIS AGREEMENT AS OF THE EFFECTIVE DATE OF SUCH TRANSFER.
- 12.0 **Indemnity.** Customer shall indemnify, defend, release and hold Licensor and all of its members, managers, affiliates, agents, clients, consultants, customers, employees, subcontractors, invitees, shareholders, directors, officers and licensees ("Indemnified Parties") harmless from and against any action, claim, court costs, damages, demands, expense, liability, loss, penalty, proceeding or suit, including reasonable attorneys' fees, costs and disbursements (collectively "Claims") arising from or relating to injury to person or property, including death, as a result of any act or omission (whether intentional, negligent or otherwise) by Customer in connection with the Premises or Licensed Area, or otherwise related to the exercise by Customer of the License granted to Customer under this Agreement; provided, however, Customer shall not be obligated to indemnify Licensor or Indemnified Parties to the extent any Claim arises out of the negligence or willful misconduct of Licensor or the Indemnified Parties.

13.0 **[Intentionally Omitted.]**

14.0 **No Property Interest; Sole Use of Licensed Area by Customer; No Assignment or Sub-License.** Customer acknowledges that the rights granted to Customer hereunder do not constitute an easement of any portion of the Premises. Customer further acknowledges that it has been granted only a license to occupy the Licensed Area and that it has not been granted any real property interest in the Licensed Area or the Premises. Customer further agrees that, subject to required procedures and conditions to any sublicense (set forth below), none of this Agreement, any Service Order or any interest created herein shall be assigned, mortgaged, subleased, sub-licensed, encumbered or otherwise transferred by Customer by any act or omission on the part of Customer, directly or indirectly, including by way of any transfer of all or any portion of the ownership interests or assets of Customer to a third party, without Licensor's prior written consent. Customer further agrees that neither the Licensed Area or any part thereof shall be used or occupied, nor permitted to be used or occupied, by any entity (including any affiliated entity) other than Customer. Any attempt to allow the use or occupancy of the Licensed Area by any entity other than Customer, or to assign, mortgage, sublease, sub-license or encumber any rights under this Agreement by Customer shall be void and constitute a material breach of the License granted hereby, unless otherwise agreed to in writing by Licensor. In the event Customer desires to sub-license or assign this Agreement, Customer shall pay to Licensor \$1,500 to cover the legal costs of the sub-license or assignment documentation review. Additionally, as a condition to acceptance of the sub-license or assignment, Licensor may require Customer to accept additional reasonable terms. Each Sub-license agreement shall be subject to Licensor's written approval of terms, which shall not be unreasonably withheld, and shall: (i) incorporate all of the terms and conditions (other than economic/commercial terms) contained in, and shall not otherwise be inconsistent with, this Agreement; (ii) contain an affirmative assumption by the Sub-licensee of all of the obligations of Customer contained in this Agreement; (iii) contain a provision for Licensor to enforce as against any Sub-licensee directly any of the provisions contained in this Agreement or such sub-license agreement; and (iv) provide that no additional sub-licenses by Sub-licensee shall be permitted.

15.0 **Mechanics Liens.** If any mechanics lien or other liens shall be filed against the building, the Premises or property of Licensor, or any improvement thereon by reason of or arising out of any labor or materials furnished or alleged to have been furnished or to be furnished to or for Customer or by reason of any changes, or additions to Licensor property made at the request or under the direction of the Customer, Customer shall, within thirty (30) days after receipt of written notice from Licensor either pay such lien or cause the same to be bonded off in the manner provided by law. Customer shall also defend on behalf of Licensor, at Customer's sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of such liens and Customer shall pay any damage and discharge any judgment entered thereon.

16.0 **Subordination.** All rights of Customer hereunder are and shall be subject and subordinate in all respects to all security interests on the Premises and in the assets of Licensor. This Section 16 shall be self-operative and no further instrument of subordination shall be required. In confirmation of such subordination, Customer shall promptly execute, acknowledge and deliver any instrument that Licensor or the landlord of the Premises may reasonably request to evidence such subordination. Customer covenants and agrees not to execute any security agreements, Uniform Commercial Code financing statements, chattel mortgages, conditional bills of sale, leases or other title retention agreements or any modifications, extensions, replacement or amendments thereto in connection with the purchase of, or covering or affecting any fixtures, equipment or personal property used at the Premises, except to the extent the same relate only to Customer's property: (a) which does not constitute a fixture or part of the Premises under the law of the State within which the Facility identified on each Service Order is located and (b) the removal of which will not damage the Premises.

17.0 **General Provisions.**

17.1 **No Joint Venture.** Neither party is authorized to assume or create any obligation on behalf of, in the name of, or binding upon the other party, nor shall this Agreement in any way create, give rise to, or be deemed a joint venture or partnership between the parties.

17.2 **No Solicitation.** Customer shall not use the Premises or Licensed Area for marketing or solicitation purposes. Customer shall place no signs or marking of any kind (except for a sign or other identification affixed to Customer's Equipment and reasonably necessary to identify Customer's Equipment, and which shall include a list of emergency contacts with telephone numbers), in the Premises or Licensed Area. Customer shall not, and shall make sure that its Customer Representatives shall not, during the Term of this Agreement and for a period of six (6) months thereafter, directly or indirectly (i) solicit, employ, offer to employ or engage as a consultant, any



employee of Licensor; or (ii) pay or offer to pay any employee of Licensor any compensation (in cash or in kind), gifts or entertainment as an inducement (stated or implied) to perform any services in the Premises or Licensed Area for Customer or any Customer Representative. Any violation of this provision shall constitute a material breach of this Agreement.

- 17.3 **Force Majeure.** Licensor shall not be liable for any damage or claim of damage arising from or relating to delays, failures to perform, damages, losses or destruction or malfunction of any equipment or any consequence thereof caused or occasioned by, or due to, acts of God, fire, explosion, flood, water, the elements, vandalism, cable or fiber cuts, labor disputes or shortages, utility curtailments, power failures, civil disturbances, or any law, order, or regulation of any department, agency, commission, court, bureau, corporation or other instrumentality of one or more of said governmental agencies, or any law, order, regulation, direction, action or request thereof, national emergency, insurrection, riot, war, strike lockout or work stoppage, or other labor difficulties, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, of any other cause beyond Licensor's reasonable control.
- 17.4 **No Waiver; Binding Effect; Amendment; Merger.** The failure of Licensor to enforce or insist upon compliance with any of the provisions of this Agreement (including Facility Rules) or the waiver thereof, in any instance, shall not be construed as a waiver or relinquishment of any other instance, or of any other provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may not be amended except by an instrument in writing, executed by the parties. This Agreement supersedes and merges all prior agreements, promises, understandings, statements representations, warranties, indemnities and covenants and all inducements to the making of this Agreement relied upon by either party, whether written or oral, and embodies the parties' complete and entire agreement with respect to the subject matter hereof. No representation, statement or agreement, oral or written, made before the execution of this Agreement shall vary or modify the written terms hereof in any way whatsoever.
- 17.5 **Choice of Law; Severability.** THIS AGREEMENT SHALL BE IN ALL RESPECTS GOVERNED AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE WITHIN WHICH THE LICENSED AREA IS LOCATED, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part, for any reason, such illegal, unenforceable or invalid provision or part shall be stricken from this Agreement and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement.
- 17.6 **Further Assurances; Customer Certifications.** The parties shall, at their own cost and expense, execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intended purposes of this Agreement. In such regard, Customer agrees, within twenty (20) business days of written request, to provide written acknowledgement or other form of certification as may be necessary or advisable to confirm the commercial terms and status of this Agreement and any License granted hereunder.
- 17.7 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, taken together, shall constitute one and the same instrument.
- 17.8 **Notices.** All notices or consents required or permitted to be given hereunder shall be in writing to the Customer at the address set forth in the "Certain Required Information" section set forth above and to the Licensor if sent to the appropriate Telx Entity c/o The Telx Group, Inc., 1 State Street, 21<sup>st</sup> Floor, New York, NY 10004 USA, Telephone: (212) 480-3300, Facsimile: (212) 480-8384. Notices shall be deemed to be duly given if sent via: (a) hand delivery, (b) certified mail return receipt requested postage prepaid or (c) nationally recognized overnight courier service.
- 17.9 **[Intentionally Omitted.]**
- 17.10 **Time of the Essence.** Time is of the essence in all things to be done, including all payments to be made by Customer under this Agreement.
- 17.11 **[Intentionally Omitted.]**

17.12 **Entire Agreement.** The Service Order(s) referenced in and attached to these Terms and Conditions, the Addendum attached hereto, as well as the subsequent Service Orders executed in connection with these Terms and Conditions, form a part of and shall be deemed an integral part hereof to the same extent as if written in whole herein.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, LICENSOR ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS AGREEMENT AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

IN WITNESS WHEREOF, the Parties have executed these Terms and Conditions as of the date first written above.

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 111 8<sup>th</sup>, LLC  
telx – Phoenix, LLC  
telx – Santa Clara, LLC  
telx – San Francisco, LLC  
telx – Weehawken, LLC

By: \_\_\_\_\_

Name:  
Title:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
Please Print Name: AMY L. BROWN  
Please Print Title: Director of Real Estate

RECOMMENDED:

By: \_\_\_\_\_  
Chris Vein  
Chief Information Officer,  
Director, Department of Technology

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Anita L. Wood  
Deputy City Attorney

**EXHIBIT A**  
**CERTAIN DEFINITIONS**

**“Agreement”** Shall refer to these Master Terms and Conditions together with any and all Service Orders which are submitted by Customer to Licensor.

**“Authorized Personnel”** Shall refer to the persons authorized by Customer to access the Licensed Area.

**“Breach Notice”** Shall refer to written notice of breach provided to the breaching party by the non-breaching party.

**“Building”** Shall refer to the physical structure within which the applicable Telx Facility is located.

**“Claims”** Shall have the meaning set forth in Section 12.

**“Commencement Date”** Shall refer to the date upon which the Services are installed.

**“Confidential Information”** Shall refer to any information that is: (a) identified by the disclosing party as being proprietary and/or confidential; (b) contains the disclosing party’s customer lists, customer information, technical information, pricing information, pricing methodologies, financial position, trade secrets, customer communications or proposals, benchmarking information, satisfaction surveys, business plans or information relating to the disclosing party’s business operations or (c) that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be recognized by the receiving party as confidential or proprietary and treated as such. Confidential Information shall also include any and all photographs, recordings or other images of the inside of any Telx Facility, including any Meet-Me-Room or Meet-Me-Area.

**“Customer”** Shall refer to the party so defined on the applicable Service Order.

**“Customer Representatives”** Shall refer to Customer’s employees, representatives, independent contractors and any other individuals accessing the Premises and Licensed Area from time to time on behalf of the Customer.

**“Customer Portal”** Shall refer to Telx online ordering platform that is accessible via the internet at a location designated by Telx.

**“Default Notice”** Shall refer to written notice of default provided to the defaulting party by the non-defaulting party.

**“Direct Lease”** Shall refer to that certain Meet-Me-Room Lease, dated March 26, 2006, between Customer and 200 Paul, LLC.

**“Equipment”** Shall refer to Customer-provided communications and information technology equipment and cabling.

**“Facility”** Shall refer to the location identified as such on the applicable Service Order.

**“Facility Rules”** Shall refer to the Licensor’s rules and regulations for the Premises as such Facility Rules may be amended from time to time by Licensor in Licensor’s sole and absolute discretion. The current version of the Facility Rules can be found on the Internet at:

[http://www.telx.com/index.php?option=com\\_content&task=view&id=108&Itemid=129](http://www.telx.com/index.php?option=com_content&task=view&id=108&Itemid=129)

The Facility Rules in effect as of November 18, 2010 are attached as Exhibit D.

**“Fees and Charges”** Shall consist of all MRC and NRC, including charges for power, and all taxes that legally apply to Customer’s order.

**“Initial Payment”** Shall consist of (a) the NRC set forth on the applicable Service Order, (b) the first month’s MRC and (c) the Security Deposit.

**“Initial Service Order”** Shall refer to the first Service Order executed by Customer and Licensor pursuant to which the business relationship between the parties is established.

**“Initial Term”** Shall refer to the initial term in months set forth in Section 4.

**“Interconnection Services”** Shall refer to the interconnection and cross-connect services provided by Licensor to facilitate Customer needs of connectivity to other customers and carriers within the Interconnection Facility.

**“Interconnection Facility Services”** Shall mean the Services identified on any Service Order, together with the Services identified in Section 6.1.

**“License”** Shall refer to the license granted by Licensor to Customer for access to and use of the Licensed Area for the Permitted Purpose.

**“Licensed Area”** Shall refer to those certain portions of the Premises as more specifically identified each Service Order(s) with respect to which Customer is granted a license for the purposes of locating certain communications and information technology equipment, cabling and other related activities.

**“Licensed Area Delivery Notice”** Shall refer to the notice provided by Licensor to Customer pursuant to which Customer is informed that the Licensed Area is available for Customer to occupy.

**“Licensor”** Shall refer to each Telx Entity identified as such on each Service Order.

**“Meet-Me-Area”** Shall refer to those Licensor –designated areas within each Telx Meet-Me-Room which contain passive interconnection panels to support circuit connections and where all cross connections take place.

**“Meet-Me-Room”** Shall refer to those Licensor-controlled areas in each Facility within which customers may install their equipment in racks, cabinets and cages.

**“MRC”** Shall mean the monthly recurring charges set forth on each Service Order and further described in Section 2.2.

**“NRC”** Shall mean the non-recurring charges set forth on any Service Order and further described in Section 2.2.

**“Payment Date”** Shall mean the first of the calendar month to which an invoice relates, provided that with respect to the first payment of MRC at the beginning of the term and the first payment of MRC after the beginning of each new fiscal year for Customer or after any change in the amount of the MRC, the Payment Date shall be the later of such date or (30) days after written notice of the required MRC from Licensor.

**“Permitted Purpose”** Shall refer to the placement, operation and interconnection of communications and information technology equipment.

**“Premises”** Shall refer to the relevant portion of each Telx Facility, Meet-Me-Room and/or Meet-Me-Area, as applicable, within which the Licensed Area is located.

**“Renewal Term”** Shall refer to each twelve-month renewal term after the Initial Term.

**“Right of First Refusal”** Shall mean, unless defined otherwise elsewhere in this Agreement or in a Service Order, a one-time right granted by Licensor to Customer to license additional space in the Premises on the terms and conditions specified by Licensor.

**“Security Deposit”** Shall mean an amount equal to: (a) one month’s projected MRC or (b) such other amount as is set forth as the “Security Deposit Amount” on the applicable Service Order.

**“Services”** Shall refer to those Interconnection Facility Services described in Section 6.1 herein and set forth in any Service Order submitted by Customer and accepted by Licensor.

**“Service Order”** Shall refer to each Telx-generated order for space and Interconnection Facility Services.

**“Service Order Effective Date”** Shall refer to: (1) in the case of an Initial Service Order, the date upon which the last party executes the Service Order or (2) in the event a Service Order other than an Initial Service Order, the later of the date upon which the Service Order is executed by the Customer or the date upon which the Service Order is received by Licensor. Each Service Order Effective Date shall be specific to each Service Order, shall relate to the Services set forth on such Service Order exclusively and shall be applicable to such Service Order only.

**“Telx”** Shall be the singular term used to refer to the Telx Entities.

**“Telx Entities”** Shall mean the Telx companies set forth on the signature page attached to the Agreement.

**“Term”** Shall mean the Initial Term and any Renewal Term, as applicable.

**“Terms and Conditions”** Shall refer to these Master Terms and Conditions.

## UNIFORM SALES & USE TAX CERTIFICATE—MULTIJURISDICTION

The below-listed states have indicated that this form of certificate is acceptable, subject to the notes on pages 2-4. The issuer and the recipient have the responsibility of determining the proper use of this certificate under applicable laws in each state, as these may change from time to time.

Issued to Seller: \_\_\_\_\_

Address: \_\_\_\_\_

I certify that:  
 Name of Firm (Buyer): \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

is engaged as a registered  
 Wholesaler  
 Retailer  
 Manufacturer  
 Seller (California)  
 Lessor (see notes on pages 2-4)  
 Other (Specify) \_\_\_\_\_

and is registered with the below listed states and cities within which your firm would deliver purchases to us and that any such purchases are for wholesale, resale, ingredients or components of a new product or service<sup>1</sup> to be resold, leased, or rented in the normal course of business. We are in the business of wholesaling, retailing, manufacturing, leasing (renting) the following:

Description of Business: \_\_\_\_\_

General description of tangible property or taxable services to be purchased from the seller: \_\_\_\_\_

State	State Registration, Seller's Permit, or ID Number of Purchaser	State	State Registration, Seller's Permit, or ID Number of Purchaser
AL <sup>2</sup>	_____	MO <sup>13</sup>	_____
AR	_____	NE <sup>14</sup>	_____
AZ <sup>22</sup>	_____	NV	_____
CA <sup>3</sup>	_____	NJ	_____
CO <sup>1</sup>	_____	NM <sup>1,15</sup>	_____
CT <sup>4</sup>	_____	NC <sup>24</sup>	_____
DC <sup>5</sup>	_____	ND	_____
GA <sup>6</sup>	_____	OH <sup>25</sup>	_____
HI <sup>1,7</sup>	_____	OK <sup>16</sup>	_____
ID	_____	PA <sup>26</sup>	_____
IL <sup>1,8</sup>	_____	RI <sup>17</sup>	_____
IA	_____	SC	_____
KS	_____	SD <sup>18</sup>	_____
KY <sup>23</sup>	_____	TN	_____
ME <sup>9</sup>	_____	TX <sup>19</sup>	_____
MD <sup>10</sup>	_____	UT	_____
MI <sup>11</sup>	_____	VT	_____
MN <sup>12</sup>	_____	WA <sup>20</sup>	_____
		WI <sup>21</sup>	_____

I further certify that if any property or service so purchased tax free is used or consumed by the firm as to make it subject to a Sales or use Tax we will pay the tax due directly to the proper taxing authority when state law so provides or inform the seller for added tax billing. This certificate shall be a part of each order which we may hereafter give to you, unless otherwise specified, and shall be valid until canceled by us in writing or revoked by the city or state.

Under penalties of perjury, I swear or affirm that the information on this form is true and correct as to every material matter.

Authorized Signature: \_\_\_\_\_  
(Owner, Partner or Corporate Officer)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## INSTRUCTIONS REGARDING UNIFORM SALES & USE TAX CERTIFICATE

### To Seller's Customers:

In order to comply with the majority of state and local sales tax law requirements, the seller must have in its files a properly executed exemption certificate from all of its customers who claim a sales tax exemption. If the seller does not have this certificate, it is obliged to collect the tax for the state in which the property or service is delivered.

If the buyer is entitled to sales tax exemption, the buyer should complete the certificate and send it to the seller at its earliest convenience. If the buyer purchases tax free for a reason for which this form does not provide, the buyer should send the seller its special certificate or statement.

### Caution to Seller:

In order for the certificate to be accepted in good faith by the seller, seller must exercise care that the property or service being sold is of a type normally sold wholesale, resold, leased, rented or incorporated as an ingredient or component part of a product manufactured by buyer and then resold in the usual course of its business. A seller failing to exercise due care could be held liable for the sales tax due in some states or cities. Misuse of this certificate by seller, lessee, or the representative thereof may be punishable by fine, imprisonment or loss of right to issue certificate in some states or cities.

### Notes:

1. The state of Colorado, Hawaii, Illinois, and New Mexico do not permit the use of this certificate to claim a resale exemption for the purchase of a taxable service for resale.
2. Alabama: Each retailer shall be responsible for determining the validity of a purchaser's claim for exemption.
3. California:
  - A. This certificate is not valid as an exemption certificate. Its use is limited to use as a resale certificate subject to the provisions of Title 18, California Code of Regulations, Section 1668 (Sales and Use Tax Regulation 1668, Resale Certificate).
  - B. By use of this certificate, the purchaser certifies that the property is purchased for resale in the regular course of business in the form of tangible personal property, which includes property incorporated as an ingredient or component part of an item manufactured for resale in the regular course of business.
  - C. When the applicable tax would be sales tax, it is the seller who owes that tax unless the seller takes a timely and valid resale certificate in good faith.
  - D. A valid resale certificate is effective until the issuer revokes the certificate.
4. Connecticut: This certificate is not valid as an exemption certificate. Its use is limited to use as a resale certificate subject to Conn. Gen. State §§12-410(5) and 12-411(14) and an regulations and administrative pronouncements pertaining to resale certificates.
5. District of Columbia: This certificate is not valid as an exemption certificate. It is not valid as a resale certificate unless it contains the purchaser's D.C. sales and use tax registration number.
6. Georgia: the purchaser's state of registration number will be accepted in lieu of Georgia's registration number when the purchaser is located outside Georgia, does not have nexus with Georgia, and the tangible personal property is delivered by drop shipment to the purchaser's customer located in Georgia
7. Hawaii allows this certificate to be used by the seller to claim a lower general excise tax rate or no general excise tax, rather than the buyer claiming an exemption. The no tax situation occurs when the purchaser of imported goods certifies to the seller, who originally imported the goods into Hawaii, that the purchaser will resell the imported goods at wholesale. If the lower rate or no tax does not in fact apply to the sale, the purchaser is liable to pay the seller the additional tax imposed. See Hawaii Dept. of Taxation Tax Information Release No. 93-5, November 10, 1993, and Tax Information Release No. 98-8, October 30, 1998.
8. Use of this certificate in Illinois is subject to the provisions of 86 Ill. Adm. Code Ch.I. Sec. 130.1405. Illinois does not have an exemption on sales of property for subsequent lease or rental, nor does the use of this certificate for claiming resale purchases of services have any application in Illinois.

The registration number to be supplied next to Illinois on page 1 of this certificate must be the Illinois registration or resale number; no other state's registration number is acceptable.

"Good faith" is not the standard of care to be exercised by a retailer in Illinois. A retailer in Illinois is not required to determine if the purchaser actually intends to resell the item. Instead, a retailer must confirm that the purchaser has a valid registration or resale number at the time of purchase. If a purchaser fails to provide a certificate of resale at the time of sale in Illinois, the seller must charge the purchaser tax.

While there is no statutory requirement that blanket certificates of resale be renewed at certain intervals, blanket certificates should be updated periodically, and no less frequently than every three years.

9. Maine does not have an exemption on sales of property for subsequent lease or rental.
10. Maryland: This certificate is not valid as an exemption certificate. However, vendors may accept resale certificates that bear the exemption number issued to a religious organization. Exemption certifications issued to religious organizations consist of 8 digits, the first two of which are always "29". Maryland registration, exemption and direct pay numbers may be verified on the website of the Comptroller of the Treasury at [www.marylandtaxes.com](http://www.marylandtaxes.com).
11. Michigan: Effective for a period of three years unless a lesser period is mutually agreed to and stated on this certificate. Covers all exempt transfers when accepted by the seller in "good faith" as defined by Michigan statute.
12. Minnesota:
  - A. Does not allow a resale certificate for purchases of taxable services for resale in most situations.
  - B. Allows an exemption for items used only once during production and not used again.
13. Missouri:
  - A. Purchases who improperly purchase property or services sales tax free using this certificate may be required to pay the tax, interest, additions to tax or penalty.
  - B. Even if property is delivered outside Missouri, facts and circumstances may subject it to Missouri tax, contrary to the second sentence of the first paragraph of the above instructions.
14. Nebraska: A blanket certificate is valid 3 years from the date of issuance.
15. New Mexico: For transactions occurring on or after July 1, 1998, New Mexico will accept this certificate in lieu of a New Mexico nontaxable transaction certificate and as evidence of the deductibility of a sale tangible personal property provided:
  - a) this certificate was not issued by the State of New Mexico;
  - b) the buyer is not required to be registered in New Mexico; and
  - c) the buyer is purchasing tangible personal property for resale or incorporations as an ingredient or component part into a manufactured product.
16. Oklahoma would allow this certificate in lieu of a copy of the purchaser's sales tax permit as one of the elements of "properly completed documents" which is one of the three requirements which must be met prior to the vendor being relieved of liability. The other two requirements are that the vendor must have the certificate in his possession at the time the sale is made and must accept the documentation in good faith. The specific documentation required under OAC 710-65-7-6 is:
  - A) Sales tax permit information may consist of:
    - (i) A copy of the purchaser's sales tax permit; or
    - (ii) In lieu of a copy of the permit, obtain the following:
      - (I) Sales tax permit number; and
      - (II) The name and address of the purchaser;
  - B) A statement that the purchaser is engaged in the business of reselling the articles purchased;
  - C) A statement that the articles purchased are purchased for resale;
  - D) The signature of the purchaser or a person authorized to legally bind the purchaser; and
  - E) Certification on the face of the invoice, bill or sales slip or on separate letter that said purchaser is engaged in reselling the articles purchased.

Absent strict compliance with these requirements, Oklahoma holds a seller liable for sales tax due on sales where the claimed exemption is found to be invalid, for whatever reason, unless the Tax Commission determines that purchaser should be pursued for collection of the tax resulting from improper presentation of a certificate.



17. Rhode Island allows this certificate to be used to claim a resale exemption only when the item will be resold in the same form. They do not permit this certificate to be used to claim any other type of exemption.
18. South Dakota: Services which are purchased by a service provider and delivered to a current customer in conjunction with the services contracted to be provided to the customer are claimed to be for resale. Receipts from the sale of a service for resale by the purchaser are not subject to sales tax if the purchaser furnishes a resale certificate which the seller accepts in good faith. In order for the transaction to be a sale for resale, the following conditions must be present:
  - (1) The service is purchased for or on behalf of a current customer;
  - (2) The purchaser of the service does not use the service in any manner; and
  - (3) The service is delivered or resold to the customer without any alteration or change.
19. Texas. Items purchased for resale must be for resale within the geographical limits of the United States, its territories and possessions.
20. Washington:
  - A. Blanket resale certificates must be renewed at intervals not to exceed four years;
  - B. This certificate may be used to document exempt sales of "chemicals to be used in processing an article to be produced for sale."
  - C. Buyer acknowledges that the misuse of the tax due, in addition to the tax, interest, and any other penalties imposed by law.
21. Wisconsin allows this certificate to be used to claim a resale exemption only. It does not permit this certificate to be used to claim any other type of exemption.
22. Arizona: This certificate may be used only when making purchases of tangible personal property for resale in the ordinary course of business, and not for any other statutory deduction or exemption. It is valid as a resale certificate only if it contains the purchaser's name, address, signature, and Arizona transaction privilege tax (or other state sales tax) license number, as required by Arizona Revised Statutes § 42-5022, *Burden of proving sales not at retail*.
23. Kentucky:
  1. Kentucky does not permit the use of this certificate to claim a resale exclusion for the purchase of a taxable service.
  2. This certificate is not valid as an exemption certificate. Its use is limited to use as a resale certificate subject to the provisions of Kentucky Revised Statute 139.270 (Good Faith).
  3. The use of this certificate by the purchaser constitutes the issuance of a blanket certificate in accordance with Kentucky Administrative Regulation 103 KAR 31:111.
24. North Carolina: This certificate is not valid as an exemption certificate or if signed by a person such as a contractor who intends to use the property. Its use is subject to G.S. 105-164.28 and any administrative rules or directives pertaining to resale certificates.
25. Ohio:
  - A. The buyer must specify which one of the reasons for exemption on the certificate applies. This may be done by circling or underlining the appropriate reason or writing it on the form above the state registration section. Failure to specify the exemption reason will, on audit, result in disallowance of the certificate.
  - B. In order to be valid, the buyer must sign and deliver the certificate to the seller before or during the period for filing the return.
27. Pennsylvania: This certificate is not valid as an exemption certificate. It is valid as a resale certificate only if it contains the purchaser's Pennsylvania Sales and Use Tax eight-digit license number, subject to the provisions of 61 PA Code §32.3.

**CONTACT INFORMATION**

1. **BILLING CONTACT:**

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_ ; FAX: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

2. **ENGINEERING/OPERATIONS CONTACT:**

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_ ; FAX: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

3. **PRIMARY ACCOUNT CONTACT:**

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_ ; FAX: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

4. **PROVISIONING / ACCOUNT MANAGER CONTACT:**

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

PHONE: \_\_\_\_\_; FAX: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

ADDENDUM TO MASTER TERMS AND CONDITIONS

(City Requirements)

between

THE TELX ENTITIES,  
as Licensor

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Customer

For interconnection and collocation in a portion of the  
Meet-Me-Room  
200 Paul Avenue,  
San Francisco, California

## ADDENDUM TO COLLOCATION AGREEMENT

THIS ADDENDUM (this "Addendum") is a part of that certain agreement, dated for reference purposes only as of February 1, 2011, by and between THE TELX GROUP, INC., a Delaware corporation, on behalf of itself and its wholly-owned subsidiaries set forth on the signature page of the Agreement (collectively, "Licensor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Customer") for a license and certain support services in that interconnection and collocation facility known as the Meet-Me-Room located on the third (3<sup>rd</sup>) floor of the building located at 200 Paul Avenue, San Francisco, California (the "Agreement").

Licensor and City hereby agree as follows:

### 1. RENEWAL TERMS; AUTOMATIC SHORT TERM RENEWAL TERMS

#### 1.1 Renewal Terms

City shall have the right to extend the Initial Term of this Agreement for three (3) additional successive one (1)-year renewal terms (each, a "Renewal Term"). Such Renewal Terms shall be on all of the terms and conditions contained in this Agreement, provided that the MRC shall be adjusted on the commencement date of each Renewal Term (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. City may exercise the extension option(s), if at all, by giving written notice to Licensor no later than one hundred eighty (180) days prior to expiration of the Term to be extended, the effectiveness of which exercise shall be subject to receipt of all necessary City approvals (i.e., resolutions by City's Board of Supervisors, if required, in City's sole and absolute discretion, approving and authorizing exercise of the applicable option) within ninety (90) days following the date of exercise.

#### 1.2 Automatic Short Term Renewal Terms

Following the expiration of the Initial Term or, if applicable, the Renewal Term(s), this Agreement shall be automatically renewable for monthly renewal terms thereafter ("Automatic Short Term Renewal Terms"), provided that either party may terminate such Automatic Short Term Renewal Term upon ninety (90) days' prior written notice to the non-terminating party. Such Automatic Short Term Renewal Terms shall be on all of the terms and conditions contained in this Agreement, provided that (i) the monthly MRC for the initial six (6) months of the Automatic Short Term Renewal Terms shall be an amount equal to one hundred three percent (103%) of the MRC in effect during the last month of the Initial Term or, if applicable, the Renewal Term(s), and (ii) following such six (6) month period the monthly MRC shall be equal to the then fair market MRC, as reasonably and in good faith determined by Licensor.

### 2. AMENDMENTS, NEW SERVICE ORDERS REQUIREMENTS

Any amendments or modifications to this Agreement, and any new Service Orders under this Agreement shall be subject to the mutual written agreement of City and Licensor, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee, upon written recommendation by the director of City's Department of Technology; provided, however, material amendments or modifications to this Agreement and new Service Orders under this Agreement: (a) increasing the Term (other than the exercise of the options granted hereunder), (b) increasing the MRC, (c) incurring more than \$10,000 of NRC in any fiscal year, or (d) materially increasing City's liabilities or financial obligations under this Agreement, shall each additionally require the approval of City's Board of Supervisors.

### 3. INVOICES; AUDIT

Invoices furnished by Licensor under the Agreement must be in a form acceptable to City's Controller. All amounts paid by City to Licensor shall be subject to audit by City. City shall have the right, upon not less than five (5) business days' notice to Licensor, to audit the books and records of Licensor related to Fees and Charges (a "Controller's Audit"). If such audit discloses any discrepancies which would result in a reduction of City's Fees and Charges, Licensor shall immediately refund to City the amount of any overpayment by City. City shall pay the cost of such audit, provided that if such audit discloses any discrepancies which result in a reduction of any Fees and Charges of three percent (3%) or more for any calendar year, then Licensor shall pay the reasonable out-of-pocket costs actually incurred by the City in connection with such audit. Licensor shall maintain at the Facility or other

location with San Francisco in a safe, complete and organized manner all of its records pertaining to Agreement and any charges paid by City pursuant thereto, for a period of not less than three (3) years following expiration of the Term. Licensor shall maintain such records on a current basis and in sufficient detail to facilitate adequate audit and review thereof. All such books and records shall be available for inspection, copying and audit by City and its representatives, at City's expense.

#### **4. MASTER LEASE RIGHTS AND OBLIGATIONS**

##### **4.1 Licensor to Enforce Master Landlord Obligations**

200 Paul, LLC, as landlord, and Licensor, as tenant, are parties to that of that certain Lease, dated \_\_\_\_\_, 20 \_\_, pursuant to which Licensor leases the Meet-Me Room (the "Master Lease"). During the Term of this Agreement (as extended, if applicable) Licensor agrees not to terminate the Master Lease voluntarily, nor to modify the Master Lease in a manner that materially and adversely affects City's rights under this Agreement. Licensor will refrain from any act or omission that would result in the failure or breach of any of the covenants, provisions, or conditions of the Master Lease on the part of the tenant under the Master Lease. Licensor, at its sole cost, shall use commercially reasonable efforts to enforce the landlord maintenance and repair obligations under the Master Lease with respect to the exterior and structural portions of the building and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the building and the common areas of the building required for City's access to the Licensed Area or enjoyment of its rights under the Agreement (the "Essential Services"), and to enforce City's rights to use those portions of the building's common areas required for City's access to the Licensed Area.

##### **4.2 Disruption in Essential Utilities or Services**

In the event of any failure, stoppage or interruption of any Interconnection Facility Services or Essential Services, Licensor shall immediately notify City of such failure, stoppage or interruption, diligently attempt to restore service as promptly as possible and shall keep City apprised of its efforts. In the event there is a disruption in Essential Services, and such disruption impairs City's ability to use the License Area in the manner contemplated, then Licensor shall provide a credit for service equal to the prorated Licensor billing for the portion of the MRC relating to the disruption in questions, provided that the Essential Services do not become unavailable as a result of the actions or omissions of City or Customer's Authorized Personnel. If any failure to provide any Essential Services continues for any reason for thirty (30) days and such failure interferes with City's ability to carry on its business in the Licensed Area, then City may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Agreement upon written notice to Licensor, unless Licensor supplies City with evidence reasonably satisfactory to City that the Essential Services will be restored within sixty (60) days of the date City's use was interrupted, and such services are actually restored within such 60-day period.

#### **5. LICENSOR INDEMNITY**

Licensor shall indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Licensor in the performance of any of its obligations under this Agreement or any breach of any representations or warranties made by Licensor under this Agreement, or (b) any negligent acts or omissions of Licensor or its agents in, on or about the Premises or the Facility; provided, however, Licensor shall not be obligated to indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its agents.

#### **6. INSURANCE**

##### **6.1 City's Self-Insurance**

City, and its agents, must obtain (and provide Licensor evidence of) insurance coverage consistent with the requirements set forth on Exhibit B attached hereto (some or all of which may be established by umbrella insurance coverage), prior to any entry into the Premises. All of City's, and its agents', insurance policies with respect to the City Equipment shall be endorsed so as to include a waiver of subrogation in favor of Licensor. Notwithstanding the foregoing, City may elect not to obtain such insurance coverage and instead self-insure such coverage (the "Self-Insured Coverages") by either (a) not maintaining the insurance policies for the Self-Insured Coverages required pursuant to Section, or (b) maintaining deductibles or self-insured retentions for the policies for the Self-Insured

Coverages required pursuant to Section in excess of \$10,000. In the event City elects to self-insure the Self-Insured Coverage, (1) liability coverage will apply as if City was maintaining a policy without deductible or self-insured retention, (2) City waives any and all rights to make any claim against Licensor and its employees, agents or insurers for any loss or losses incurred by City or any third party which could have been covered had City obtained insurance described in Exhibit B, (3) City shall indemnify, defend and hold harmless Licensor against all costs, expenses, damages and losses (including attorneys' fees) claimed against Licensor by City or any third party resulting from City's failure to obtain insurance for the Self-Insured Coverages, (4) the right to self-insure the Self-Insured Coverages shall not be deemed to invalidate or void any other requirements or conditions of this Agreement, including, without limitation, the waiver of subrogation, release of Licensor and City's indemnity obligations, and (5) City shall cause any of City's contractors, subcontractors or agents (other than City departments or divisions covered by the Self-Insured Coverages) performing work or entering the Premises on behalf of City under the terms of this Agreement to procure and maintain insurance as required by Exhibit B.

## **6.2 Licensor's Insurance**

Licensor, at no cost to City, shall procure and keep in effect at all times during the Term insurance as follows: (a) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU); and (b) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident.

## **6.3 Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, Licensor hereby waives any right of recovery against City for any loss or damage sustained by Licensor with respect to the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which Licensor is required to purchase under this Agreement or is otherwise actually recovered from valid and collectible insurance covering Licensor; provided that the foregoing waiver shall not apply to the first Fifty Thousand Dollars (\$50,000) of any deductible Licensor is required to pay in connection with such insurance claim. Licensor agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Premises; provided, Licensor's failure to do so shall not affect the above waiver.

## **7. GENERAL PROVISIONS**

### **7.1 City Approvals**

All approvals, consents or other determinations permitted or required by City under this Agreement, including but not limited to the exercise of any option granted to City, shall be made by or through City's Director of Property unless otherwise provided in this Agreement, subject to any applicable limitations in the City's Charter.

### **7.2 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Licensor, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Licensor, its successors and assigns, or for any obligation of City under this Agreement.

### **7.3 MacBride Principles - Northern Ireland**

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Licensor acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**7.4 Controller's Certification of Funds**

The terms of this Agreement shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for the payment or expenditure of money by City under this Agreement unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Agreement commences, sufficient funds for the payment of MRC and any other payments required under this Agreement are not appropriated, then City may terminate this Agreement, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Licensor reasonable advance notice of such termination.

**7.5 Non Discrimination in City Contracts and Benefits Ordinance**

**(a) Covenant Not to Discriminate**

In the performance of this Agreement, Licensor agrees not to discriminate against any employee of, any City employee working with Licensor, or applicant for employment with Licensor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**(b) Subcontracts**

Licensor shall include in all subcontracts relating to the Licensed Area a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Licensor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Licensor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**(c) Non-Discrimination in Benefits**

Licensor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

**(d) HRC Form**

As a condition to this Agreement, Licensor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Licensor hereby represents that prior to execution of the Agreement: (a) Licensor executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (b) the HRC approved such form.

**(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Licensor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Licensor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars



(\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Licensor and/or deducted from any payments due Licensor.

#### **7.6 Tropical Hardwood and Virgin Redwood Ban**

(a) Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Licensor nor any of its contractors shall provide any items to City in the performance of this Agreement which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood products.

(c) In the event Licensor fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Licensor shall be liable for liquidated damages for each violation in an amount equal to Licensor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Licensor acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Licensor from any contract with the City and County of San Francisco.

#### **7.7 Effective Date**

The date on which this Agreement shall become effective (the "Effective Date") is the date upon which: (a) City's Mayor and Board of Supervisors, in their sole and absolute discretion, adopt a resolution approving this Agreement in accordance with all applicable laws and (b) this Agreement is duly executed by the parties hereto.

#### **7.8 Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

#### **7.9 Conflicts of Interest**

Through its execution of this Agreement, Licensor acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Licensor becomes aware of any such fact during the Term of this Agreement, Licensor shall immediately notify City.

#### **7.10 Notification of Limitations on Contributions**

Through its execution of this Agreement, Licensor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Licensor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Licensor further acknowledges that the

prohibition on contributions applies to each prospective party to the contract; each member of Licensor's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Licensor; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Licensor. Additionally, Licensor acknowledges that Licensor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Licensor further agrees to provide to City the names of each person, entity or committee described above.

#### **7.11 Preservative-Treated Wood Containing Arsenic**

Licensor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of the San Francisco Environment Code, Chapter 13 is obtained from City's Department of Environment under Section 1304 of the Environment Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Licensor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Licensor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **7.12 Attorneys' Fees**

In the event that either Licensor or City fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney or of Licensor's in-house counsel shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by, as applicable, the Office of the City Attorney or Licensor's in-house legal department. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney

#### **7.13 Controlling Document**

In the event of any conflict between the terms of Master Terms and Conditions of the Agreement and this Addendum, the terms of this Addendum shall control.

EXHIBIT B

**Insurance Provisions**

**Policies**

- |  |  |
|--|--|
| A. Commercial general liability insurance (including contractual liability): | \$2,000,000 single limit; \$5,000,000 aggregate limit  |
| B. "All Risk" Personal Property Insurance:                                   | Full Replacement Value of Customer's Personal Property in Licensed Area.   |
| C. Workers' Compensation Insurance:  | in accordance with the laws of the state in which the Property is located, and Employer's Liability insurance with a limit not less than \$1,000,000 Bodily Injury Each Accident; \$1,000,000 Bodily Injury By Disease - Each Person; and \$1,000,000 Bodily Injury By Disease - Policy Limit. |

**Requirements:**

All insurance required under this Agreement shall be issued by insurers with a "General Policyholders Rating" of at least A-, X, as set forth in "Best's Insurance Guide." Such insurers shall be authorized to do business in California.

**EXHIBIT "C"**  
**ENVIRONMENTAL SLA**

1. Uptime: Licensor shall provide 99.99% uptime. If Licensor fails to provide 99.99% uptime, Licensor agrees to provide a credit for service equal to the prorated Licensor billing for the portion of the MRC relating to the outage in question.
2. Environmental (Heat): Ambient room temperature shall not exceed 75.6 degrees Fahrenheit or drop below 68 degrees Fahrenheit, +/- 5 degrees Fahrenheit.
3. Environmental (Humidity): Humidity shall not exceed 60% relative humidity or drop below 40% relative humidity, +/- 5%.

Licensor guarantees that the Interconnection Facility Services shall be available 99.99% of the time. In the event of "Downtime" (as defined below), Customer shall request and receive a credit (the "Service Credit") to be applied against the monthly charge as follows:

- a. If the total Downtime in any calendar month is more than one (1) continuous hour but less than four (4) continuous hours, Customer will receive one days' credit, which credit shall be applied to the monthly charge for the next succeeding month.
- b. If total Downtime in any calendar month is more than four (4) continuous hours but less than eight (8) continuous hours, Customer shall receive two days' credit, which credit shall be applied to the monthly charge for the next succeeding month.
- c. If the total Downtime in any calendar month is more than eight (8) continuous hours, Customer shall receive three days' credit, which shall be applied to the monthly charge for the next succeeding month.

In no event will any Service Credit for any single incident of Downtime exceed five (5) days in any calendar month, and in no event will the total Service Credit for any calendar month exceed 100% of the monthly charges for such month.

"Downtime" shall mean an interruption of the Interconnection Facility Services to Customer due to either: (1) utility failure or (2) failure of any cross connection maintained by Licensor between Customer and a third party. In the event of Downtime, Licensor will be responsible for restoring either the utility service or the failed connection between Customer and the third party, as applicable. Licensor responsibility for cross connections between Customer and any third party in the Premises and pursuant to the Agreement shall be limited to the maintenance of such connections from the rack or cage in the Licensed Area to the "Demarcation Point". The Demarcation Point is the point where third party networks are consolidated, as well as the point where all interconnections between Customer and third parties are completed, not the result of faulty equipment within the Customer's cabinet or cage or any form of negligence on the Customer's part