

Amendment Number Three
to
Contract Number DIR-TEX-AN-NG-CTSA-008
between
State of Texas, acting by and through the Department of Information Resources
and
Time Warner Cable Texas, LLC

This Amendment Number Three to TEX-AN NG Contract Number DIR-TEX-AN-NG-CTSA-008 (“Contract”) is effective as of the date of the last signature below (“Amendment Number Three Date”), by and between the Department of Information Resources (“DIR”) and Time Warner Cable Texas, LLC (“Vendor”) and sets forth modified and amended terms and conditions that shall apply to the Contract Number DIR-TEX-AN-NG-CTSA-008 between Time Warner Entertainment – Advance/Newhouse Partnership d/b/a Time Warner Cable through its Texas Region and DIR, dated November 10, 2011, as amended by Amendment Number One, dated January 10, 2012 and Amendment Number Two, dated June 19, 2015 (the “Contract”) as follows:

1. **Article 3. Term. Section 3.1 Initial Term** is hereby retitled as **Section 3.1 Term** and amended to add the following sentence after the last sentence in Section 3.1 as follows:

The term of this CTSA is extended through November 10, 2019, completing three (3) of the five (5) one-year renewal options pursuant to Section 3.2 below.

2. **Article 4 Relationship among DIR, Vendor other TEX-AN NG Vendors, Authorized End Users and Customers. Section 4.1 DIR as Vendor’s Customer** is hereby amended and restated as follows:

Pursuant to its authority found in Chapter 2170, Texas Government Code, DIR is the single state agency mandated to procure telecommunications services on behalf of Customers. In all interactions under the CTSA, DIR is in the role of Vendor’s Customer, with the exception of Local Services and Small Office/Home Office (SOHO) Internet connectivity Services (hereinafter “direct sales transactions”), for which the applicable non-DIR entity submitting the Purchase Order will be in the role of Customer. Except as noted above, DIR will issue all Purchase Orders to Vendor on behalf of itself and the Customers. Except as noted above, DIR shall act as the Vendor’s billing agent for all Services ordered and consumed by the Customers and shall pay net proceeds from such billings to Vendor.

Vendor agrees to process all DIR orders for Services available under the CTSA through the CTSA. This shall include new orders for services available under the CTSA and renewal orders for services available under the CTSA.

3. **Article 4 Relationship among DIR, Vendor other TEX-AN NG Vendors, Authorized End Users and Customers. Section 4.3 Customers as Authorized End Users of Vendor’s Services** is hereby amended and restated as follows:

As specified in Section 2170.004, Texas Government Code, certain Texas governmental and non-governmental entities are authorized to use the telecommunications services for which DIR contracts. For DIR’s internal purposes, these entities are Customers. From the Vendor’s perspective, and for purposes of this CTSA (including for purposes of making payments pursuant to Section 9.13 of Exhibit B), DIR is the applicable Customer, and these entities are “Authorized End Users,” whether as organizations or persons employed by such organizations. In connection with DIR ordering certain Services from Vendor on behalf of an entity as permitted hereunder, the entity may enter into a certain TEX-AN NG Customer Services Agreement with DIR, setting forth the terms and conditions pursuant to which DIR shall be the billing agent on behalf of Vendor to receive payment for the Services from the Customer. For clarity, Vendor shall not be a party to, nor be bound by any terms or conditions of, any TEX-AN NG Customer Services Agreement.

4. Exhibit A Definitions, **Article 2. Definitions. 80. TEX-AN NG Customer Service Agreement** is hereby updated and restated as follows:

80. TEX-AN NG Customer Service Agreement – A contractual document containing certain terms, conditions, and scope for Services to be deployed and operated under this CTSA, and executed by (and binding only upon) the Customer and DIR.

5. Exhibit A Definitions, **Article 2. Definitions.** is hereby updated by adding the following definition:

94. Vendor Reporting Guide –Excel spreadsheet developed and updated by DIR that details all required monthly reports including, but not limited to, report formats, report due dates, required fields and respective data formats and where to submit reports.

6. Exhibit B Terms and Conditions, **Article 3. General Terms and Conditions. Section 3.11 Vendor Certifications (k)** is hereby updated and restated as follows:

(k) For itself and on behalf of its Subcontractors, has identified all current or former, within the last twelve (12) years, employees of the State assigned to work on the CTSA 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, or affinity, and, if these facts change during the course of the CTSA, Vendor certifies for itself and on behalf of its Subcontractors, it shall disclose the name and other pertinent

information about the employment of current and former employees and their relatives within two degrees of consanguinity;

7. Exhibit B Terms and Conditions, **Article 4. Vendor Personnel Management. Section 4.03 Cooperation with DIR, other TEX-AN-NG Vendors and Customers (a)** is hereby updated and restated as follows:

- (a) Cooperation with DIR on cost avoidance and performance measures.

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the CTSA. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of Services sold under the CTSA. The report shall contain: Service description, list price, Price to Customer or Rate To DIR under the CTSA, and pricing from three (3) alternative Vendor contract sources under which Customers are eligible to procure the Services. Additionally, Vendor shall promptly provide DIR with all other CTSA performance related information that assists DIR in reporting the other performance measures for which it is responsible.

8. Exhibit B Terms and Conditions, **Article 5 Governing Law and Regulations. Section 5.03 Compliance with Immigration laws** is hereby amended to include the following paragraph in Section 5.03:

The Vendor shall comply, to the extent applicable to Vendor's provision of the Services under this CTSA, with all laws and regulations related to federal immigration, to include but not be limited to, the Immigration and Reform Act of 1986, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) who will perform any labor or services under this Contract.

In addition, pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, to the extent applicable to Vendor's provision of the Services under this CTSA, the Vendor shall as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Vendor during the term of this Contract to perform duties within Texas; and

all subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the subcontractor during the term of this Contract and assigned by the subcontractor to perform work pursuant to this Contract.

The Vendor shall require its subcontractors performing work pursuant to this Contract to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

9. Exhibit B Terms and Conditions, **Article 9. Terms and Conditions of Vendor Billing and DIR Customer Payment. Section 9.01 Monthly Consolidated Invoice to DIR** is hereby updated and restated as follows:

The Vendor shall provide DIR with a Monthly Consolidated Invoice which includes all Services provided by the Vendor to DIR, at the Rates To DIR and with any applicable telecommunications fees and surcharges as allowed by this CTSA, in electronic format, with the ability to batch load. All such Monthly Consolidated Invoices shall conform to the standards as set forth in the Vendor Reporting Guide and *Exhibit F, Attachment F-17, Billing Plan* provided by Vendor.

10. Exhibit B Terms and Conditions, **Article 9. Terms and Conditions of Vendor Billing and DIR Customer Payment. Section 9.07 Dispute Handling and Adjustments (b)** is hereby updated and restated as follows:

(b) DIR has the right to file a billing Dispute. The Vendor shall investigate, report on and use reasonable business efforts to resolve Disputes within 60 calendar days that involve less than or equal to \$15,000 and within 90 calendar days for disputes that involve amounts greater than \$15,000. This time frame starts with the submission of the Dispute by DIR and ends with the satisfactory resolution of the Dispute. When warranted, Vendor shall issue Billing Adjustment(s) within 30 calendar days after resolution. DIR reserves the right to charge a management fee for Billing adjustments not made within the 2 billing periods after resolution in the amount of \$100 per CKR (circuit reference) per month not adjusted as outlined herein. DIR may require a revised Monthly Statement that does not contain the disputed item(s). Vendor shall allow non-payment by DIR for the disputed amount until there is a Dispute Resolution, as allowed by Chapter 2251, Texas Government Code.

11. Exhibit B Terms and Conditions, **Article 9. Terms and Conditions of Vendor Billing and DIR Customer Payment. Section 9.15 Reporting of direct sales transactions and payments to DIR of CRFs (b)** is hereby updated and restated as follows:

(b) Detailed Monthly Report.

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR, showing the dollar volume of any and all sales under the CTSA for the previous calendar month period. Reports shall be submitted to the DIR Cooperative Contracts E-Mail Box at ict.sales@dir.texas.gov. Reports are due on, or before the thirtieth (30th) calendar day after the close of the previous month period. If the 30th calendar day falls on a state or federal holiday, the report shall be due on the next business day. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the administrative fee due for the reporting period, subcontractor name (if applicable), EPEAT designation (if applicable), configuration (if applicable), contract discount percentage, actual discount percentage, negotiated contract price (if fixed price is offered instead of discount off of MSRP), and other information as reasonably required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section. DIR is developing an online Vendor Sales Report (VSR) portal for electronic submission of monthly reports, with an expected go live date of Spring 2016. Vendors will be required to submit monthly sales reports through the VSR portal; failure to do so will result in contract termination.

12. Exhibit B Terms and Conditions, **Article 9. Terms and Conditions of Vendor Billing and DIR Customer Payment. Section 9.15 Reporting of direct sales transactions and payments to DIR of CRFs (d) CRFs** is hereby updated and restated in its entirety as follows:

- (1) The CRFs shall be paid by Vendor to DIR for each direct sales transaction under the CTSA. The CRF per direct sales transaction Service is specified in the CTSA at *Exhibit C*. Payment of the CRFs shall be due on the thirtieth (30th) calendar day after the close of the previous month period.

Failure to timely submit CRF payments may, at DIR's discretion, result in the addition of late fees of \$100/day for each day payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

- (2) Vendor shall reference the CTSA contract number on any remittance instruments. Failure to reference contract number on any CRF payments may result in the payments not being applied to Vendor's account(s) correctly or in a timely manner. In the event the Vendors CRF payments do not

reference the contract number and result in a late payment, DIR reserves the right to enforce the \$100/day up to \$1000 per month late fee referenced in Subsection (1) above.

13. Exhibit H. Form of TEX-AN NG Customer Services Agreement, **Article 1, Article 2, Article 3, Article 4, Attachment H-1, and Attachment H-2**, are all hereby removed and Exhibit H will be reserved for future use.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be this Amendment Number Three, then Amendment Number Two, then Amendment Number One, and then the Contract.

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IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of last signature.

Time Warner Cable Texas, LLC. on behalf of itself and all of its affiliates.

Authorized By: _____ signature on file _____

Name: Lynne P. Bell

Title: VP, Strategic Sales

Date: 10/12/2016

The State of Texas, acting by and through the Department of Information Resources

Authorized By: Signature on file

Name: Stacey Napier

Title: Executive Director

Date: 11/2/2016

Legal: 11/2/2016

Summary report:	
Litéra® Change-Pro 7.5.0.135 Document comparison done on 9/28/2016 11:28:13 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://MCIMANAGE/NORTHVA/867656/5	
Modified DMS: iw://MCIMANAGE/NORTHVA/867656/7	
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Delete	4
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<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
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Table moves from	0
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Embedded Excel	0
Format changes	0
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