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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

PARETEUM CORPORATION, et al., 1 Chapter 11  
Case No. 22-10615(LGB)

Debtor.

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**OBJECTION OF TELX – SANTA CLARA LLC TO THE OMNIBUS  
MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE  
ASSUMPTION OF CERTAIN COMMERCIAL EXECUTORY  
CONTRACTS PURSUANT TO 11 U.S.C. § 365(a) AND GRANTING  
RELATED RELIEF**

Telx - Santa Clara LLC (“Telx”) by and through its counsel Reich, Reich & Reich, P.C. hereby object (“Objection”) to the cure amounts set forth in the *Notice of Cure Costs and Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale*. [ECF No. 77] and the *Exhibit A annexed thereto*. (the “Assumption Notice”) Telx respectfully states:

1. On May 15, 2022 (the “Petition Date”), the above captioned debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (“Bankruptcy Code”).

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1 The Debtors in the Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors’ corporate headquarters are located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.



2. The debtors continue to operate its business and manage its properties as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

3. Telx is a party to a master terms and conditions agreement with iPass Inc., one of the above captioned debtors (the “Debtor”). Pursuant to the master terms and conditions agreement, Telx granted the Debtor a license to install certain information technology and/or telecommunication equipment at its Santa Clara facilities and to interconnect to a carrier using Telx’s infrastructure at those facilities (the “Agreement”). Under the Agreement Telx also provides the Debtor with electrical power, air conditioning, lighting, facility management services, fire suppression, repairs and maintenance. A copy of the Agreement is attached hereto as Exhibit A.

4. The Agreement is identified on page 26 of Exhibit A to the Assumption Notice.

5. The Debtor seeks to assume the Agreement and has filed the Assumption Notice which incorrectly lists the Debtor’s proposed cure amounts as \$136,012.66 (“Debtor’s Proposed Cure Amounts”).

6. Telx objects to the Debtor’s Proposed Cure Amounts as set forth in the Assumption Notice because the correct cure amounts due and owing under the Agreement as of the date of this filing for is \$146,972.50 as set forth in the Statements of Account attached to this Objection as Exhibits “B” (“Correct Cure Amounts”). These amounts represent, inter alia, pre-petition and/or post-petition unpaid balances due under the Agreement known as of the date of this filing.

7. Telx further object to the Debtor’s Proposed Cure Amounts in that they do not take into consideration the passage of time between the filing of the Assumption Notice and the effective date of any assumption of the Agreement by the Debtor. Accordingly, any order that is

entered establishing cure amounts with respect to the Agreement must require that the Debtor (i) comply with all obligations under the Agreement pursuant to 11 U.S.C. § 365(d)(3) pending the actual assumption of the Agreement; and (ii) cure any additional defaults that may occur under the Agreement between the date of this Objection and the effective date of any assumption by the Debtors. See 11 U.S.C. § 365(b)(1).

### **ARGUMENT**

8. Section 365 of the Bankruptcy Code obligates the Debtor to promptly cure all existing defaults before assuming any unexpired lease of non-residential real property. See 11 U.S.C. § 365(b)(1)(A) and (B); *Agri Star Meat & Poultry, LLC v. Nevel Props. Corp. (In re Nevel Props. Corp.)*, 765 F.3d 846, 849 (8th Cir. 2014) (stating that a lease cannot be assumed unless a cure has been effected); *In re Alipat, Inc.*, 36 B.R. 274, 276 (Bankr. E.D. Mo. 1984) (“[I]f there has been a default in an executory contract or unexpired lease, the trustee may not assume such contract or lease unless he or she cures the default, compensates the other party, and provides adequate assurance of future performance...”). The Debtor is therefore required to promptly cure all existing defaults by paying Telx the Correct Cure Amounts immediately upon the assumption of the Agreement.

9. Prior to the Agreement actually being assumed, all other amounts that will become due and owing under the Agreement, also need to be cured to the extent such amounts remain unpaid.

### **RESERVATION OF RIGHTS AND JOINDER**

10. Telx reserve the right to assert any and all other claims against the Debtor arising out of or related to the Agreement, including without limitation, claims for (a) the costs of any repair that may be necessary after inspection of the premises; (b) post-petition and other

charges accruing under the Agreement that Telx have yet to discover and not yet identified on Exhibit “B”; (c) pecuniary losses suffered by Telx, attorneys’ fees and costs incurred as a direct result of any further defaults; and (d) non-monetary defaults of which Telx does not have knowledge at this time. To the extent applicable, Telx reserve all rights to object to any proposed assignee of the Agreement on any basis, to the extent the Debtor seeks to assign the Agreement, as well as any other rights it now has or may have under applicable law with respect to this matter including but not limited to any rights under Section 365 of the Bankruptcy Code. To the extent not inconsistent herewith, Telx hereby joins in the objections raised by other counterparties similarly situated.

**CONCLUSION**

11. Telx respectfully submits that the Correct Cure Amounts should be allowed (subject to adjustment by Telx) in the amounts set forth herein, and the Court should grant such other relief that the Court finds just and proper.

WHEREFORE, Telx - Santa Clara LLC, respectfully requests the Court enter an Order (i) sustaining this Objection, (ii) conditioning the Debtors assumption of the Agreement on Debtors payment in full of all amounts owing to Telx under the Agreement through the effective date of any assumption, including attorneys' fees and costs within 5 calendar days of the entry of any assumption order, (iii) requiring the assignee to comply with each and every term, condition and obligation set forth in the Agreement, including but not limited to any other accrued year-charges provided in the Agreement that have not yet been billed, and (iv) granting all such other and further relief as this Court considers proper and just.

Dated: White Plains, New York  
June 14, 2022

REICH REICH & REICH, P.C.  
Attorneys for Creditor Telx – Santa Clara, LLC

/s/Nicholas A. Pasalides

Nicholas A. Pasalides, Esq.

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**Exhibit A**

**MASTER TERMS AND CONDITIONS**

This Agreement is entered into on 10/31, 2013 (the "Agreement Effective Date") by and between the Telx Entities and iPass Inc.. 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: iPass Incorporated  
Customer Address: 3800 Bridge Parkway, Redwood Shores  
(Street)  
Ca, USA  
(State/Country)  
Customer Tel Number: 650-232-4100  
Customer Fax Number: 650-232-4111  
Customer Email Address: cloud-icteng@ipass.com  
Customer State of Formation: \_\_\_\_\_

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

Customer Billing Entity Name: \_\_\_\_\_  
Customer Billing Address: \_\_\_\_\_  
Customer Billing Contact: ATTN: \_\_\_\_\_  
Customer Billing Tel Number: \_\_\_\_\_  
Customer Billing Fax Number: \_\_\_\_\_  
Customer Email Address: \_\_\_\_\_  
Customer Tax Exempt?  YES (Attach state certificates)  NO

**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 committed term 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 other material term under this Agreement, Customer's Authorized Personnel shall 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. All 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 hot aisle/cold aisle containment, 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.



- 1.3.2 **Removal.** Customer agrees that, upon the expiration or termination of the License, Customer shall promptly remove or have removed, 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 (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, 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 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 Customer Equipment from the Licensed Area at a time when Customer is delinquent in meeting its payment obligations or is in breach of any other material term under this Agreement.
- 1.4 **Cross-Connections.** Only upon the prior express written consent of Licensor 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 upon thirty (30) 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 is practicable under the circumstances.
- 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.** Customer, subject to the terms and conditions of the Agreement, shall be permitted to commence occupying the Licensed Area, provided the Customer has received from Licensor the Licensed Area Delivery Notice and has returned 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 (as required by Section 13 of these Terms and Conditions), and (d) such other information as is required by this Agreement. In the event the Customer has not completed (or reached, in the sole reasonable determination of Licensor substantial completion of) occupancy of the Licensed Area within sixty (60) days following the Service Order Effective Date (or such other date as may be designated in the Service Order(s) as the "Start Date"), then Licensor may, in its sole discretion either (i) require of Customer additional assurances as to a projected occupancy date, (ii) designate another Licensed Area for the Customer, or (iii) elect by written notice to the Customer to revoke the applicable License, and thereby Customer shall be required to promptly vacate the originally designated Licensed Area, at Customer's expense.

- 2.2 **Recurring and Non-Recurring Fees and Charges.** Except for the initial payment, all payments from Customer for recurring fees shall be due and payable on the first of the calendar month to which such invoice relates ("Payment Date"). Customer shall pay Licensor in advance the MRC, which shall include without limitation: charges for use and occupancy of the Licensed Area, power, and 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. 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, and Customer shall be responsible for any taxes that legally apply to Customer's order. In addition to the fees described above, Customer agrees to reimburse Licensor within 30 days after billing, for Customer's pro rata share of any costs incurred by Licensor due to the installation, operation, maintenance, use or licensing of the Premises, such pro rata share to be calculated by dividing the total number of square feet in Customer's Licensed Area by the total number of square feet in the applicable Premises. 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.** Customer may place orders for Services by executing a Service Order or by submitting an order through the Customer Portal. In order to access the Customer Portal, the following requirements must be met: (a) the ordering party must be an existing Customer; (b) Customer's financial account must not be in arrears, and (c) 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 that occur under Customer's account. Licensor does not have any obligation to verify that anyone using Customer's account and password has Customer's authorization.
- 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. Licensor shall give effect to such certificate on a prospective basis from the date of receipt, subject to applicable law.
- 2.5 **Invoices.** All payments from Customer for MRC shall be due and payable on the Payment Date. Any payments that remain unpaid five (5) days after the Payment Date shall be subject to a monthly late fee equal to 10% of the outstanding payment amount. 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. Notwithstanding anything stated otherwise, any Customer purchase order document (whether signed by one or both parties) shall be construed solely as evidence of Customer's internal business processes, and the terms and conditions contained thereon shall be void and of no effect with regard to this Agreement between the parties.
- 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 first year of the Initial Term of any License granted hereunder in an amount not to exceed five percent (5%) over the amount charged during the preceding twelve month period. Charges for power shall be subject to adjustment upon thirty (30) days' advance written notice. Customer's NRC shall be charged in accordance with the terms of each Service Order on which they are set forth.
- 2.7 **Security Deposit. [INTENTIONALLY DELETED]**
- 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. 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) days of the date of the dispute notice. If Customer was billed in

error, Licensor will provide Customer with a credit for the amount billed incorrectly. If the amount was billed correctly, Customer will pay the amount within fifteen (15) days of confirmation. Any open dispute that is not diligently pursued by the Customer beyond the thirty (30) day period will be considered closed in favor of Licensor and accepted in full.

- 3.0 **Cancellation of Individual Interconnection Facility Services.** During the Term, Customer may cancel a particular Interconnection Facility Service (other than an individual cross connect which is not purchased as part of a pack) prior to the expiration of the then-current Term by providing Licensor with thirty days' prior written notice provided, however, that Customer must either: (a) pay to Licensor as liquidated damages and not a penalty the aggregate MRC for the cancelled Services which would come due and payable for the duration of the then-current Term (such payment amount the "Acceleration Amount") or (b) replace the terminated Interconnection Facility Service with Interconnection Facility Services of equal or greater value in any Telx Facility. The Acceleration Amount shall be received by Licensor by the effective date of the cancellation for the cancelled Interconnection Facility Services. Licensor shall be entitled to treat cancellation of more than 50% of Customer's Interconnection Facility Services during the then-current 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 the Acceleration Amount shall apply as of that date.
- 4.0 **Term.** The Initial Term of this Agreement shall be thirty-nine (39) months commencing on the Agreement Effective Date. This Agreement shall automatically renew for twelve-month periods thereafter (each, a "Renewal Term"), subject to earlier termination or revocation for cause as provided herein. Under no circumstances will any Service Order survive the expiration or earlier termination of this Agreement. While Customer has no right to use the Services after the end of the Term, 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. Licensor shall provide Services to Customer after the end of the Term at Licensor's sole discretion and Licensor shall be entitled to terminate provision of the Services at will, such termination to be effective immediately upon notice to Customer.
- 4.1 **Elective Termination.** (i) During the Term, Customer may only terminate this Agreement or a Service Order: (a) for cause as set forth in Section 5 below; or (b) on thirty (30) days' notice provided Customer pays the Acceleration Amount. Payment of the Acceleration Amount shall be received by Licensor no later than the effective date of the elective termination. (ii) Following the Initial Term, either party may effect elective termination of any License created hereunder, effective as of the expiration of the Initial Term or Renewal Term, as the case may be, without payment of the Acceleration Amount, by providing one hundred twenty (120) days' prior written notice of the termination to the other party.
- 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. 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.
- 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.
- 6.2 **Service Level Commitments.** Licensor warrants and represents to Customer that the Services shall comply with the Service Level Agreements ("SLAs") for each Service as more specifically described in Exhibit "B" attached hereto and any associated Service Availability Metrics which are incorporated therein and applicable to the discrete Services and the associated remedies set forth therein. Customer acknowledges that the service level credits applicable to the specific Services are its exclusive remedy for monetary damages in the event of Service interruption or outage.
- 6.3 **Repairs & Maintenance.** Licensor shall use its good-faith efforts to provide Customer (except in the case of emergency, in which event Licensor shall use reasonable efforts, but shall not be required, to provide Customer with prior notice) not less than twenty four (24) hours prior notice 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: (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 five (5) days of a Breach Notice identifying such failure; (b) violation by Customer of any provision of the Agreement (other than a provision related to payment) and failure to cure such violation within thirty (30) days of a Breach Notice identifying the same; (c) material breach by Customer of any Service Order, between Licensor (or any of its affiliate companies) and Customer and failure to cure such violation within five (5) 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. In the case of (a) above, Licensor shall be entitled to restrict Customer's access to and to suspend provision of power to the Licensed Area.

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 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 Customer breaches this Agreement 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 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 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 all damages Licensor may suffer 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 Premises, and, in addition thereto, Licensor may declare to be due and payable immediately, the aggregate MRC and other charges and assessments that would otherwise become due and payable during the remainder of the Term (in the absence of the termination of the Agreement). Upon the acceleration of such amounts, Customer agrees to pay the same at once, and further agrees such 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 Customer's failure to cure any non-payment of fees and/or charges described in the related Default Notice, Licensor shall be entitled to prevent and otherwise take all commercially reasonable steps to restrict Customer's access to and/or removal of any Equipment from the affected Licensed Area ("Customer Equipment Retention"). Customer MRC (including power charges, to extent provision of power has not been suspended) shall continue to accrue and be payable by Customer, notwithstanding Licensor exercise of available remedies set forth herein. Licensor's right to Customer Equipment Retention shall continue until such time as Customer shall have paid in full all Fees and Charges due Licensor under this Agreement. In the event Customer fails to pay in full all amounts due, and has not responded to any Breach Notice or Default Notice within one hundred twenty (120) days of the date thereof, Licensor shall be entitled, in connection with any Customer Equipment Retention, to treat such Equipment as having been abandoned, and Licensor shall be entitled to retain ownership and possession of, and otherwise sell, transfer and/or dispose of said Equipment, consistent with applicable law.

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, 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 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) Customer has the legal right and authority and will maintain the legal right and authority during the Term of this Agreement, to use the Licensed Area and the Interconnection Facility Services as contemplated under this Agreement; (c) 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; (d) 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 (e) 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) 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 Licensed Area or any portion thereof shall be rendered unusable by reason of such damage, the MRC for such Licensed Area shall proportionately abate, based on the amount of square footage of the Licensed Area which is rendered unusable, 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, 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 DURING THE TWELVE MONTHS IMMEDIATELY PRIOR TO WHEN THE CAUSE OF THE DAMAGE OCCURRED 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 AND ACCRUING AFTER 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, licensees and Owner's Indemnitees 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, the provision of Interconnection Services, or otherwise related to the exercise by Customer of the License granted to Customer under this Agreement. Licensor shall indemnify, defend, release and hold Customer and all of its members, managers, affiliates, agents, clients, consultants, customers, employees, subcontractors, invitees, shareholders, directors, officers, and licensees 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 Licensor in connection with the Premises or Licensed Area, the provision of Interconnection Services, or otherwise related to the exercise of any obligation under this Agreement.
- 13.0 **Insurance.** Customer shall keep in effect such insurance coverages as are set forth below for each Licensed Area. Customer shall maintain, at its expense, commercial general liability insurance for the Licensed Area. Such coverage shall: (a) contain blanket contractual liability coverage that covers Customer's liabilities arising out of this Agreement; (b) have a single limit of not less than one million dollars (\$1,000,000), an aggregate limit of not less than two million dollars (\$2,000,000) and include umbrella or excess liability insurance with a combined single limit of not less than three million dollars (\$3,000,000); (c) cover any third parties performing work in the Premises; (d) name Customer as insured and Licensor as additional insured (e) be considered primary, regardless of any insurance carried by Licensor. Customer shall maintain "all risk" property insurance in the full replacement value of Customer's Equipment and personal property in the Premises. Customer shall procure and maintain

workers' compensation and employer's liability insurance in accordance with the laws of the state in which the Facility is located. Employers liability insurance shall have a limit of not less than: (a) one million dollars (\$1,000,000) Bodily Injury Each Accident; (b) one million dollars (\$1,000,000) Bodily Injury By Disease – Each Person; and (c) one million dollars (\$1,000,000) Bodily Injury By Disease – Policy Limit. All insurance required under this License Agreement shall be issued by insurers rated in "Best's Insurance Guide" with a "General Policyholders Rating" of at least "A-" for "Financial Strength" and a "Financial Size Category" rating of at least X. Such Insurers shall be authorized to do business in the state in which the Facility is located. Prior to occupying the Licensed Area, Customer shall submit to Licensor evidence that Customer has the insurance policies required hereunder in effect and shall provide to Licensor certificates, with copies of all applicable endorsements attached, to Licensor before the commencement of this License. Customer shall ensure that Licensor receives reasonable prior written notice before any policy is cancelled or materially modified. If any work is to be performed for Customer's improvements, the certificate shall be delivered by Customer to Licensor prior to commencement of the improvements. If Customer fails to obtain the necessary coverages, Licensor may obtain such coverages at Customer's expense. Customer's property insurance shall include a waiver of subrogation in favor of Licensor and Owner's Indemnitees. Failure to comply with this Section 13 shall constitute a material breach of this Agreement.

For so long as waiver of subrogation provisions are in (or Customer could have obtained the same in) its "all risk" casualty/fire insurance policies, Customer hereby waives (and agrees to cause any other permitted occupants of Customer to waive and to execute and deliver to Licensor written instruments waiving) any right of recovery against Owner's Indemnitees and any servants, employees, agents or contractors of any Owner's Indemnitees for any loss occasioned by fire or other casualty which is an insured risk under such policies and agrees that Customer, or any other permitted occupant of Customer, as the case may be, shall look solely to the proceeds of such policies to compensate Customer or such other permitted occupants for any loss occasioned by fire or other casualty which is an insured risk under such policies.

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 and remain unconditionally subject and subordinate in all respects to all security interests on the Premises, to the lease for the facility, as amended, and any Owner or ground lease of the Building, if any, 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 **Termination of Facility Lease.** Notwithstanding anything to the contrary in this Agreement, the term of this Agreement, as it pertains to the Premises in the Building, shall terminate automatically upon the expiration or earlier termination of the Lease, unless Owner, at Owner's option, demands that Customer attorn to Owner or Owner's designee as set forth herein.

In the event of the termination, re-entry or dispossession of Licensor by Owner under the Lease, Customer upon such Owner's request shall promptly provide to Owner a copy of all documentation and agreements pertaining to Customer's presence in the Building. Owner may, at its option, take over (or designate a designee of Owner to take over) all of the right, title and interest of Licensor, as licensor under this Agreement, with respect to the Premises at the Building. In the event that Owner so elects to take over (or have a designee take over) such right, title and interest of Licensor, then Customer shall, at Owner's option, attorn to Owner or at Owner's further option, to Owner's designee pursuant to the then executory provisions of this Agreement to the extent the same relate to the Building, except that (1) neither Owner nor Owner's designee shall (i) be liable for any act or omission of Licensor under this Agreement prior to such attornment, (ii) be subject to any offset which accrued to Customer against Licensor, (iii) be bound by any prepayment of more than one month's MRCs or NRCs or other sums due hereunder unless such prepayment was previously approved by such Owner, nor (iv) be bound by any covenant to undertake or complete any construction of, or related to, the Premises, or perform any work for Customer, (2) Owner or Owner's designee, as Licensor, may require reasonable modifications of Customer's insurance requirements, consistent with owners of other first class office Buildings in the vicinity of the Building, and (3) neither Owner nor Owner's designee shall be bound for any of the terms and conditions that relate to any premises other than the Premises in the Building (and any such provisions shall be deemed excluded from this Agreement). Upon request, Customer shall execute any agreement requested to confirm such attornment.

18.0 **General Provisions.**

18.1 **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.

18.2 **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.

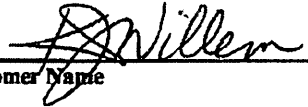
- 18.3 **Force Majeure.** Licensor shall not be liable for any damage or claim of damage arising from or relating to delays, failures to perform, damages, losses or destruction or malfunction of any equipment or any consequence thereof caused or occasioned by, or due to, acts of God, fire, explosion, flood, water, the elements, vandalism, cable or fiber cuts, labor disputes or shortages, utility curtailments, 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, or any other cause beyond Licensor's reasonable control.
- 18.4 **No Waiver; Binding Effect; Amendment; Merger.** The failure of a party 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.
- 18.5 **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.
- 18.6 **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 ten (10) 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.
- 18.7 **Counterparts; Agreement by Facsimile Transmission.** 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. Each party agrees that the execution and delivery of this Agreement by facsimile shall have the same force and effect as delivery of original signatures and that each party may use such facsimile signatures as evidence of the execution and delivery of this Agreement by the parties to the same extent that an original signature could be used.
- 18.8 **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, (c) nationally recognized overnight courier service, (d) by facsimile from a machine that confirms transmission; or (e) via e-mail provided such e-mail is affirmatively acknowledged by the receiving party.

- 18.9 **Confidentiality.** During the Term, each party shall retain in confidence all Confidential Information (including, with respect to Customer, the identification of other licensees of space at the Premises) and know-how, in whatever form transmitted. This obligation shall extend to the disclosing party's Confidential Information and to any third party Confidential Information that the disclosing party has in its possession under obligations of confidentiality and discloses in any way to the receiving party. The receiving party shall treat the Confidential Information with the same degree of care as it uses to protect its own confidential information of like importance, but in no event with less than reasonable care, and will make no use of such Confidential Information during the existence of this Agreement except as otherwise specified herein. The Receiving Party shall have no obligation to maintain the confidentiality of information that: (i) it received rightfully from another party without restrictions on disclosure prior to its receipt from the disclosing party; (ii) the disclosing party has disclosed to an unaffiliated third party without any obligation to maintain such information in confidence; (iii) is or becomes available to the public through no breach of this Agreement; (iv) is approved for release by the disclosing party, but only to the extent of such authorization; (v) is independently developed by the receiving party or (vi) is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure, and only if the receiving party first gives sufficient notice to the disclosing party of the requirement for the disclosure in order to allow the disclosing party an opportunity to obtain an appropriate protective order. Customer's obligation to keep confidential the identities of other licensees in the Premises shall continue until such time as the licensees are no longer customers of Licensor. The parties agree that a breach of the terms of this Section 17.9 would result in irreparable injury to the disclosing party for which a remedy in damages would be inadequate. Customer shall not issue any press release or public announcement with respect to Customer's point of presence in any Telx Facility without first securing Licensor's approval of such press release or public announcement. The parties agree that in the event of such breach or threatened breach, the disclosing party shall be entitled to seek an injunction to prevent the breach or threatened breach, in addition to remedies otherwise available for such specific performance or injunctive relief, that the disclosing party has an adequate remedy at law.
- 18.10 **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.
- 18.11 **Attorney's Fees.** In the event of any legal action by which Licensor either seeks to enforce or defend its rights under this Agreement or any License granted hereunder (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, Customer shall pay Licensor's attorney's fees and court costs.
- 18.12 **Entire Agreement.** The Service Order(s) referenced in and attached to these Terms and Conditions, 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.

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  
Telx - Portland, LLC  
Telx - Seattle, LLC

By:   
Name: **Anthony Rossabi**  
**Senior Vice President**  
Title: **Service Provider Group**

  
Customer Name  
By: \_\_\_\_\_  
Name: **Karen Willem**  
Title: **CFD**

**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 Licensor's online ordering platform that is accessible via the internet at a location designated by Licensor.

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

**"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/Facilities/#rules>

**"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.

**"Lease"** The lease between Licensor and the Owner of the Building.

**"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 on 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.

**"Owner"** Any owner, landlord or ground lessee of a Building where Licensor provides services.

**"Owner's Indemnitees"** Shall mean any Owner (and in the event of an attornment to Owner's designee, shall also mean Owner's designee), the shareholders, members, or the partners comprising Owner (and such designee) and its and their partners, members, shareholders, officers, directors, employees, agents (including, without limitation, any leasing and managing agents) and contractors, together with the lessor under any superior lease and the holder of any mortgage affecting the Building and/or the land upon which it stands.

**"Payment Date"** Shall mean the first of the calendar month to which an invoice relates.

**"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.

**EXHIBIT B**  
**SERVICE LEVEL AGREEMENT**

1. **Scope** This Service Level Agreement (SLA) applies to Customer's service performance for Telix's Colocation Services, Interconnection Services, IP Transit Services and Cloud Services. The Interpretation of this SLA is, at all times, intended to be subject to and consistent with the Telix Customer Resource Guide, which is available to customers at <http://telix.com/files/docs/resources/Telix-resource-guide.pdf>
2. **Notification and Credits** Service-impacting conditions may be reported either by Customer or by Telix. At the time Customer or Telix believes that a service impacting condition has occurred, the reporting party(s) must initiate a trouble ticket by contacting Telix's Network Operations Center ("NOC") in accordance with the method of contact set forth in the Telix Customer Resource Guide. For the purpose of determining the amount of any credit, periods of unavailability will be deemed to commence when Telix opens a trouble ticket to track such unavailability and will be deemed to end when Telix has restored availability based on the noted restoration time in the applicable trouble ticket unless Customer provides technical documentation to establish the exact time(s) of the beginning and/or end of the period of unavailability. A trouble ticket will be opened within 15 minutes of Telix discovering the outage or within 5 minutes of Customer notifying Telix of the outage. Credits will be applied to Customer's first monthly invoice subsequent to Telix's determination that a service impacting condition that lies within the scope of coverage has occurred.
3. **Exclusions** Service quality objectives cover only those events isolated to the covered areas, as specified in Section 1 above. SLA objectives do not apply to Excused Outages which include scheduled, emergency or Customer-requested service interruptions or maintenance windows. Measurement of outages will be conducted only in accordance with the service levels defined for each product set and can be viewed at <https://connected.telix.com/web/guest/library>. Under no circumstances will any tests performed by Customer, its vendors or partners, be recognized by Telix as the sole measurable criterion of violation length, quality or type for the purposes of establishing a service credit hereunder. All customer measurements must be verified by Telix. The SLA objectives contained herein apply only to Telix customers secured via a valid Telix Master Service Agreement; they do not apply to customers of Customer. Credits will not be given for outages involving: (a) trouble tickets associated with new installations; (b) trouble tickets erroneously opened by Customer; (c) a circuit release required by Customer for testing; (d) trouble tickets opened by Customer for service monitoring purposes only; or (e) trouble tickets related to Customer maintenance, configurations, negligence, accidents or omissions or use of Telix's network or services in breach of Telix's Master Service Agreement or Acceptable Use Policy; (f) false SLA breaches reported as a result of outages or errors of any Telix measurement system; (g) events beyond Telix's reasonable control; acts or omissions of Customer, its employees, contractors, agents, End Users or other service providers and carriers; (h) the failure or malfunction of equipment, applications or systems not owned and controlled by Telix; (i) a Force Majeure event; (j) Customer's failure to permit entry by Telix or make facilities or components available to Telix for testing or repair; or otherwise to comply with Telix instructions and service requirements; (k) customer premise equipment ("CPE"); or (l) local access service or 3rd party service of any type. The Service credits set forth in this Attachment are Customer's sole and exclusive remedy if Telix fails to meet the service level thresholds stated herein and in any calendar month the maximum Service credit to which Customer shall be entitled for any Service will not exceed the MRC for such Service except where otherwise noted.
4. **Chronic Outage** Customer may elect to terminate an affected Service prior to the end of the Service Term without termination liability for reasons other than an Excused Outage as defined in the Chronic Outage subsection for individual Telix product sets. Customer may only terminate such Service that is unavailable as described and must exercise its right to terminate the affected Service in writing, within thirty (30) days after the event giving rise to a right of termination hereunder, which termination will be effective as set forth by Customer in such notice of termination. Except for any credits that have accrued pursuant to Remedies and Credits offered as a part of each Product subsection, this sets forth the sole remedy of Customer for chronic outages or interruptions of any Telix Service covered in this agreement. Failure by Customer to provide Telix with timely notifications as set forth herein will be deemed a waiver by Customer of this termination right.
5. **Credit Types** Telix offers two types of service credits under this SLA. Proactive credits are automatically processed by the appropriate Telix team member, and are credited to Customer's monthly invoice following Telix's determination that the event lies within the scope of coverage. Customer is not required to request proactive credits. However, if Customer feels that Telix has not applied a credit correctly, Customer is able to request those credits via their Telix Sales Team anytime within ninety (90) days of the resolution of the event in question. Non-proactive service credits are not applied automatically to Customer's monthly invoice. Non-proactive credits must be requested in writing from Customer's Telix Sales Team within ninety (90) days of the resolution of the event for which the credit is being requested. Telix will apply any non-proactive credits due to Customer on Customer's monthly invoice following their request and Telix's determination that the event lies within the scope of coverage.
6. **Installation Intervals** Telix will deliver contracted services within the installation intervals set forth in the Telix Customer Resource Guide. The interval for measuring the fulfillment of a service request begins when Telix has all required information to begin an installation as evidenced by the issuance of a Firm Order Confirmation ("FOC") or other such notification indicating all preliminary requirements have been fulfilled. Telix will manage the installation interval based on the Service Delivery Installation Matrix posted on the Telix Customer Portal and included with the Telix Customer Resource Guide or such other period as may be mutually agreed to, in writing, by the parties.  
  
Changes to an accepted work order, Customer-initiated delays and any Customer credit approval issues will place the installation interval on hold. The interval concludes with the availability of the contracted service and the establishment of billing. The Service Delivery Install Intervals apply only to the availability of the Telix contracted service. They do not apply to CPE, 3rd party elements contracted for by Customer or by Telix on behalf of Customer or any other Customer provided infrastructure.
7. **Telix Service Availability Metrics** Telix will use commercially reasonable efforts to ensure that Telix's Services will be available at all times. Individual service availability metrics are available by product purchased and are linked as addendums to this agreement. Please refer to the specific product service level for full details.
8. **Product Metric Addendums** Telix installation and service availability metrics are product specific service level addendums. Individual service metric statements are posted on the Telix Customer Portal and may be included as addendums to this agreement. Remedies and Credits for disruptions to services covered as a part of this SLA are defined for each individual product set as a part of their respective addendum.



**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 Purchases	State	State Registration, Seller's Permit, or ID Number of Purchases
AL <sup>1</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>24</sup>	_____
IL <sup>1,8</sup>	_____	RI <sup>17</sup>	_____
IA	_____	SC	_____
KS	_____	SD <sup>18</sup>	_____
KY <sup>23</sup>	_____	TN	_____
MA <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. Stat. §§12-410(5) and 12-411(14) and any 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 incorporation 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 U.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.

**ADDITIONAL CUSTOMER CONTACT INFORMATION**

<p><b>PRIMARY ACCOUNT BUSINESS/SALES CONTACT :</b></p>	<p>NAME: <u>Jerry Geyer</u></p> <p>TITLE: <u>Director, Network Operations</u></p> <p>ADDRESS: <u>3800 Bridge Parkway</u> <u>Redwood Shores, Ca.</u></p> <p>PHONE: <u>650-232-4375</u> ; FAX: _____</p> <p>EMAIL ADDRESS: <u>jgeyer@ipass.com</u></p>
<p><b>OPERATIONS CONTACT: ENGINEERING</b></p>	<p>NAME: <u>Jerry Geyer</u></p> <p>TITLE: <u>Director, Network Operations</u></p> <p>ADDRESS: <u>3800 Bridge Parkway</u> <u>Redwood Shores, Ca.</u></p> <p>PHONE: <u>650-232-4375</u> ; FAX: _____</p> <p>EMAIL ADDRESS: <u>jgeyer@ipass.com</u></p>
<p><b>OPERATIONS CONTACT: PROVISIONING</b></p>	<p>NAME: <u>Jerry Geyer</u></p> <p>TITLE: <u>Director, Network Operations</u></p> <p>ADDRESS: <u>3800 Bridge Parkway</u> <u>Redwood Shores, Ca.</u></p> <p>PHONE: <u>650-232-4375</u> ; FAX: _____</p> <p>EMAIL ADDRESS: <u>jgeyer@ipass.com</u></p>
<p><b>OPERATIONS CONTACT: INSTALLATIONS</b></p>	<p>NAME: <u>Jerry Geyer</u></p> <p>TITLE: <u>Director, Network Operations</u></p> <p>ADDRESS: <u>3800 Bridge Parkway</u> <u>Redwood Shores, Ca.</u></p> <p>PHONE: <u>650-232-4375</u> ; FAX: _____</p> <p>EMAIL ADDRESS: <u>jgeyer@ipass.com</u></p>
<p><b>OPERATIONS CONTACT: SUPPORT/ MAINTENANCE</b></p>	<p>NAME: <u>Network Administrator</u></p> <p>TITLE: <u>Network Administrator</u></p> <p>ADDRESS: <u>3800 Bridge Parkway</u> <u>Redwood Shores, Ca.</u></p> <p>PHONE: <u>650-232-4100</u> ; FAX: _____</p> <p>EMAIL ADDRESS: <u>cloud-neteng@ipass.com</u></p>

**Exhibit B**



Customer Statement

**Licensor**

telx - Santa Clara, LLC  
2820 Northwestern Parkway  
Santa Clara, CA 95051  
US

**For Inquiries**

Tyllisha Beard  
tbeard@digitalrealty.com  
214-377-4726

**Billing Address**

iPass Incorporated  
3800 Bridge Pkwy  
Redwood Shores, CA 94065  
US

**Statement Details**

**Statement Date:** 06/10/2022  
**Account #:** [REDACTED] 4131

Item	Date	Due Date	Transaction Type	Document Number	Amount (\$)	Balance (\$)
1	09/18/2020	09/18/2020	Incoming Payment	445824	\$(17,163.50)	\$(16,348.23)
2	10/01/2021	10/01/2021	Invoice	691727	\$17,677.69	\$17,677.69
3	11/01/2021	11/01/2021	Invoice	694363	\$18,205.38	\$18,205.38
4	12/01/2021	12/01/2021	Invoice	699680	\$18,205.38	\$18,205.38
5	01/01/2022	01/01/2022	Invoice	702615	\$18,205.38	\$18,205.38
6	02/01/2022	02/01/2022	Invoice	708013	\$18,205.38	\$18,205.38
7	03/01/2022	03/01/2022	Invoice	711175	\$18,205.38	\$18,205.38
8	04/01/2022	04/01/2022	Invoice	715183	\$18,205.38	\$18,205.38
9	05/01/2022	05/01/2022	Invoice	719679	\$18,205.38	\$8,808.24
<b>Subtotal (\$)</b>					<b>\$127,951.85</b>	<b>\$119,369.98</b>

**Total Amount Due: \$119,369.98**

If you need copies of any of the invoices, please go to the portal <http://marketplaceportal.com>. If you need help accessing the portal, please contact [access@digitalrealty.com](mailto:access@digitalrealty.com) and they will assist you. If you need any help using the portal, [customersuccess@digitalrealty.com](mailto:customersuccess@digitalrealty.com) can give you a hand. Disputed invoices must be paid less the disputed amount. Please process disputes via the web portal so they can be researched. If your records indicate any of the invoices were previously paid, please provide the proof of payment so we can research. This notice may not reflect recent payments received.

Please detach and include with your payment

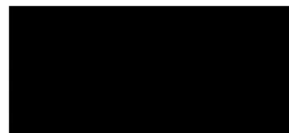
**Remit Account Details**

telx - Santa Clara, LLC  
P.O. Box 419729  
Boston, MA 02241-9729

**Questions?**

[ColoUSCollections@digitalrealty.com](mailto:ColoUSCollections@digitalrealty.com)

**Wire Instructions**



**Statement Date:**

06/10/2022

**Account #:**

[REDACTED] 4131



Customer Statement

**Licensor**

telx - Santa Clara, LLC  
2820 Northwestern Parkway  
Santa Clara, CA 95051  
US

**For Inquiries**

Tyllisha Beard  
tbeard@digitalrealty.com  
214-377-4726

**Billing Address**

iPass Incorporated - DIP  
3800 Bridge Pkwy  
Redwood Shores, CA 94065  
US

**Statement Details**

**Statement Date:** 06/10/2022  
**Account #:** [REDACTED] 4243

Item	Date	Due Date	Transaction Type	Document Number	Amount (\$)	Balance (\$)
1	05/16/2022	05/25/2022	Invoice	722799	\$9,397.14	\$9,397.14
2	06/01/2022	06/01/2022	Invoice	722801	\$18,205.38	\$18,205.38
<b>Subtotal (\$)</b>					<b>\$27,602.52</b>	<b>\$27,602.52</b>

**Total Amount Due: \$27,602.52**

If you need copies of any of the invoices, please go to the portal <http://marketplaceportal.com>. If you need help accessing the portal, please contact [access@digitalrealty.com](mailto:access@digitalrealty.com) and they will assist you. If you need any help using the portal, [customersuccess@digitalrealty.com](mailto:customersuccess@digitalrealty.com) can give you a hand. Disputed invoices must be paid less the disputed amount. Please process disputes via the web portal so they can be researched. If your records indicate any of the invoices were previously paid, please provide the proof of payment so we can research. This notice may not reflect recent payments received.

*Please detach and include with your payment*

**Remit Account Details**

telx - Santa Clara, LLC  
P.O. Box 419729  
Boston, MA 02241-9729

**Questions?**

[ColoUSCollections@digitalrealty.com](mailto:ColoUSCollections@digitalrealty.com)

**Wire Instructions**



**Statement Date:** 06/10/2022  
**Account #:** [REDACTED] 4243