



## City of La Habra Heights AGENDA REPORT

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To: Mayor and City Council Meeting of: December 11, 2014

From: Abraham Han, Senior Mgt. Analyst

**SUBJECT: AUTHORIZE AGREEMENT WITH TIME WARNER CABLE FOR PEG CHANNEL ORIGATION POINT INSTALLATION AND OPERATION**

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### BACKGROUND

After each City Council and Planning Commission meeting Joe Geissinger places that meeting's video content onto a hard drive. He then takes the hard drive to Time Warner Cable in Brea and inserts it into City-owned playback equipment that, according to Kristy Hennessey of Time Warner Cable, is thirty years old. Time Warner is phasing out this manual upload procedure. In order to continue to play local content they are requiring that La Habra Heights become an origination point by relocating the playback equipment at City Hall and installing a direct feed. This feed is a dedicated fiber cable that connects City Hall to a hub at Time Warner facilities. The cable cannot be used for other purposes.

Time Warner and staff have been in discussions about an origination point at City Hall for six years. La Habra Heights is probably the last city in their market to use the manual upload. There will be two costs involved. The first is for installation of the fiber cable and encoder device at \$9,578.00. Installation will take 120 to 180 days from executing an agreement. The second cost is an ongoing charge of \$550 per month (\$6,600 per year) plus applicable regulatory taxes/fees for the video data transfer from City Hall to the Time Warner hub. If the City enters into the agreement proposed by Time Warner Cable the base monthly rate will remain unchanged for five years.

If the Council determines that paying the monthly fee is acceptable, they should authorize the City Manager to enter into the attached agreement with Time Warner Cable. The other option is to cease televising Council meetings with the only playback on the Granicus feed.

### FISCAL IMPACT

One-time installation costs total approximately \$9,578.00 and are split between the installation of fiber lines (\$5,578.00) and a broadcasting encoder device (\$4,000.00). The PEG budget for FY 14-15 was depleted due to purchases made for the relocation, therefore a \$10,000 advance from the General Fund would be needed. The advance would be reimbursed over the next fiscal year (FY 2015-16).

The cost of video feed would be approximately \$7,000 per year. (\$6,600 plus applicable regulatory taxes/fees). Because it is not a capital purchase, the fees must be paid by the General Fund. If the installation occurs within 120 days, two months of data transfer fees would be necessary.

ITEM# 15

## **RECOMMENDATION**

- A. Authorize the City Manager to enter into an agreement, in a form approved by the City Attorney, with Time Warner Cable for one-time installation and monthly operating costs for a PEG channel origination point at City Hall; AND
- B. Advance \$10,000 from the General Fund to the PEG Fund, and authorize reimbursement to the General Fund from the PEG Fund over the next fiscal year (FY 2015-16), AND
- C. Appropriate funds in an amount not-to-exceed \$1,500 for FY 2014-15 from the City's undesignated General Fund balance for video data transfer.

## **ATTACHMENT**

Time Warner Cable Origination Point Service Agreement

# SERVICE AGREEMENT

This Time Warner Cable Business Class Service Agreement ("**Service Agreement**") in addition to the Time Warner Cable Business Class Terms and Conditions ("**Terms and Conditions**") and any Time Warner Cable Business Class Service Orders (each, a "**Service Order**"), constitute the "**Master Agreement**" by and between customer identified below ("**Customer**") and Time Warner Cable ("**TWC or Operator**") and is effective as of the date last signed below.

## Time Warner Cable Information

### Time Warner Cable Pacific West LLC

d/b/a Time Warner Cable

Contact: Enrico Diaz

Street: 17777 Center Court Dt, 8<sup>th</sup> Floor

Phone: 562-677-0402

City: Cerritos

Cell Phone:

State: CA

Fax: 704-697-4790

Zip Code: 90703

## Customer Information

**Customer Name (Exact Legal Name):**  
City of La Habra Heights

**Account Number**

**Federal Tax ID**

**Billing Address:**  
1245 N Hacienda Rd.  
La Habra Heights, CA 9063

**Billing Contact Name:** Abraham Han

**Phone**

**Fax**

**Authorized Contact**

**Phone**

**Fax**

**Agreement**

THIS SERVICE AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS ATTACHED HERETO. SUCH TERMS AND CONDITIONS ARE INCORPORATED HEREIN BY THIS REFERENCE. BY EXECUTING THIS SERVICE AGREEMENT BELOW, CUSTOMER ACKNOWLEDGES THAT: (1) CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS, INCLUDING SECTION 21 THEREOF, WHICH PROVIDES THAT THE PARTIES DESIRE TO RESOLVE DISPUTES RELATING TO THE TIME WARNER BUSINESS CLASS SERVICES AGREEMENT THROUGH ARBITRATION; AND (2) BY AGREEING TO ARBITRATION, CUSTOMER IS GIVING UP VARIOUS RIGHTS, INCLUDING THE RIGHT TO TRIAL BY JURY.

By signing and accepting below you are acknowledging that you have read and agree to the terms and conditions outlined in this document.

**Electronic Signature Disclosure**

**Authorized Signature for Time Warner Cable**

**Authorized Signature for Customer**

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

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

Name (printed): \_\_\_\_\_

Name (printed): \_\_\_\_\_

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

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

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

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

# Business Class Customer Service Order

Account Executive: Enrico Diaz

Phone: 562-677-0402

Cell Phone:

Fax: 704-697-4790

Email:

<b>Customer Information</b>		
<b>Business Name:</b> City of La Habra Heights		<b>Customer Type:</b>
<b>Federal Tax ID</b>	<b>Tax Exempt Status</b>	<b>Tax Exempt Certificate #</b>
<b>Billing Address</b> 1245 N Hacienda Rd. La Habra Heights, CA 9063		<b>Account Number</b>
<b>Billing Contact</b>	<b>Billing Contact Phone</b>	<b>Billing Contact Email Address</b>
<b>Authorized Contact</b>	<b>Authorized Contact Phone</b>	<b>Authorized Contact Email Address</b>
<b>Technical Contact</b>	<b>Technical Contact Phone</b>	<b>Technical Contact Email Address</b>

<b>PRI Trunk Service Order Information</b>					
<b>Current LEC</b>	<b>Current IXC</b>	<b>LEC BTN(S)</b>	<b>E-911 Location 1</b>	<b>E-911 Location 2</b>	<b>E-911 Location 3</b>

**ASI Video Transport - Private Line Service Order Information**

Site Name	Address Location	Location Type	Service Description / Bandwidth (List all Services for Each Location)	Customer Requested Due Date
City Hall	1245 N Hacienda Rd. La Habra Heights, CA 9063	Spoke	10Mb	
TWC Head-End	185 E. Alder Brea, CA 92821	HUB	10Mb	

Service Category	Monthly Recurring Charges	Non-Recurring Charges	Initial Order Term
Return Video Feed (ASI Video Transport 10Mb)	\$550.00	\$	60 Months
One Time Cap Ex Fee	\$	\$5,578.00	
Encoder cost (Owned and Maintained by TWC-BC)	\$	\$4,000.00	
	\$	\$	
		\$	
<b>*Gross Total</b>	\$550.00		60 Months
<b>*Net Total</b>	<b>\$550.00</b>	<b>\$9,578.00</b>	

**Special Terms**

The services, products, prices and terms identified on this Service Order constitute Time Warner Cable's offer to provide such services on such terms. Until Customer has accepted this offer by signing as appropriate below, Time Warner Cable reserves the right to rescind this offer at any time, at its sole discretion.

The Agreement shall be renewable for successive terms unless at least thirty (30) days prior to the expiration of the then- current term, either party notifies the other party of such party's intent not to renew this Agreement. Agreement term and corresponding monthly billing will commence on actual service installation date. Agreement locks in rate for the Time Warner Cable Business Class services for term of contract. Cable television and Work-at-home services are subject to annual price change.

**Electronic Signature Disclosure**

By signing and accepting below you are acknowledging that you have read and agree to the terms and conditions outlined in this document.

\_\_\_\_\_  
**Authorized Signature for Time Warner Cable**

\_\_\_\_\_  
**Authorized Signature for Customer**

\_\_\_\_\_  
**Printed Name and Title**

\_\_\_\_\_  
**Printed Name and Title**

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

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

## **Time Warner Cable Business Class Terms and Conditions**

These Time Warner Cable Business Class Terms and Conditions (“**Terms and Conditions**”), and any Time Warner Cable Business Class Service Orders (as described in Section 2.2 below) are hereby incorporated into the Time Warner Cable Business Class National Service Agreement or the Time Warner Cable Business Class Service Agreement, as the case may be, (“**Service Agreement**”) and constitute the “**Master Agreement**” by and between Customer and TWC (collectively, the “**Parties**” or each individually a “**Party**”) for the services specified on Service Orders (“**Services**”). The attachments to these Terms and Conditions (“**Attachments**”) further describe TWC’s services and are hereby incorporated into, and made a part of, these Terms and Conditions by this reference. The Attachments set forth additional terms and conditions for the applicable Service. “**TWC**” means Time Warner Cable Pacific West LLC d/b/a Time Warner Cable and any TWC-affiliated entity that is providing the Services.

Subject to the terms and conditions of the Master Agreement (including, without limitation, Customer’s compliance with its obligations set forth in Section 5), TWC shall provide Customer with the Services in accordance with any Service Order entered into by the Parties. Customer understands and agrees that certain Services may not be available in all TWC service areas and that TWC, upon entering into a Service Order with Customer may, at TWC’s discretion, utilize one or more of its affiliates or third parties to deliver the Services (“**Third Party Services**”). The Third Party Services may be subject to additional terms and conditions. Unless otherwise set forth, TWC shall use commercially reasonable efforts to provide the Services seven (7) days a week, twenty four (24) hours a day, excluding scheduled maintenance, required repair and events beyond TWC’s reasonable control.

Customer shall request Services hereunder by issuing to TWC one or more proposed service and/or work order(s) (in the form provided or approved by TWC) or via a mutually agreed electronic order entry system. Upon TWC’s acceptance of a proposed service and/or work order(s), such proposed service and/or work order(s), shall be deemed a “**Service Order**” hereunder and shall be deemed incorporated into, and made a part of, the Master Agreement by this reference. A proposed service and/or work order shall be deemed accepted upon the earlier of (a) TWC’s acceptance of such proposed service and/or work order in writing; or (b) TWC’s commencement of delivery of the Service(s) set forth in such proposed service and/or work order.

Customer shall obtain and maintain, or ensure that each Customer employee or branch office that uses the Service (each, an “**End User**”), shall obtain and maintain throughout the Term, such consents (including without limitation landlord and land owner consents) as are necessary to timely permit, and shall timely permit, TWC personnel to install, deliver, operate and maintain the Services and TWC Equipment (as defined in Section 4 below) at Customer’s and any Customer End User’s facilities. Customer shall permit TWC reasonable access to the Customer and any End User facilities at any time as needed to install, configure, upgrade, maintain or remove the TWC Equipment and other Service components collocated at Customer’s or an End User’s facilities. Customer shall make and maintain throughout the Term all reasonable site preparations necessary to permit the installation, maintenance and operation of the Service and any TWC Equipment as specified by TWC and that is required to provide the Services hereunder. In addition, Customer shall provide TWC with floor space, rack space, other space and clean power as is reasonably necessary for the installation and operation of TWC Equipment at the Customer locations identified in a Service Order. Customer shall not charge TWC, and shall ensure that TWC does not incur, any fees or expenses whatsoever in connection with Customer’s provision of space, power, or access as described in these Terms and Conditions, or otherwise in connection with Customer’s performance of its obligations pursuant to this Section 3; and any such fees or expenses charged by a Customer End User shall be borne solely by Customer. Provided that Customer properly performs all necessary site preparation and provides TWC with all required consents, TWC shall use commercially reasonable efforts to install the Service in accordance with the requested Service start date indicated on a Service Order. TWC shall provide Customer with a completion notice (“**Completion Notice**”) upon completion of the installation of a Service. In the event that TWC is unable to install the Service in accordance with the agreed upon schedule as a result of (i) Customer’s (or its End User’s) failure to deliver any required materials, support



or information to TWC; or (ii) TWC not being able to obtain access to equipment or software at the installation location as necessary for installation of the Service, then Customer shall pay TWC the standard installation fee as identified on the applicable Attachment hereto for any installation trip made by TWC and an additional installation fee for each subsequent trip necessitated to perform the Service installation. Interconnection of the Services and TWC Equipment with Customer's or an End User's equipment will be performed by Customer unless otherwise agreed in writing between the Parties. With respect to any Services for which Customer will seek any discounts under the E-Rate Program administered by the Schools and Libraries Division of the Universal Administrative Company (USAC) or the California Teleconnect Fund (collectively, the "**Discounts**"), Customer acknowledges that TWC will not begin installation of any TWC Equipment or otherwise incur costs to provide such Services under a Service Order unless and until Customer notifies TWC that either (i) Customer has received confirmation of applicable Discounts or (ii) Customer elects to pay the Gross Monthly Service Charges set forth on the Service Order in full.

TWC shall use commercially reasonable efforts to maintain the TWC-provided and installed equipment, including as applicable, any cabling, cable modems, related splitters, routers or other items, (collectively, "**TWC Equipment**") on TWC's side of the demarcation points used by TWC to provide the Service. Notwithstanding any contrary provision set forth in the Master Agreement, equipment and services on Customer's side of the demarcation points, as well as any other Customer-provided equipment, are the responsibility of Customer. TWC shall provide a telephone number and email address for inquiries and remote problem support for the Service. All such Customer support shall be provided only to Customer's designated personnel, as mutually agreed upon by TWC and Customer. Customer is responsible for all communications and interfaces with its End Users. In no event shall TWC be responsible for providing support for any network, equipment or software not provided and installed by TWC or for issues or problems beyond its control. Notwithstanding anything to the contrary in the foregoing, TWC shall use commercially reasonable efforts to restore any cable cuts on the TWC network and shall keep Customer reasonably advised of such restoration progress. Customer agrees to provide routine operational Service support for TWC Equipment and Service components collocated at Customer's or an End User's facility, including without limitation by performing reboots, as requested by TWC.

**Customer's use of the Service (including all content transmitted via the Service) shall comply with all applicable laws and regulations and the terms of the Master Agreement. Customer shall not resell or redistribute (whether for a fee or otherwise) the Service, or any portion thereof, or make any use of the Service other than for Customer's internal business purposes, unless otherwise agreed in writing by TWC. Customer shall ensure that its End Users' use of the Service, if any, shall comply with all applicable laws and regulations and terms of the Master Agreement. TWC may audit Customer's use of the Service remotely or otherwise, to ensure Customer's compliance with the Master Agreement.**

**Customer shall ensure that all TWC Equipment at Customer's and Customer's End Users' facilities remains free and clear of all liens and encumbrances and Customer shall be responsible for loss or damage to the TWC Equipment while at Customer's or an End User's facilities. As between the Parties, Customer is solely responsible for: (a) all use (whether or not authorized) of the Service by Customer, an End User or any person or entity, which use shall be deemed Customer's use for purposes of the Master Agreement; (b) all content that is viewed, stored or transmitted via the Service; and (c) all third party charges incurred for merchandise and services accessed via the Service, if any. Customer shall conform its equipment and software, and to ensure that each End User conforms its equipment and software, to the technical specifications for the Service provided by TWC.**

The Master Agreement shall commence on the earlier to occur of (a) the date of the last signature on the Service Agreement (the "**Effective Date**") or (b) TWC's commencement of delivery of the Service(s) set forth in a Service Order, and shall remain in effect for the term specified in the Service Agreement, or if no term is specified, until the expiration or termination of all Service Orders (the "**Term**"). The term for the applicable Service shall be set forth in the Service Order ("**Initial Order Term**") and shall remain in effect until expiration as set forth in the Service Order. Unless otherwise specified in the Service Agreement, if the Customer continues to receive Services after the expiration of the Initial Order Term, the Services shall renew on a month to month basis on the same terms and conditions ("**Renewal Order Term**", collectively with Initial Order Term, "**Order Term**"). The fees for the Renewal Order Term shall be as set forth in Section 7.

For each Service, Customer shall pay TWC all recurring and non-recurring charges, fees and taxes, (which may include Service installation and activation charges, measured and usage-based charges, local, long distance, directory assistance and operator services calling charges, and equipment and facilities charges) (collectively the "Service Charges") as set forth on the Service Order in accordance with the following payment terms: Service Charges shall be billed to Customer on a monthly basis commencing upon Service installation, and are payable within thirty (30) days after the date appearing on the invoice. If Customer and any Services purchased under this Master Agreement are eligible for Discounts, then as a courtesy to Customer, TWC will submit invoices to Customer net of Discounts and bill the balance to the government agencies administering the Discounts, all as set forth on the applicable Service Order. Customer shall apply for all applicable Discounts for each year of the Term and provide to TWC satisfactory evidence of the continuation of each Discount for such years. If TWC does not receive such confirmation, then TWC shall have the right to bill the Gross Monthly Service Charges for the applicable Services to Customer. TWC will not defer any charges while Customer awaits reimbursement, subsidy, discount or credit from any third party or government entity, and Customer shall have the obligation to pay all charges regardless of the status of any such reimbursement, subsidy, discount or credit. TWC shall have the right to increase Service Charges for each Service after the initial Order Term for such Service upon thirty (30) days written notice to Customer. TWC may charge a standard late fee for any amounts which are not paid when due, which amount shall not exceed one and one-half percent (1.5%) of the monthly Service Charges or the highest rate chargeable by law. Customer shall also be responsible for all costs of collection (including reasonable attorneys' fees) to collect overdue amounts. If TWC fails to present a charge in a timely manner, such failure shall not constitute a waiver of the charges for the fees to which it relates and Customer shall pay such invoice in accordance with these payment terms.

Customer shall pay all federal, state, and local taxes, government fees, charges, surcharges or similar exactions imposed on the Services and/or products that are the subject of the Master Agreement including but not limited to state and local sales and use taxes, telecommunications taxes, federal and state universal service fund fees and/or state and local regulatory fees to the extent applicable. TWC shall have the right to recover from Customer, and Customer shall pay, the amount of any state or local fees, charges or taxes arising as a result of this Agreement that are imposed on TWC or TWC's Services, or measured on TWC's receipts. Such fees or taxes shall be invoiced to Customer in the form of a surcharge included on Customer's invoice. TWC shall be responsible for and shall pay all taxes measured by TWC's net income. To the extent that a dispute arises as to which Party is liable for fees or taxes under the Master Agreement, Customer shall bear the burden of proof in showing that the fee or tax is imposed upon TWC's net income. This burden may be satisfied by Customer producing written documentation from the jurisdiction imposing the fee or tax indicating that the fee or tax is based on TWC's net income. Customer shall provide TWC any and all documentation substantiating a claim for exemption from taxes or fees prior to the date that Services are first provided under the Master Agreement. To the extent such documentation is held invalid for any reason, Customer shall reimburse TWC for any tax or fee liability including without limitation related interest and penalties arising from such invalid documentation.

Customer acknowledges that currently, and from time to time, there is uncertainty about the regulatory classification and/or treatment of some of the Services TWC provides and, consequently, uncertainty about what fees, taxes and surcharges are due from TWC and/or its customers. Customer agrees that TWC has the right to determine, in its sole discretion, what fees, taxes and surcharges are due and to collect and remit them to the relevant governmental authorities, and/or to pay and pass them through to Customer. Customer hereby waives any claims it may have regarding TWC's collection or remittance of such fees, taxes and surcharges. Customer understands that it may obtain a list of the fees, taxes and surcharges that TWC currently collects or passes through by writing to TWC at the following address and requesting same: Time Warner Cable, 7800 Crescent Executive Drive, Charlotte, North Carolina, 28217; Attention: Subscriber Tax Inquiries.

**TWC's Proprietary Rights.** All materials including, but not limited to, any TWC Equipment (including related firmware), software, data and information provided by TWC, any identifiers or passwords used to access the Service or otherwise provided by TWC, and any know-how, methodologies or processes including, but not limited to, all copyrights, trademarks, patents, trade secrets, any other proprietary rights inherent therein and appurtenant thereto, used by TWC to provide the Service (collectively "TWC Materials") shall remain the sole and exclusive property of TWC or its suppliers. Nothing herein is intended to convey any right or ownership interest to Customer or any other person or entity in or to such TWC Materials. Customer shall acquire no interest in the TWC Materials by virtue of the payments provided for in this Master Agreement. Customer may use the TWC Materials solely for Customer's use of the Service during any applicable Order Term and the same may not be transferred by Customer to any other person, corporation or entity. Customer may not disassemble, decompile, reverse engineer, reproduce, modify or distribute the TWC Materials, in whole or in part, or use them for the benefit of any third party. All rights in the TWC Materials not expressly granted to Customer in the Master Agreement are reserved to TWC. Customer shall not open, alter, misuse, tamper with or remove the TWC Equipment as and where installed by TWC, and shall not remove any markings or labels from the TWC Equipment indicating TWC (or its suppliers) ownership or serial numbers.

**Confidentiality.** Customer shall maintain in confidence, and not to disclose to third parties or use, except for such use as is expressly permitted in the Master Agreement, the TWC Materials and any other information and materials provided by TWC in connection with the Master Agreement, that are identified or marked as confidential or are otherwise reasonably understood to be confidential, including but not limited to the content of the Master Agreement.

**Software.** If software is provided to Customer under the Master Agreement, TWC grants Customer a limited, non-exclusive and non-transferable license to use such software, in object code form only, solely for the purpose of using the Service for Customer's internal business purposes during the Term.

TWC has the right, but not the obligation, to upgrade, modify and enhance the TWC Equipment (including related firmware) and the Service and take any action that TWC deems appropriate to protect the Service and its facilities. TWC has the right to add to, modify or delete any provision of these Terms and Conditions. TWC shall notify Customer of any material adverse change to these Terms and Conditions or Service descriptions by posting such modified Terms and Conditions or Service description on the TWC web site or by email, or, if applicable, in the appropriate TWC tariff. Upon the effectiveness of any addition, modification or deletion, Customer's continued use of the Services shall constitute Customer's consent to such addition, modification or deletion, and agreement to continue to be bound by the Master Agreement. In any event, if TWC modifies the Services or these Terms and Conditions and such modification has a material adverse impact on Customer's ability to use the Service, Customer may, within the thirty (30) day period following the date of such modification, terminate, without penalty, the Service Order relating to the affected Service.

Either Party may terminate a Service Order; (a) upon thirty (30) days written notice to the other Party of the other Party's material breach of the Master Agreement or the applicable Service Order, provided that such material breach is not cured within such thirty (30) day period; or (b) immediately, in the event that the other Party liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for general relief from its debtors, initiates any proceeding seeking general protection from its creditors, or is removed or delisted from a trading exchange (each, a "**Bankruptcy Event**"); or (c) immediately, in the event that, after entering into such Service Order, TWC conducts a site survey and learns that the construction costs shall require a material increase in the Service Charges. In the event that Customer fails to comply with any applicable laws or regulations or the terms of the Master Agreement, TWC may upon thirty (30) days written notice suspend or discontinue any applicable Service in whole or in part without further notice, provided that such failure is not cured within such thirty (30) day period. In addition, TWC may immediately terminate or suspend Customer's or its End User's use of the Service if such use is determined by TWC, in its sole discretion, to be resulting in a material degradation of the TWC network, until such time as such degradation has been remedied. TWC will use commercially reasonable efforts to assist Customer in remedying such degradation. In the event of a suspension, TWC

may require the payment of reconnect or other charges before restarting the suspended Service. Upon the termination or expiration of the Master Agreement (including all Service Order(s): (i) TWC's obligations under the Master Agreement shall cease; (ii) Customer shall promptly pay all amounts due and owing to TWC for Service delivered prior to the date of termination or expiration, and any deinstallation fees identified in the Service Order(s), if any; (iii) Customer shall promptly cease all use of any software provided by TWC hereunder, and shall return such software to TWC; and (iv) Customer shall return to TWC or permit TWC to remove, in TWC's discretion, the TWC Equipment in the same condition as when received, ordinary wear and tear excepted. Customer shall reimburse TWC for the reasonable and documented costs of the repair or replacement, at TWC's discretion, of any TWC Equipment not returned in accordance with this Section 11. In addition, notwithstanding anything to the contrary in the Master Agreement, in the event this Master Agreement or any Service Order hereunder terminates for any reason other than TWC's material breach or a Bankruptcy Event impacting TWC (as permitted in Sections 11(a) or 11(b) above), Customer shall promptly pay TWC the full amount of the Service Charges that Customer would have been charged for the remainder of the Initial Term or the then-current renewal term. The foregoing shall be in addition to any other rights and remedies that TWC may have under the Master Agreement or at law or equity.

Notwithstanding the foregoing, if, after the initial award of a Discount and TWC has provisioned a Service, any Discount for a subsequent year is reduced, eliminated, or otherwise not available, then Customer shall promptly notify TWC in writing that it, or the end user school district, is no longer eligible to receive the Discount and that such ineligibility did not result from any act or failure by Customer or the school districts using the Services. This Master Agreement shall remain in full force and effect and Customer shall continue to pay TWC an amount equal to the Service Charges, plus applicable taxes and fees, less an amount equivalent to the Discount. TWC shall continue to provide the Services, but may, in its sole discretion, reduce the bandwidth provided to the Customer, or the end user school district, to account for the decreased amount being paid for the Services. Customer shall, and shall cause the school districts to, use their best efforts to reinstate all applicable Discounts or find another source of funds to ensure that TWC receives the total Service Charges anticipated for the applicable Initial Order Term.

To the extent allowed by applicable law, Customer shall defend, indemnify and hold harmless TWC, its affiliates, its service providers and suppliers and their respective officers, directors, employees and agents, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to: (a) the use of the Service, including but not limited to a breach of Section 5 of these Terms and Conditions; (b) personal injury or property damage caused by the negligence or willful misconduct of Customer or its employees or agents; or (c) any fees, fines or penalties incurred by TWC as a result of Customer's violation of the 10% Rule as set forth in Attachment D. TWC agrees to defend, indemnify and hold harmless the District including, without limitation, any of its boards, officers, agents, employees, assigns and successors in interest, from and against third party claims, liabilities, damages and expenses, including reasonable attorneys' and other professionals' fees, arising out of or relating to bodily injury or tangible property damage caused by the gross negligence or willful misconduct of TWC or its employees or agents.

CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR USE OF THE SERVICE AND USES THE SAME AT ITS OWN RISK. TWC EXERCISES NO CONTROL OVER AND HAS NO RESPONSIBILITY WHATSOEVER FOR THE CONTENT TRANSMITTED OR ACCESSIBLE THROUGH THE SERVICE AND TWC EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR SUCH CONTENT. EXCEPT AS SPECIFICALLY SET FORTH IN THE MASTER AGREEMENT, THE SERVICE, TWC EQUIPMENT AND TWC MATERIALS ARE PROVIDED "AS IS," WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, SYSTEM INTEGRATION, DATA ACCURACY, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY TWC, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY WARRANTY. TWC DOES NOT REPRESENT OR WARRANT THAT THE SERVICE SHALL MEET CUSTOMER'S REQUIREMENTS, PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES, BE UNINTERRUPTED, SECURE, ERROR FREE, WITHOUT DEGRADATION OF VOICE QUALITY OR LOSS OF CONTENT, DATE OR INFORMATION OR THAT ANY MINIMUM TRANSMISSION SPEED IS GUARANTEED AT ANY TIME. EXCEPT AS SET FORTH IN THE MASTER AGREEMENT, TWC DOES NOT WARRANT THAT ANY SERVICE OR EQUIPMENT PROVIDED BY TWC SHALL PERFORM AT A PARTICULAR SPEED, BANDWIDTH OR THROUGHPUT RATE. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TRANSMISSIONS OVER THE SERVICE MAY NOT BE SECURE. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DATA, MATERIAL OR TRAFFIC OF ANY KIND WHATSOEVER CARRIED, UPLOADED, DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER SHALL BE SOLELY

RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S OR AN END USER'S COMPUTER SYSTEM OR EQUIPMENT (INCLUDING NETWORK EQUIPMENT) OR LOSS OF SUCH DATA, MATERIAL OR TRAFFIC DURING, OR THAT RESULTS FROM, CUSTOMER'S OR ITS END USERS' USE OF THE SERVICE INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S OR END USERS' SENDING OR RECEIVING, OR UPLOADING OR DOWNLOADING, OR ATTEMPTS TO DO SAME, OF SUCH DATA, MATERIAL OR TRAFFIC. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT TWC'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO CUSTOMER UNDER THIS AGREEMENT AND TWC DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS UNDER THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SYSTEM INTEGRATION, DATA ACCURACY OR QUIET ENJOYMENT.

IN NO EVENT SHALL TWC BE LIABLE TO CUSTOMER, AN END USER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT, REGARDLESS OF WHETHER TWC HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TWC'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THE MASTER AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY)) SHALL BE LIMITED TO THE FEES PAID OR OWED BY CUSTOMER UNDER THE SERVICE ORDER THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. IN NO EVENT SHALL TWC'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER UNDER THE MASTER AGREEMENT. TWC SHALL NOT BE RESPONSIBLE FOR ANY LOSSES OR DAMAGES ARISING AS A RESULT OF THE UNAVAILABILITY OF THE SERVICE, INCLUDING THE INABILITY TO REACH 911 OR OTHER EMERGENCY SERVICES, THE INABILITY TO CONTACT A SECURITY SYSTEM OR REMOTE MEDICAL OR OTHER MONITORING SERVICE PROVIDER OR ANY FAILURE OR FAULT RELATING TO CUSTOMER-PROVIDED EQUIPMENT, FACILITIES OR SERVICES.

Customer's privacy interests, including Customer's ability to limit disclosure of certain information to third parties, may be addressed by, among other laws, the Federal Telecommunications Act (the "**Telecommunications Act**"), the Federal Cable Communications Act (the "**Cable Act**"), the Electronic Communications Privacy Act, and, to the extent applicable, state laws and regulations. Customer proprietary network information and personally identifiable information that may be collected, used or disclosed in accordance with applicable laws is described in Attachment B (Voice Services), the Subscriber Privacy Policy, and, if applicable, in TWC's tariff, which are incorporated into, and made a part of the Master Agreement by this reference. The Subscriber Privacy Policy is available at [www.twcbc.com/legal](http://www.twcbc.com/legal). In addition to the foregoing, Customer hereby acknowledges and agrees that TWC may disclose Customer's and its employees' personally identifiable information as required by law or regulation, or the American Registry for Internet Numbers ("**ARIN**") or any similar agency, or in accordance with TWC's Subscriber Privacy Policy or, if applicable, tariff. In addition, TWC shall have the right (except where prohibited by law), but not the obligation, to disclose any information to protect its rights, property and/or operations, or where circumstances suggest that individual or public safety is in peril.

Notwithstanding anything to the contrary contained in the Master Agreement, a Party shall have no liability to the other due to circumstances beyond its control, including, but not limited to, acts of God, terrorism, flood, fiber cuts, natural disaster, regulation or governmental acts, fire, civil disturbance, weather, or any unauthorized access to or destruction or modification of the Service, in whole or in part (each a "**Force Majeure Event**"). Notwithstanding anything to the contrary in the Master Agreement, Customer may terminate the affected Service Order(s) in its entirety and without penalty if a Force Majeure Event continues for more than ten (10) consecutive days and prevents TWC from delivering the Service under such Service Order(s).

In the event of any change in applicable law, regulation, decision, rule or order, including without limitation any new application of or increase in any government- or quasi-government-imposed fees or charges that increases the costs or other terms of TWC's delivery of Service to Customer, or, in the event of any increase in pole attachment or conduit charges applicable to any facilities used by TWC in providing the Service, Customer acknowledges and agrees that TWC may pass through to Customer any such increased fees or costs, but only to the extent of the actual increase, provided TWC notifies Customer at least thirty (30) days in advance of the increase. In such case, and if such increase materially increases the fees

or charges due by Customer under the Master Agreement for the applicable Service, Customer may, within thirty (30) days after notification of such increase, terminate the affected Service without incurring termination liability, provided Customer notifies TWC at least fifteen (15) days in advance of Customer's requested termination date. Further, in the event that TWC is required to file tariffs or rate schedules with a regulatory agency or otherwise publish its rates in accordance with regulatory agency rules or policies respecting the delivery of the Service or any portion thereof, and TWC is required under applicable law to apply those rates to Customer's purchase of Service under the Master Agreement, then the terms set forth in the applicable tariff or rate schedule shall govern TWC's delivery of, and Customer's use or consumption of the Service. In addition, if TWC determines that offering or providing the Service, or any part thereof, has become impracticable for legal or regulatory reasons or circumstances, then TWC may terminate the Master Agreement and any affected Service Orders without liability, by giving Customer thirty (30) days prior written notice or any such notice as is required by law or regulation applicable to such determination.

**The Master Agreement, including the Attachments and the Service Order(s) are subject to all applicable federal, state or local laws and regulations in effect in the relevant jurisdiction(s) in which TWC provides the Services. If any provision of the Master Agreement, the Attachments, or the Service Order(s) contravene or are in conflict with any such law or regulation, then the terms of such law or regulation shall take priority over the relevant provision of the Master Agreement, the Attachments, and/or the Service Order(s). If the relevant law or regulation applies to some but not all of the Service(s) being provided under the Master Agreement, then such law or regulation shall take priority over the relevant provision of the Master Agreement, the Attachments, and the Service Order(s) only for purposes of those Service(s) to which the law or regulation applies. Except as explicitly stated in the Master Agreement, nothing contained in the Master Agreement shall constitute a waiver by TWC of any rights under applicable laws or regulations pertaining to the installation, operation, maintenance or removal of the Services, facilities or equipment.**

The Master Agreement including, without limitation, all Attachments, sets forth the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous written or oral agreements or representations between the Parties with respect to such subject matter.

Each Service shall be provisioned pursuant to the terms and conditions of the Master Agreement. In the event that TWC permits a Customer to use its own standard purchase order form to order the Service, the Parties hereby acknowledge and agree that the terms and conditions hereof shall prevail notwithstanding any variance with the terms and conditions of any purchase order submitted by Customer, and any different or additional terms contained in such purchase order shall have no force or effect. To the extent that the terms of any Service Agreement or Service Order are inconsistent with the terms of these Terms and Conditions, the terms of the Service Agreement then the terms of the Service Order shall control.

As between the Parties, TWC shall obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to TWC's operation and provision of the Services as contemplated in the Master Agreement, and Customer shall obtain and maintain at its own expense all licenses, approvals and regulatory authority required by law with respect to Customer's use of the Services as contemplated in the Master Agreement. Unless specified otherwise in the Master Agreement, each Party shall give all notices, pay all fees and comply with all laws, ordinances, rules and regulations relating to its performance obligations specified in the Master Agreement.

EXCEPT FOR CLAIMS FOR INJUNCTIVE RELIEF, AS DESCRIBED BELOW, ANY PAST, PRESENT, OR FUTURE CONTROVERSY OR CLAIM ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT SHALL BE BROUGHT IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK AND SHALL BE RESOLVED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES, INCLUDING, IF APPLICABLE, THE SUPPLEMENTARY PROCEDURES FOR THE RESOLUTION OF CONSUMER RELATED DISPUTES. CONSOLIDATED OR CLASS ACTION ARBITRATIONS SHALL NOT BE PERMITTED. THE ARBITRATOR OF ANY DISPUTE OR CLAIM BROUGHT UNDER OR IN CONNECTION WITH THE MASTER AGREEMENT SHALL NOT HAVE THE POWER TO AWARD INJUNCTIVE RELIEF; INJUNCTIVE RELIEF MAY BE SOUGHT SOLELY IN AN APPROPRIATE COURT OF

LAW. NO CLAIM SUBJECT TO ARBITRATION UNDER THE MASTER AGREEMENT MAY BE COMBINED WITH A CLAIM SUBJECT TO RESOLUTION BEFORE A COURT OF LAW. THE ARBITRABILITY OF DISPUTES SHALL BE DETERMINED BY THE ARBITRATOR. JUDGMENT UPON AN AWARD MAY BE ENTERED IN ANY COURT HAVING COMPETENT JURISDICTION. IF ANY PORTION OF THIS SECTION IS HELD TO BE UNENFORCEABLE, THE REMAINDER SHALL CONTINUE TO BE ENFORCEABLE.

#### **22.0 GOVERNING LAW; JURISDICTION; CLAIMS**

The interpretation, validity and enforcement of the Master Agreement, and all legal actions brought under or in connection with the subject matter of the Master Agreement, shall be governed by the law of the State of New York (except that any conflicts-of-law principles of such state that would result in the application of the law of another jurisdiction shall be disregarded). Any legal action brought under or in connection with the subject matter of the Master Agreement shall be brought only in the United States District Court for the Southern District of New York or, if such court would not have jurisdiction over the matter, then only in a New York State court sitting in the Borough of Manhattan, City of New York. Each party submits to the exclusive jurisdiction of these courts and agrees not to commence any legal action under or in connection with the subject matter of the Master Agreement in any other court or forum. Each Party waives any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of the Master Agreement in the Federal or state courts sitting in the Borough of Manhattan, City of New York, and agrees not to plead or claim in such courts that any such action has been brought in an inconvenient forum. Any claim that Customer wishes to assert under the Master Agreement must be initiated not later than one (1) year after the claim arose.

#### **23.0 SEVERABILITY; WAIVER**

In the event that any portion of the Master Agreement is held to be invalid or unenforceable, the invalid or unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties set forth in the Master Agreement and the remainder of the Master Agreement shall remain in full force and effect. No waiver of any breach or default under the Master Agreement shall be deemed to be a waiver of any preceding or subsequent breach or default. To be legally binding on TWC, any waiver must be in writing.

#### **24.0 ASSIGNMENT**

Customer may not assign the Master Agreement without the prior written consent of TWC, and any assignment in violation of this Section shall be null and void. TWC may assign its rights and obligations under the Master Agreement including, without limitation, in whole or in part, to any affiliate without the prior written approval of or notice to Customer. Customer understands and agrees that, regardless of any such assignment, the rights and obligations of TWC in the Master Agreement may accrue to, or be fulfilled by, any affiliate, as well as by TWC and/or its subcontractors.

#### **25.0 PUBLICITY**

Customer may not issue a press release, public announcement or other public statements regarding the Master Agreement without TWC's prior written consent.

#### **26.0 NO THIRD PARTY BENEFICIARIES; RELATIONSHIP OF THE PARTIES**

There are no third party beneficiaries to the Master Agreement. The Parties to the Master Agreement are independent contractors.

#### **27.0 TWCBC.COM**

Customer agrees that all of its use of the TWCBC.COM website shall comply with the Term of Use available at <http://www.twcbc.com/Corporate/Privacy.html>, as the same may be updated by TWC from time to time.

#### **28.0 NOTICES**

Any notice under the Master Agreement shall be given in writing and shall be deemed to have been given when actually received by the other Party. Notices shall be delivered to Customer and TWC at the respective addresses set forth above, or to such other address as is provided by one Party to the other in writing. Notices to TWC shall include a cc to: Time Warner Cable Inc., 60 Columbus Circle, New York, New York, 10023, Attn: General Counsel, Fax: (212) 364-8254.

#### **29.0 COUNTERPARTS**

The Master Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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## Attachment C

### Business Class Teleworker Service, Branch Office Connectivity Service, Broadband High Speed Data, Wideband Internet and Dedicated Internet Access (collectively, "Data Services")

**Teleworker Service ("TW Service"):** If Customer selects to receive the TW Service, TWC shall provide connectivity to a single personal computer ("PC") via a cable modem at the residential location of the limited number of Customer employees set forth on a Service Order to connect such employees' PCs to the Customer's data network. Each PC connection may be used by one Customer employee at a time solely for Customer's internal business purposes. If Customer selects to receive the TW Service, Customer represents and warrants that Customer has obtained all legally-required consents and other permissions from its employees receiving the TW Service to enable TWC to report directly to Customer TW Service End user usage, billing and other identifying information (including the name and address of each TW Service employee account).

**Branch Office Connectivity Service ("BOC Service"):** If Customer selects to receive the BOC Service, TWC shall provide connectivity from the number of Customer branch offices set forth in a Service Order to the Customer's data network. Customer shall be permitted to connect any number of computers within Customer's identified branch offices to the BOC Service, provided that use does not exceed the standard bandwidth provided by TWC.

**Broadband High Speed Data and Wideband Internet ("HSD Service"):** If Customer selects to receive the HSD Service, TWC shall provide connectivity from the number of Customer sites set forth in a Service Order to the Customer's data network. Customer shall be permitted to connect any number of computers within Customer's identified sites to the HSD Service, provided that use does not exceed the standard bandwidth provided by TWC.

**Dedicated Internet Access ("DIA Service"):** If Customer selects to receive the DIA Service, TWC shall provide Customer with a dedicated, scalable connection over a packet-based infrastructure with Internet service provider ("ISP") peering between Customer's data network identified on a Service Order and the TWC facility identified on a Service Order.

#### Customer's use of the Data Services is subject to the following additional terms and conditions:

- TWC's provision of any Data Service is subject to availability.
- TWC shall allow Customer employees to use (however in no event shall TWC be responsible for) a Virtual Private Network ("VPN") and to allow the VPN to pass through the cable modem of any Data Service, as applicable, provided that TWC shall have the right to disconnect (or demand the immediate disconnection of) any such Data Service that degrades any service provided to other subscribers on the TWC network.
- Customer shall not upload, post, transmit or otherwise make available on or via the Data Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening,



abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law. TWC may remove content that in its judgment violates these standards.

- TWC shall have the right, but not the obligation, to: (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer's bandwidth utilization and to limit excessive use of bandwidth (as determined by TWC) as TWC deems appropriate to efficiently manage its network. In the event that any TWC audit reveals that Customer's usage of a Data Service exceeds Customer's rights under the Master Agreement, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage. In addition, TWC shall have the right, but not the obligation, to: (i) review public content associated with the Data Services, including chat rooms, bulletin boards and forums, in order to determine compliance with the Master Agreement and any rules now or hereafter established by TWC; and (ii) remove (or demand the removal of) any such content that TWC determines to be unacceptable or to violate the terms of the Master Agreement or any bandwidth utilization limitations.
- Each tier or level of Data Services has limits on the maximum throughput rate at which Customer may send and receive data at any time and the maximum throughput rate may be achieved in bursts, but generally shall not be sustained on a consistent basis. The throughput rate experienced by Customer at any time shall vary based on numerous factors, including without limitation, the condition of Customer's inside wiring, computer configurations, Internet and TWC network congestion, time of day and the accessed website servers, among other factors.

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**Attachment D**  
**Business Class Data Transport Services: Ethernet Solutions**  
**("Ethernet Service")**

**Ethernet:** If Customer selects to receive the Ethernet Service, TWC shall provide Customer with a dedicated circuit connection between Customer's data network and the TWC facility identified on a Service Order. The Ethernet Services shall be limited to the capacity set forth on a Service Order.

**Customer's use of Ethernet Service is subject to the following additional terms and conditions:**

- TWC's provision of Ethernet Services is subject to availability.
- TWC shall have the right to disconnect (or demand the immediate disconnection of) any such Ethernet Service that degrades any service provided to other subscribers on the TWC network.
- Customer shall not transmit or otherwise make available on or via the Ethernet Service any material (including any message or series of messages) that violates or infringes in any way upon the rights of others, that is unlawful, threatening, abusive, obstructive, harassing, libelous, invasive of privacy or publicity rights, that in the circumstances would be obscene or indecent, that constitutes hate speech, that is otherwise offensive or objectionable, or that encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any law.
- TWC shall have the right, but not the obligation, to (a) monitor traffic and content on its network, in its sole discretion, including through the use of automatic content filters (including without limitation spam, virus, and adult language sniffers and filters); and (b) monitor Customer's bandwidth utilization and to limit excessive use of bandwidth (as determined by TWC) as TWC deems appropriate to efficiently manage its network. In the event that any TWC audit reveals that Customer's usage of the Ethernet Service exceeds Customer's rights under the Master Agreement, Customer shall pay TWC an amount equal to one and a half times the Service Charges that would have been due for such excessive usage as liquidated damages and not as a penalty. In addition, Customer shall either discontinue any excess usage or thereafter continue to pay the applicable Service Charges for such additional usage.
- Each tier or level of Ethernet Service has limits on the maximum throughput rate at which Customer may send and receive data at any time and the maximum throughput rate may be achieved in bursts, but generally shall not be sustained on a consistent basis. The throughput rate experienced by Customer at any time shall vary based on numerous factors, including without limitation, the condition of Customer's inside wiring, computer configurations, Internet and TWC network congestion, time of day and the accessed servers, among other factors.
- Customer represents and warrants that Customer's use of Ethernet Services shall be such that the Ethernet Service shall be deemed jurisdictionally interstate, pursuant to the Federal Communications Commission's mixed use "**10% Rule**" (47 C.F. R. 36.154, 4 FCC Red. 1352), and shall notify TWC in the event of breach or threatened breach of the foregoing. If, as a result of Customer's use of Ethernet Services, the Ethernet Services are deemed not to be jurisdictionally interstate pursuant to the 10% Rule, then Customer shall be liable for any resulting fees, fines, penalties and costs incurred by TWC. In addition, if TWC determines that Customer's use of the Ethernet Services is likely to be deemed not to be jurisdictionally interstate, and therefore that TWC's provision of the Ethernet Services is likely to put TWC's franchises, licenses, permits or business at risk, or otherwise cause regulatory problems for TWC, then TWC may immediately suspend the provision of any or all Ethernet Service under any or all affected Service Orders until such time as either (a) Customer provides TWC with satisfactory assurances that Customer's use of Ethernet Services shall be deemed to be jurisdictionally interstate or (b) TWC is otherwise brought into full compliance with any applicable laws and regulations.