

TEX-AN 2021

Communications Technology Services Agreement

Version 2.0

DIR Contract No DIR-TELE-CTSA-004

Between

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

and

**CenturyLink Communications, LLC d/b/a Lumen Technologies
Group (Successful Respondent)**

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TEX-AN 2021 Communications Technology Services Agreement

This TEX-AN 2021 Communications Technology Services Agreement (CTSA) is entered into by and between the State of Texas, acting by and through the Texas Department of Information Resources (DIR), with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and CenturyLink Communications, LLC d/b/a Lumen Technologies Group. (Successful Respondent), with a principal place of business at 100 Centurylink Dr., Monroe, LA 71203-2041.

Preamble

WHEREAS, in accordance with the laws of the State, DIR issued the Request for Offer (RFO) for TEX-AN Communications 2021 (TEX-AN 2021) on the Texas Comptroller of Public Accounts' (CPAs) Electronic State Business Daily (ESBD) Website, Request for Offer (RFO) number DIR-CPO-TMP-552 (the RFO);

WHEREAS, in response to the RFO, Successful Respondent submitted Successful Respondent's Response, dated March 29, 2021, as revised, amended and supplemented thereafter (the Response)

WHEREAS, based on the Response, DIR and Successful Respondent have engaged in extensive negotiations, discussions, and due diligence that have culminated in the formation of the contractual relationship described in this TEX-AN 2021 Communications Technology Services Agreement (hereinafter CTSA or Contract); and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DIR and Successful Respondent (collectively, the "Parties" and each, a "Party") hereby agree as follows:

1 INTRODUCTION

1.1 Provision, Performance, and Management by Successful Respondent

DIR desires that certain communications technology Services procured in accordance with State law (pursuant to Chapter 2170, Texas Government Code) be provided, performed, and managed by Successful Respondent as and to the extent described in this CTSA. Successful Respondent has carefully reviewed DIR's requirements, has performed all due diligence it deems necessary, has received all information requested and required of DIR, and desires to deploy, perform, and manage such communications technology Services for DIR, the Customers, and, as required, other TEX-AN NG and TEX-AN 2021 Contract Holders. If Successful Respondent later discovers such due diligence was insufficient or lacking certain information, Successful Respondent shall assume any associated costs or expenses.

1.2 Successful Respondent's Experience and Qualifications

The Successful Respondent represents and warrants that it is an established provider of communications technology Services as awarded under this CTSA and has the skills, qualifications, expertise, financial

resources, and experience necessary to provide the communications technology Services, plans, reports, and other deliverables described in this CTSA.

1.3 Definitions

- a) The terms defined in this Agreement include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, subsection, exhibit, attachment, or other subdivision. Article, section, subsection, exhibit, and attachment references refer to articles, sections and subsections of, and exhibits and attachments to, this Agreement. The words "include" and "including" shall not be construed as terms of limitation. Unless otherwise modified, the words "day," "month," and "year" mean, respectively, calendar day, calendar month, and calendar year. The word "notice" and "notification" and their derivatives mean notice or notification in writing. References in this Agreement to any law shall be to such law in changed or amended form or to a newly adopted law replacing a prior law. All references to this Agreement shall include the exhibits and attachments to this Agreement unless otherwise provided. Other terms used in this Agreement are defined in the context in which they are used and have the meanings there indicated.
- b) Except as otherwise expressly provided in this CTSA, all capitalized terms (including derivatives of such terms) used in this CTSA shall have the meanings ascribed to them in **Exhibit A Definitions**; provided however, that any such defined terms, if not capitalized herein, shall have the same meaning as the defined term unless the context or industry usage require a different meaning. Words having well-known technical or trade meanings shall be accorded such meaning, unless expressly defined otherwise herein. Uncapitalized terms or phrases are to be given their usual meaning.
- c) Global drafting conventions.
 - 1) The terms "include," "includes," and "including" are terms of inclusion, and where used in this CTSA, are deemed to be followed by the words "without limitation."
 - 2) Any references to "sections," "exhibits," or "attachments" are deemed to be references to sections, exhibits, or attachments to this CTSA.
 - 3) Any references to agreements, contracts, statutes, or administrative rules or regulations in this CTSA are deemed references to these documents as amended, modified, or supplemented from time to time during the term of this CTSA.

1.4 Inducements

- a) In executing this CTSA, DIR relies on Successful Respondent's representations, warranties, and covenants regarding the following:
 - 1) Successful Respondent, including its agents and Subcontractors, regularly provide the types of Services described in the RFO to other public or private entities;
 - 2) Successful Respondent, including its agents and Subcontractors, have the skills, qualifications, expertise, financial resources, and experience necessary to perform the Services described in the RFO, Successful Respondent's Response, and this CTSA in an efficient and cost-effective manner with a high degree of quality and responsiveness, and have performed similar Services for other public or private entities;

- 3) Successful Respondent has thoroughly reviewed, analyzed, and understood the RFO, has timely raised all questions or objections to the RFO, and has had the opportunity to review and fully understand the DIR's current TEX-AN NG program, operating environment for the Services, this CTSA, and the needs and requirements of DIR, the Customers, and the State during the Term of the CTSA;
 - 4) Successful Respondent has had the opportunity to review and understand the State's stated objectives in entering into this CTSA and, based on such review and understanding, Successful Respondent has the ability and capability to perform the Services in accordance with the terms and conditions of this CTSA;
 - 5) Successful Respondent also has reviewed and understands all of the risks associated with the TEX-AN 2021 Program as described in the RFO and the CTSA, including the risk of non-appropriation of funds;
 - 6) Successful Respondent shall at all times be capable of and legally authorized to provide the Services; and
 - 7) The Rates to DIR, Prices, and any discounts offered hereunder shall be true and correct.
- b) Accordingly, on the basis of these representations, warranties, and covenants, DIR desires to engage Successful Respondent to perform the Services under the terms and conditions set forth in this CTSA, and Successful Respondent covenants to perform the Services under the terms and conditions set forth in this CTSA.

1.5 Construction of Agreement

1.5.1 Severability

If any provision of this CTSA (or any portion thereof) or the application of any such provision (or portion thereof) to any person, entity, or circumstance is held to be illegal, invalid, or otherwise unenforceable in any respect by a final judgment, order of the State Office of Administrative Hearings, or court of competent jurisdiction, such provision shall be deemed to be void and unenforceable. Notwithstanding the preceding sentence, the remaining provisions of this CTSA, if capable of substantial performance, shall remain in full force and effect. By entering into this CTSA, DIR makes no representations or warranties regarding the enforceability of the terms of this CTSA and DIR does not waive any applicable law that conflicts with the terms of this CTSA.

1.5.2 Survival of Terms

Notwithstanding the expiration or and termination of this CTSA:

- a) any provision of this CTSA that contemplates performance or observance subsequent to any termination or expiration of this CTSA shall survive any termination or expiration of this CTSA and continue in full force and effect;
- b) all provisions of this Agreement shall survive the expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein
- c) any provisions that the Parties have expressly agreed will survive any termination or expiration shall survive the expiration or any termination of this Agreement;
- d) any terms that remain to be performed or by their nature would be intended to be applicable following any such termination or expiration, including the Administrative Fee, any and all payment obligations invoiced prior to the termination or expiration hereof, and indemnification rights and obligations;

- e) the limitation on use and disclosure of DIR or Customer Data shall survive the expiration or any termination of this Agreement and shall be perpetual;
- f) each party's confidentiality obligations under this CTSA shall continue for any period required by applicable law or until such time as the Confidential Information is publicly known and made generally available through no action or inaction of the receiving Party;
- g) all applicable services, warranties, or service agreements that were entered into between Successful Respondent and a Customer under the terms and conditions of the CTSA shall survive the expiration or termination of the CTSA; and
- h) all Purchase Orders issued and accepted by Successful Respondent shall survive expiration or termination of the CTSA for the term of the Purchase Order unless the Customer terminates the Purchase Order sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the CTSA for more than two (2) years, unless Customer makes an express finding and justification for the longer term. The finding and justification must either be included in the Purchase Order, or referenced in it prior to the expiration or termination of the CTSA and maintained in Customer's procurement record.
- i) The Successful Respondent agrees that DIR may require continued performance, not including termination assistance, beyond the initial or any renewal CTSA term, of any of the within described Services at the rates specified in the CTSA. This option may be exercised more than once, but the total extension of performance hereunder shall not exceed four (4) calendar months. Such extension of Services shall be subject to the requirements of the CTSA, with the sole and limited exception that the original date of termination shall be extended pursuant to this provision.

1.5.3 Headings

The article and section headings and the Table of Contents in this CTSA are for reference and convenience only and may not be considered in the interpretation of this CTSA.

1.6 No Implied Authority

- a) The authority delegated to Successful Respondent by DIR is limited to the terms of this CTSA. DIR is the State agency designated by the Texas Legislature to administer the TEX-AN 2021 Program, and no other agency of the State grants Successful Respondent any authority related to this TEX-AN 2021 Program. Successful Respondent may not rely upon implied authority, and specifically is not delegated authority under this CTSA to:
 - 1) make public policy;
 - 2) promulgate, amend, or disregard administrative regulations or program policy decisions made by DIR for administration of the TEX-AN 2021 Program; or
 - 3) unilaterally communicate or negotiate with any Customer or the Texas Legislature on behalf of DIR regarding the TEX-AN 2021 Program.
- b) Successful Respondent may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

1.7 Legal Authority

- a) DIR is authorized to enter into this CTSA under Chapter 2170, Texas Government Code. Successful Respondent is authorized to enter into this CTSA pursuant to the authorization of its governing board or controlling owner or officer.

- b) The person or persons signing and executing this CTSA on behalf of the Parties, or representing themselves as signing and executing CTSA on behalf of the Parties, warrant and guarantee that he, she, or they have been duly authorized to execute this CTSA and to validly and legally bind the Parties to all of its terms, performances, and provisions.

2 CTSA DOCUMENTS

2.1 Definition

This CTSA includes each of the exhibits and attachments attached to this CTSA, which are hereby incorporated into and deemed part of this CTSA, and unless otherwise expressly stated all references to this CTSA shall include the exhibits and attachments. A listing of the exhibits and attachments is included in the Table of Contents.

2.2 Compliance with Procurement Laws

This CTSA is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the CPA's ESBD, RFO DIR-CPO-TMP-552, on January 4, 2021, for TEX-AN 2021 Communications Technology Services. Successful Respondent responded, and DIR conducted its evaluation. DIR determined that Successful Respondent should be invited into negotiations. DIR and Successful Respondent have engaged in extensive negotiations, discussions, and due diligence that have culminated in the formation of the contractual relationship described in this CTSA. Upon execution of all CTSA's arising from the RFO, a notice of award for RFO DIR-CPO-TMP-552 shall be posted by DIR on the ESBD.

2.3 Order of Precedence

In the event of any conflict or contradiction between or among the various documents comprising the CTSA, the documents will control in the following order of precedence:

- a) Articles 1 through 22 of this CTSA, and all amendments thereto,
- b) Exhibit A Definitions to the CTSA, and all amendments thereto,
- c) All other Exhibits to the CTSA, and all amendments thereto,
- d) Attachments to the CTSA, and all amendments thereto,
- e) Appendices to the CTSA, and all amendments thereto;
- f) The RFO Number DIR-CPO-TMP-552, as amended and clarified by DIR official revisions or addenda, and incorporated by reference herein.
- g) Successful Respondent's final Response dated March 29, 2021, and incorporated by reference herein.

3 TERM

3.1 Initial Term

The Initial Term of this CTSA shall commence on the Effective Date, date of last signature, and continue for four (4) years from the Effective Date, unless this CTSA is terminated earlier as provided herein, in

which case the Initial Term of this CTSA shall end at 11:59:59 p.m., Central Time, on the effective date of such termination (the “Initial Term”).

3.2 Extension(s)

By giving written notice to Successful Respondent no less than thirty (30) days prior to the expiration date of the Initial Term or the then-current Renewal Term, DIR, in its sole and absolute discretion, shall have the right to extend the Term of the CTSA for up to four (4) years from the expiration of the Initial Term, in any combination of months or years as necessary to complete the purpose of this procurement. DIR, in its sole and absolute discretion, may extend the CTSA more than once up to a total of an additional four-year period (each a “Renewal Term”). The exact period(s) of the extension(s) shall be specified in the DIR notice of extension. The total period of time during which the CTSA is in effect is the Term. No termination charges or penalties shall be applicable to any termination before or after the end of the Initial Term.

4 RELATIONSHIP AMONG DIR, SUCCESSFUL RESPONDENT, OTHER TEX-AN 2021 CONTRACT HOLDERS, AND CUSTOMERS

4.1 DIR as Successful Respondent’s Customer

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 Successful Respondent’s customer, with the exception of Local Services, Small Office/Home Office (SO/HO) Internet Connectivity Services, wireless voice and Data Services, Technology Based Conferencing Services, and telecommunications managed Services (hereinafter collectively “Direct Sales Transaction Services”). Except as noted below, DIR will issue all Purchase Orders to Successful Respondent on behalf of itself and the Customers. Except as noted below, DIR shall act as the Successful Respondent’s billing agent for all Services ordered and consumed by the Customers and shall pay net proceeds from such billings to Successful Respondent.

4.2 Direct Sales Transaction Service Customers for Successful Respondent

- a) If Successful Respondent is awarded any Direct Sales Transaction Services, then Successful Respondent shall receive Purchase Orders for such Direct Sales Transaction Services from the Direct Sales Transaction Service Customer(s). Successful Respondent shall bill Direct Sales Transaction Service Customers for the Services at the Prices allowed by this CTSA (or Statement of Work (SOW) as applicable) that includes the Administrative Fee. Successful Respondent shall remit the associated Administrative Fee to DIR on a monthly basis. Successful Respondent shall also be responsible for sales reports and other administrative duties associated with providing these Services to the Direct Sales Transaction Service Customers.
- b) Successful Respondent agrees to process all Direct Sales Transaction Service Customer orders for Services available under the CTSA through the CTSA. Successful Respondent shall not offer Direct Sales Transaction Services to Customers outside of the CTSA or for rates higher than negotiated herein. Successful Respondent agrees that all discounts offered to DIR are equal to or exceed any discount offered by Successful Respondent to any similarly situated Customer.

4.3 Customers as Authorized End Users of Successful Respondent's Services

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 in this CTSA. For DIR's purposes, these entities are Customers. From the Successful Respondent's perspective, these entities may be referred to as "Authorized End Users," whether as organizations or persons employed by such organizations. All references herein to "Customer" include "Authorized End Users." When ordering certain Services from Successful Respondent, non-state agency Customers may enter into a certain TEX-AN 2021 Customer Services Agreement (CSA), with DIR, which sets forth the terms and conditions for the deployment, acceptance, and delivery of such certain Services by Successful Respondent to such Customer. Under each CSA, DIR shall be the billing agent on behalf of Successful Respondent to receive payment for the Services from the Customer. The minimally acceptable terms and conditions of the CSA are attached as **Exhibit F**. Customers operating under the CSA will ensure funds are committed for the payment of services to DIR where DIR is acting as Successful Respondent's billing agent. In addition, Successful Respondent understands and agrees that if Successful Respondent responds to certain Customer pricing requests or Statements of Work, then, in order to contract with the Customer, Successful Respondent may be required to comply with additional terms and conditions or certifications that an individual Customer may require due to state and federal law (e.g., privacy and security requirements).

4.4 Use of Third Parties

An award from the RFO is not exclusive to the Successful Respondent. Successful Respondent acknowledges that DIR intends to award or has awarded multiple CTSA's for Services out of the RFO to other Successful Respondents (TEX-AN 2021 Contract Holders). Successful Respondent further acknowledges that some of the Services provided by Successful Respondent hereunder may also be provided by other TEX-AN 2021 Contract Holders. Finally, Successful Respondent acknowledges that Successful Respondent may have a dependency on other TEX-AN 2021 Contract Holders to serve a particular Customer in a particular area. Therefore, Successful Respondent warrants and covenants, for itself and its Subcontractors, it shall not discriminate against another TEX-AN 2021 Contract Holder in the deployment and delivery of any Service in any manner to DIR and/or any Customer, or otherwise cause any disruption to Services as deployed and delivered to DIR and/or Customers by any other TEX-AN 2021 Contract Holder.

4.5 DIR (and Customer) Right of Use

- a) Notwithstanding anything to the contrary contained in this CTSA, Successful Respondent acknowledges and agrees that: (i) this is not a requirements CTSA and DIR and Customers shall not be required to obtain their requirements for any of the Services from Successful Respondent; and (ii) Successful Respondent is not the exclusive provider to DIR or the Customers of any of the Services and DIR and the Customers may at any time themselves and/or through third parties (each, a "DIR Contractor") provide and/or obtain any services (including services to supplement, replace, or render unnecessary the Services).
- b) Nothing in this Agreement shall be construed or interpreted as limiting DIR's right or ability to add or delete Customers, or DIR's or any Customer's right or ability during the Term to change requirements, move parts of Services in and out of scope, or to increase or decrease their demand for Services. To the extent DIR or a Customer obtains from Successful Respondent, or provides to itself, any of the Services, the charges, if any, shall be adjusted downward in accordance with **Exhibit B Pricing and Volumes**, to the extent applicable, or equitably adjusted downward in

proportion to the portion of the Services that Successful Respondent shall not be providing. Both Successful Respondent and Customer shall approve such adjustments in writing.

- c) DIR may elect to solicit and receive bids from third parties to perform any new services. If DIR elects to use third parties to perform new services: (i) such new services shall not be deemed "Services" under the provisions of this Agreement; and (ii) Successful Respondent shall cooperate with such third parties as provided above.

4.5.1 Successful Respondent Cooperation

Successful Respondent acknowledges that its provision of the Services shall require significant cooperation with third parties, and Successful Respondent shall fully cooperate and work in good faith with third parties as described in this CTSA and to the extent otherwise requested by DIR.

4.5.2 Notice by Successful Respondent

Without limiting its obligations under this CTSA, Successful Respondent shall expeditiously notify DIR when it becomes aware that an act or omission of DIR or Customer personnel or a DIR Contractor shall cause, or has caused, a problem or delay in providing the Services, and shall work with DIR, the Customers, and the DIR Contractor to prevent or circumvent such problem or delay. Successful Respondent shall cooperate with DIR, the Customers, and DIR Contractors to resolve differences and conflicts arising between the Services and other activities undertaken by DIR, the Customers and DIR Contractors.

4.6 Covenant of Cooperation

Successful Respondent hereby agrees and covenants that it shall fully cooperate with other TEX-AN 2021 Contract Holders in fulfilling the terms of this CTSA and/or CSA with DIR and/or Customers. Successful Respondent is required to cooperate to the fullest extent possible to assist DIR in communications and negotiations with all Customers as directed by DIR. Successful Respondent acknowledges that this covenant is material to DIR and that failure to maintain such cooperation may be grounds for termination for cause. Each Customer shall cooperate with its selected Contract Holders and DIR in fulfilling the terms of each CSA to which they are a party.

4.7 Special Covenant to Cooperate with DIR on Internal Business Process Improvements

All TEX-AN 2021 Contract Holders shall interface with DIR's internal service delivery system to support DIR's service delivery processes, including the BMC Helix ITSM platform version 20.08. Network and any subsequent versions to network demarcation points are determined on a case by case basis depending upon type of Service. Successful Respondent shall provide timely, complete, and commercially reasonable cooperation in the implementation and use of the DIR adopted systems at no additional cost to DIR or the Customers. As of the Effective Date, the BMC Helix ITSM platform includes service request management (Service ordering), asset management, performance and service level management, incident management (help desk/trouble tickets), change management, and knowledge management. Other systems in development to support Tex-AN-2021 include DIR enterprise billing and customer relationship management. As of the Effective Date, DIR and Successful Respondent have agreed to the following formats and Data to include detailed data for quotes, orders, trouble tickets, billing, Service Level Agreements, and network monitoring and formats to include email, delimited flat files, and web services XML as documented in **Appendix B Master Vendor Reporting Guide**. DIR will provide reasonable written notice to Successful Respondent as new systems become available for Successful Respondent's use. If Successful Respondent is unable to implement and use the DIR adopted internal systems at no additional cost to DIR or Customers, DIR reserves the right to terminate the CTSA. Successful Respondent shall promptly notify DIR if it encounters an unforeseen challenge to

implementing any DIR adopted internal systems. DIR agrees to negotiate in good faith to resolve the Successful Respondent's challenge, reserving the right to terminate the CTSA if no resolution is apparent within thirty (30) days of notification of the challenge.

5 AWARDED SERVICES

5.1 Description

A description of the Services awarded to Successful Respondent under this CTSA are found in Exhibit B to the CTSA. This CTSA is an indefinite quantity contract. DIR has not made and does not make any representations or warranties about the amount or type of Services that Successful Respondent may sell to DIR or the Customers as a result of executing this CTSA.

5.2 Rates, Prices, and Telecommunications Fees and Surcharges

- a) The rates for the Services as set forth in Attachments to Exhibit B to the CTSA are the Rates to DIR, with the exception of the Prices for which Successful Respondent shall directly bill the Customers at the Prices set forth in Attachments to Exhibit B, or as negotiated through the SOW for Telecommunications Managed Services. For all other Services in use, Successful Respondent shall present a Monthly Consolidated Invoice to DIR based on the Rates to DIR. In its role as billing agent for Successful Respondent, DIR shall bill Customers the Rates to DIR, plus an additional percentage as the Administrative Fee, as authorized by Chapter 2170, Texas Government Code. Successful Respondent acknowledges and agrees that DIR shall retain its Administrative Fee from the amounts it collects from Customers.
- b) If the Successful Respondent is awarded Local Services, SO/HO Internet Connectivity Services, wireless Services, and/or Technology Based Conferencing Services, Attachments to Exhibit B also contains the Prices for these Services, which include the Successful Respondent's rate plus the Administrative Fee. Successful Respondent shall bill the Direct Sales Transaction Service Customers for the Price as defined in Exhibit B and shall remit the Administrative Fee to DIR on a monthly basis. Successful Respondent shall provide DIR with monthly Direct Sales Transaction Service Reports.
- c) If the Successful Respondent is awarded Telecommunication Managed Services, Successful Respondent shall work directly with Customers to negotiate an SOW that will include pricing for the Services, which will include the Successful Respondent's rate plus the Administrative Fee. Successful Respondent shall bill the Direct Sales Transaction Service Customer for the Price as defined in the SOW and shall remit the Administrative Fee to DIR on a monthly basis. Successful Respondent shall provide DIR with monthly Direct Sales Transaction Service Reports.
- d) Attachments to Exhibit B also lists for each awarded Service, all applicable telecommunications fees and/or surcharges that are permitted to be assessed by Successful Respondent against Customers in accordance with federal and/or state law. DIR shall include the listed telecommunications fees and surcharges on bills to Customers and Customers shall be responsible for paying such telecommunications fees and surcharges in full. If applicable to the Direct Sales Transaction Services, Successful Respondent shall include the telecommunications fees and surcharges on its bills to the Direct Sales Transaction Service Customers, and the Direct Sales Transaction Service Customers shall be responsible for paying such telecommunications fees and surcharges in full. No telecommunications fees and surcharges that are not set forth in Attachments to Exhibit B may appear on bills to DIR or Customers. Notwithstanding the foregoing, if federal or state laws and regulations that impose additional fees and/or surcharges

become effective after the Effective Date of this CTSA then such new fees and/or surcharges may be assessed by Successful Respondent against DIR Customers; however, such charges shall be implemented through the contract amendment process as outlined in this CTSA. Additionally, Successful Respondent reserves the right to update existing fees and/or surcharges as such updates are imposed by issuing government entity with notice to DIR and incorporation into the CTSA by compliance with Article 9 of this CTSA. DIR reserves the right to review telecommunications taxes, fees, and surcharges for applicability of payments by public entities and reserves the right to exempt Customers pursuant to federal, state, and/or local exemptions.

5.3 Authorized Changes to Rates to DIR and Prices

Successful Respondent may propose Attachments to Exhibit B changes to lower the Rates to DIR and/or the Prices. DIR shall have reasonable time to review and determine, in its sole and absolute discretion, if the change to the rates to DIR is a best value for the State. If DIR approves the Rates to DIR or Price change, such change shall be implemented using the Electronic Administrative Update (EAU) process defined in CTSA Section 9.5 to amend the CTSA and document the new Rates to DIR and/or Price. The Parties agree to make new Rates to DIR or Prices available to Customers as quickly as possible. Successful Respondent initiated Point of Presence (POP) location changes, or any other changes that have an adverse effect (price increase) on Rates to DIR or Prices must be authorized by an amendment to the CTSA before being billed. Changes that lower pricing will be administered via the EAU process.

6 SUCCESSFUL RESPONDENT PERSONNEL MANAGEMENT

6.1 Qualifications, Retention, and Replacement of Successful Respondent Employees

Successful Respondent agrees to maintain the organizational and administrative capacity and capabilities to carry out all Successful Respondent duties and responsibilities, including providing and supporting the Services, under this CTSA. The personnel Successful Respondent assigns to perform the duties and responsibilities under this CTSA will be properly trained and qualified for the functions they are to perform. Notwithstanding transfer or turnover of its personnel, or of its agents' or Subcontractors' personnel, Successful Respondent remains obligated to perform all duties and responsibilities, including providing and supporting the Services, without degradation and in accordance with the terms of this CTSA.

6.2 Responsibility for Successful Respondent Personnel

- a) Under no circumstances will Successful Respondent Personnel, be considered or deemed employees of DIR or the State, but will be considered Successful Respondent's employees, agents, or Subcontractors for all purposes. Successful Respondent, not the State, DIR, or the Customers, has the right, power, authority, and duty to supervise and direct the activities of the Successful Respondent Personnel and to compensate such Successful Respondent Personnel for any work performed by them hereunder. Successful Respondent, and not the State, DIR, or the Customers, shall be responsible and therefore solely liable for all acts and omissions of Successful Respondent Personnel associated or related in any manner with this CTSA or the related products, equipment, and Services, including acts and omissions constituting negligence, gross negligence, willful misconduct, and/or fraud.
- b) Except as expressly provided in this CTSA, neither Successful Respondent nor any of Successful Respondent Personnel may act in any sense as agents or representatives of DIR or the State of Texas.

- c) Successful Respondent Personnel shall be paid exclusively by Successful Respondent for all Services performed. Successful Respondent is responsible for and must comply with all requirements and obligations related to such Successful Respondent Personnel under local, State, or federal law, including minimum wage, social security, unemployment insurance, State and federal income tax, and workers' compensation obligations.
- d) Successful Respondent assumes sole and full responsibility for its acts and the acts of Successful Respondent Personnel relating to the performance of this CTSA.
- e) Successful Respondent agrees that any claim on behalf of any person arising out of employment, alleged employment, termination of employment, failing to employ, agency, or Subcontracts (including, but not limited to, claims of discrimination against Successful Respondent, its officers, or its agents or its Subcontractors) are the sole responsibility of Successful Respondent and are not the responsibility of DIR or any Customer, and that Successful Respondent will indemnify and hold harmless the State from any and all such claims asserted against the State, DIR or any Customer. Successful Respondent understands that any person who alleges a claim arising out of employment, alleged employment, termination of employment, failing to employ, agency, or Subcontract by Successful Respondent (including, but not limited to, claims of discrimination against Successful Respondent, its officers, or its agents or its Subcontractors) will not be entitled to any compensation, rights, or benefits from DIR (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

6.3 Cooperation with DIR, Other Contract Holders, and Customers

6.3.1 General

- a) Successful Respondent shall perform the Services in a manner that shall not: (1) disrupt or have an unnecessary adverse impact on the activities or operations of DIR, the Customers, or another TEX-AN 2021 Contract Holder; (2) degrade the Services then being received by DIR or the Customers; or (3) disrupt or interfere with the ability of DIR or the Customers to obtain the full benefit of the Services.
- b) In performing the Services and using the DIR Facilities, Successful Respondent shall observe and comply with all DIR and Customer policies, rules, and regulations applicable at or to DIR Facilities or the provision of the Services which have been communicated to Successful Respondent or Successful Respondent Personnel in advance in writing (which may include email communications and notices of information contained on web sites or conspicuously posted at DIR Facilities to the extent consistent with the way in which DIR or the Customers disseminate such information to their own employees) or by such means as are generally used by DIR or DIR Customers to disseminate such information to its employees or contractors and those applicable to specific DIR Facilities (collectively, DIR Rules). The Parties acknowledge and agree that, as of the Effective Date, the Successful Respondent is fully informed as to the DIR Rules that have been communicated to it consistent with the foregoing. Successful Respondent shall be responsible for the promulgation and distribution of DIR Rules to Successful Respondent Personnel as and to the extent necessary and appropriate. Additions or modifications to the DIR Rules may be: (i) disclosed to Successful Respondent and Successful Respondent Personnel in writing (which may include email communications and notices of information contained on web sites to the extent consistent with the way in which DIR or Customers disseminate such information to their own employees); (ii) conspicuously posted at a DIR Facility; (iii) electronically posted; or (iv) communicated to Successful Respondent or Successful Respondent Personnel by means generally used by DIR and Customers to disseminate such information to its

employees or contractors (including oral communications in immediately applicable or emergency situations). Successful Respondent and Successful Respondent Personnel shall observe and comply with such additional or modified DIR Rules.

6.3.2 DIR Cost Avoidance

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, Successful Respondent shall provide DIR with a detailed report of a representative sample of products sold under the CTSA. The report shall contain: product part number, product description, list price and price to Customer under the CTSA. Additionally, Successful Respondent shall promptly provide DIR with all other CTSA performance related information that assists DIR in reporting any other performance measures for which it is responsible.

6.3.3 Cooperation with Other TEX-AN 2021 Contract Holders

Successful Respondent agrees to reasonably cooperate with and work with the other TEX-AN 2021 Contract Holders, Subcontractors, and third party representatives as requested by DIR. To the extent permitted by DIR's financial and personnel resources, DIR agrees to reasonably cooperate with Successful Respondent.

6.3.4 Cooperation with Customers

Successful Respondent must ensure that Successful Respondent employees, agents, and Subcontractors will cooperate with DIR and Customers at no charge to DIR or Customers for purposes relating to the administration of the TEX-AN 2021 Program including, but not limited to the following purposes:

- a) The investigation and prosecution of fraud, abuse, and waste in the TEX-AN 2021 Program;
- b) Audit, inspection, or other investigative purposes; and
- c) Testimony in judicial or quasi-judicial proceedings relating to the Services under this CTSA or other delivery of information to DIR or Customers' investigators or legal staff.

6.3.5 Successful Respondent's Subcontractor's Compliance

In all cases where Successful Respondent is required to ensure its Subcontractors' compliance with a section of this CTSA (or must otherwise require compliance by its Subcontractor with the terms of this CTSA, or is responsible for or required to indemnify the State for any taxes, benefits, compliance with law or other responsibilities of its Subcontractors, other than the performance of Services), Successful Respondent shall:

- a) include the necessary language of the section of the CTSA in the applicable Subcontract; and
- b) in consultation with DIR regarding the relative prudence of continuing to use the Subcontractor for Services as opposed to potentially terminating the Subcontract for breach, Successful Respondent shall, using commercially reasonable efforts, exercise contractual remedies upon such Subcontractor's non-compliance.

6.4 Conduct of and Responsibility for Successful Respondent Employees

- a) While performing the Services, Successful Respondent's Personnel must:
 - 1) comply with applicable State, DIR, and Customer policies, procedures, rules, and regulations;

- 2) comply with requests of DIR or Customers regarding personal and professional conduct generally applicable to the Service locations, including, but not limited to, conforming to all physical security standards and requirements, as required given the Service location;
 - 3) attend workplace training offered by DIR and/or the Customers at DIR's or Customer's request; and
 - 4) otherwise conduct themselves in a businesslike and professional manner.
- b) If DIR determines, in its sole and absolute discretion, that a particular employee, agent, or Subcontractor is not conducting him/herself or itself in accordance with this Section 4.4, DIR may provide Successful Respondent with notice and documentation concerning such conduct. Upon receipt of such notice, Successful Respondent must promptly investigate the matter and take appropriate action that may include:
- 1) Removing the employee, agent, or Subcontractor from Service delivery under this CTSA;
 - 2) Providing DIR with written notice of such removal; and
 - 3) Replacing the employee, agent, or Subcontractor with a similarly qualified individual acceptable to DIR, in its sole and absolute discretion, in the case of personnel and Subcontractors.
- c) Successful Respondent shall replace any employee, agent, or Subcontractor who, as determined by DIR, in its sole and absolute discretion, after consultation with Successful Respondent, is unable to work effectively with DIR staff or Customer staff or is not adequately performing assigned responsibilities. In such event, Successful Respondent shall provide replacement employee(s), agent(s), or Subcontractor(s) with equal or greater skills and qualifications as soon as reasonably practicable. Replacement of personnel shall be subject to DIR prior review and written approval, which approval will not be unreasonably withheld or delayed. The Parties will work together in the event of any such required replacement so as not to disrupt Service delivery under the CTSA. Other than in instances when DIR determines, in its sole and absolute discretion, that removal must be handled immediately to avoid imminent harm to the TEX-AN 2021 Program or safety to others, DIR and Successful Respondent will provide written notice and cooperate with the other Party in a manner intended to minimize staff turnover and the adverse impact any requested removal may have on the Services. Nothing in this CTSA will prevent Successful Respondent from replacing employees. If the Parties have not been able to resolve DIR's concerns within five (5) Business Days of DIR communicating its concerns, Successful Respondent shall not assign the individual to that position and shall propose to DIR the assignment of another individual of suitable ability and qualifications.
- d) Successful Respondent agrees that anyone used by Successful Respondent to fulfill the terms of this CTSA is an employee, agent, or Subcontractor of Successful Respondent and remains under Successful Respondent's sole direction and control.
- e) Successful Respondent agrees to be responsible for the following with respect to Successful Respondent Personnel:
- 1) Damages incurred by Successful Respondent Personnel in the performance of their duties under this CTSA; and
 - 2) Determination of the hours to be worked and the duties to be performed by Successful Respondent Personnel.
 - 3) Successful Respondent agrees and will inform Successful Respondent Personnel that there is no right of action against DIR or any Customer for any duty owed by Successful

Respondent pursuant to this CTSA. Successful Respondent expressly agrees that neither DIR nor any Customer assumes any liability for the actions of, or judgments rendered against, the Successful Respondent, its employees, agents, or Subcontractors. Successful Respondent agrees that it has no right to indemnification or contribution from DIR or any Customer for any judgments rendered against Successful Respondent or Successful Respondent Personnel. DIR's liability to the Successful Respondent Personnel, if any, will be governed by Chapter 101, Texas Civil Practice & Remedies Code.

6.5 Responsibility for Subcontractors and Third Party Providers

- a) Successful Respondent remains fully responsible for obligations, services, and functions performed by its Subcontractors and third party providers to the same extent as if such obligations, services, and functions were performed by Successful Respondent's employees or agents and, for purposes of this CTSA, such work will be deemed work performed by Successful Respondent. DIR reserves the right to require the replacement of any Subcontractor found by DIR, in its sole and absolute discretion, to be unacceptable in accordance with CTSA Section 6.4.
- b) Successful Respondent must not disclose Confidential Information of DIR, a Customer, or the State to a Subcontractor unless and until such Subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of Successful Respondent under this CTSA.
- c) Successful Respondent must identify any Subcontractor that is a newly-formed subsidiary or entity, whether or not an Affiliate of Successful Respondent, substantiate the proposed Subcontractor's ability to perform the subcontracted Services, and certify to DIR that no loss of Service will occur as a result of the performance of such Subcontractor and provide any other information DIR may require. The Successful Respondent hereby assumes responsibility for all contractual responsibilities whether or not the Successful Respondent performs them. The Successful Respondent agrees that it is the sole point of contact for DIR with regard to all matters under this CTSA, including any matters with respect to Successful Respondent's Subcontractors.
- d) Successful Respondent shall not change a Subcontractor prior to submitting for DIR's approval, in its sole and absolute discretion, a revised HUB Subcontracting Plan. Only upon DIR's approval of a revised HUB Subcontracting Plan may Successful Respondent proceed with replacement of a Subcontractor.
- e) All Subcontracts are required to be in writing and signed by the Successful Respondent and Subcontractor

6.6 Security of Premises, Equipment, Data, and Personnel

Successful Respondent may, from time to time during the performance of the CTSA, have access to the premises, Equipment, Software, and other property, including data, files, information, and/or materials (collectively referred to as "Data") belonging to DIR or Customers. Successful Respondent will use its best efforts to preserve the safety, security, and the integrity of the premises, software, Equipment, Data, and other property of DIR or Customer, in accordance with the instruction of DIR or Customers. Successful Respondent will be responsible for damage to DIR or Customer's premises, Software, Equipment, Data, other property, and its contents, when such damage is caused by Successful Respondent Personnel. Each party is responsible for complying with the privacy laws applicable to its business. For data transport, network and voice services, Customer is responsible for encryption in transport and at rest.

6.7 Background and/or Criminal History Investigation

Prior to commencement of any Services, background checks (including national fingerprint record checks and drug testing) and/or criminal history investigation of certain of the Successful Respondent Personnel who will be involved in the provision of Services, may be performed by or at the request of DIR or certain Customers having legislative authority to require such investigations. Should any Successful Respondent Personnel who will be involved in the provision of Services to DIR under the CTSA, or to a Customer under a CSA, not be acceptable to DIR or Customer, in their sole and absolute discretion, as a result of the background and/or criminal history check, then DIR or Customer, in their sole and absolute discretion, may immediately require replacement of the Successful Respondent Personnel in question.

7 NOTICES

7.1 Delivery of Notice

Any notice or other legal communication required or permitted to be made or given by either Party pursuant to this CTSA, including any demand, will be in writing and deemed to have been duly given:

- a) Three (3) Business Days after the date of mailing if sent by certified U.S. mail, postage prepaid, with return receipt requested; or
- b) When delivered if delivered personally or sent by express courier service.

7.2 Notice

Any notice under this CTSA will be sufficient if delivered to the following persons or their successors:

If to Successful Respondent:

Mr. Dennis Fisher, Director Offer Management
CenturyLink Communications, LLC d/b/a Lumen Technologies Group
931 14th Street
Denver, CO, 80202
tel: 720.808.0862 | fax: 303.383.8275
dennis.fisher@lumen.com

With a copy to:

Ms. Davina Jerger, Associate General Counsel
CenturyLink Communications, LLC d/b/a Lumen Technologies Group
931 14th Street, Suite 900
Denver, CO, 80202
tel: 303 992 5725 | fax: 303.383.8275
davina.jerger@lumen.com

If to DIR:

Chief Procurement Officer
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700

With copies to:

General Counsel
Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
DIRLegal@dir.texas.gov

and

Texas Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Attention: Director of Contract Management
Phone: (512) 475-4700

7.3 Change of Designee

Either Party may change the above-referenced designees or address with five (5) days’ prior written notice to the other Party.

7.4 Notification of Problems

Successful Respondent shall provide to DIR written notice of any acts or omissions (whether by DIR, a Customer, Successful Respondent, or any third party), any failure to perform any of each such party's obligations under the CTSA or CSA and any other events that may affect Successful Respondent's performance of Successful Respondent's obligations under the CTSA. Successful Respondent shall provide such written notice promptly after Successful Respondent first knew or should have known of such acts, omissions, or Failures or other events. Such written notice shall describe in reasonable detail such acts, omissions, Failures, or other events and the manner in which the foregoing may affect Successful Respondent's performance.

7.5 Notification of Defaults

DIR and Successful Respondent shall promptly inform the other Party in writing of any breach of, misuse, or fraud in connection with any third party contract, Equipment lease, or third party materials license used in connection with the Services of which it becomes aware and shall cooperate with the other Party to prevent or stay any such breach, misuse, or fraud.

7.6 Notice of Adverse Impact

If Successful Respondent becomes aware of any failure of Successful Respondent to comply with its obligations under this Agreement or any other situation (a) that has impacted or reasonably could impact the maintenance of DIR's or any Customer's financial integrity or internal controls, the accuracy of DIR's or any Customer's financial, accounting or other records and reports, or compliance with DIR Rules, DIR policies or procedures or applicable laws, or (b) that has had or reasonably could have any other material adverse impact on the Services in question or the impacted operations of DIR or the Customers, then, Successful Respondent shall immediately inform DIR in writing of such situation and the impact or expected impact and Successful Respondent and DIR shall meet to formulate an action plan to minimize or eliminate the impact of such situation.

8 GENERAL TERMS AND CONDITIONS

8.1 Delegation of Authority

Whenever, by any provision of this CTSA, any right, power, or duty is imposed or conferred on DIR, the right, power, or duty so imposed or conferred is possessed and exercised by the DIR Executive Director unless any such right, power, or duty is specifically delegated to the duly appointed agents or employees of DIR. The DIR Executive Director will reduce any such delegation of authority to writing and provide a copy to Successful Respondent on request.

8.2 No Waiver of Sovereign Immunity

The Parties expressly agree that no provision of this CTSA shall be construed as or constitute a waiver by DIR or the State of any immunities from suit or from liability that DIR or the State have by operation of law.

8.3 Force Majeure

8.3.1 General

No Party shall be liable for any default or delay in the performance of its obligations under this CTSA if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, epidemics, cable cuts and power outages caused by third parties not under Successful Respondent's direction or control, or any other similar cause beyond the reasonable control of such Party except to the extent that the non-performing Party is at fault in failing to prevent or causing such default or delay, and provided that such default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans, or other means. A strike, lockout, or labor dispute involving Successful Respondent personnel shall not excuse Successful Respondent from its obligations hereunder.

8.3.2 Duration and Notification

In the event of a Force Majeure Event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so prevented, hindered, or delayed in its performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (to be confirmed in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the Force Majeure Event, the steps

being taken to address such Force Majeure Event, and the expected duration of such Force Majeure Event.

8.3.3 Substitute Services; Termination

- a) If any Force Majeure Event described above has substantially prevented, hindered, or delayed, or is reasonably expected to substantially prevent, hinder, or delay the performance by Successful Respondent of Services necessary for the performance of critical DIR or Customer functions for longer than twenty-four (24) hours, Successful Respondent shall, unless and until otherwise directed by DIR, use commercially reasonable efforts to procure such Services from an alternate source at Successful Respondent's expense for so long as the delay in performance shall continue, up to the Charges actually paid to Successful Respondent for the Services with respect to the period of nonperformance. If Successful Respondent is unable to procure such substitute Services on an expedited basis or DIR or Customer elects to contract directly for such Services, DIR or Customer may procure such Services from an alternate source at DIR's or Customer's expense.
- b) In addition, if any Force Majeure Event described above substantially prevents, hinders, or delays the performance by Successful Respondent of Services necessary for the performance of critical DIR or Customer functions: (i) for more than seven (7) days, then DIR or Customer may, upon notice to Successful Respondent, terminate all or any portion of the Services so affected (including portions that are no longer required if the impacted portion is terminated) as of the termination date specified in the notice; or (ii) for more than fifteen (15) days, then DIR may, upon notice to Successful Respondent, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. Successful Respondent shall not have the right to additional payments or increased charges as a result of any Force Majeure Event affecting Successful Respondent's ability to perform.

8.3.4 Payment Obligation

If Successful Respondent fails to provide Services in accordance with this CTSA due to the occurrence of a Force Majeure Event, all amounts payable to Successful Respondent hereunder shall be adjusted downward so that DIR or Customer is not required to pay any amounts for Services that DIR and/or any Customer are not receiving, whether from Successful Respondent or from an alternate source at Successful Respondent's expense pursuant to above.

8.3.5 Allocation of Resources

Without limiting Successful Respondent's obligations under this Agreement, whenever a Force Majeure Event causes Successful Respondent to allocate limited resources between or among Successful Respondent's customers and Affiliates, DIR and Customers shall receive at least the same treatment as comparable Successful Respondent customers.

8.4 Competitive Pricing

- a) Successful Respondent shall only charge Rates to DIR and Prices that are no higher in the aggregate than the charges charged by Successful Respondent directly to substantially similar retail third party customers for the provision of the same or substantially similar Services on substantially similar terms and conditions.
- b) No later than each Contract Anniversary Date, Successful Respondent shall certify to DIR, in writing, that it has been in full compliance with Section 8.4 a) above at all times during the prior twelve (12) month period. Any failure of Successful Respondent to comply with this certification requirement or any certification filed by Successful Respondent that is not true shall constitute a Material Breach. If Successful Respondent has breached Section 3.4 (a) above, then Successful

Respondent shall be obligated to award DIR and/or Customer, as appropriate, Credits on the next appropriate Invoice that are equal to the overcharges paid as a result of any such breach.

- c) DIR shall have the right, in its sole and absolute discretion, to conduct an audit of Successful Respondent's compliance with this Section 8.4 pursuant to the procedures set forth in CTSA, Section 13.6.

8.5 Publicity

- a) Except as provided in Subsection (b) below, Successful Respondent must not use the name of DIR, the State, or any other Customer, or refer to DIR or any such Customer(s) directly or indirectly in any media release, or public announcement, relating to this CTSA or its subject matter, including, in any promotional or marketing materials, customer lists, or business presentations (other than proposals or reports submitted to DIR, a Customer, an administrative agency of the State, or the federal government).
- b) Successful Respondent may publish, at its sole expense, any media release or public announcement, relating to this CTSA or its subject matter, including, in any promotional or marketing materials, customer lists, business presentations (other than proposals or reports submitted to DIR or a Customer, an administrative agency of the State, or a governmental agency or unit of another state or the federal government), or results of Successful Respondent performance under this CTSA with DIR's prior review and approval, which DIR may exercise at its sole and absolute discretion. Successful Respondent will provide DIR a copy of any such publication no less than five (5) Business Days prior to its intended public release unless otherwise agreed by the Parties. Successful Respondent will provide additional copies at the request of DIR. Approval of the annual Marketing Plan will constitute approval by DIR for Successful Respondent to publish all materials approved in connection with such Marketing Plan.

8.6 Assignment

8.6.1 Assignment by Successful Respondent

Successful Respondent will not assign all or any portion of its rights under or interests in this CTSA (including by operation of law) or delegate any of its duties without prior written consent of DIR, which consent may be withheld in DIR's sole discretion. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment by the Assignee, in a form acceptable to DIR in its sole and absolute discretion. Except where otherwise specifically agreed in writing by DIR, DIR's acceptance of any assignment or delegation does not release Successful Respondent from its obligations pursuant to this CTSA. The requirements of this Section 8.6.1 shall not apply in connection with Successful Respondent's assignment to (i) any Affiliate, or (ii) any person acquiring all or substantially all the assets of Successful Respondent or all or substantially all the assets of an Affiliate to which this CTSA, or any of the interests, rights, and obligations of Successful Respondent hereunder, previously has been assigned. DIR's consent to any assignment under this CTSA shall not constitute DIR's consent to further assignment.

8.6.2 Assignment by DIR

DIR may, without the approval of Successful Respondent, assign or transfer its rights or obligations under this CTSA, in whole or in part, to any other State agency as directed by the State Legislature or as otherwise required under law. Successful Respondent understands and agrees DIR may in one (1) or more transactions assign or transfer this CTSA. DIR will provide written notification of such assignment to Successful Respondent.

8.6.3 Amendment

Each Party agrees to cooperate to amend the CTSA as necessary to maintain an accurate record of the contracting Parties.

8.6.4 Assumption

Each Party to whom an assignment or transfer is made (an "Assignee") must assume all or any part of Successful Respondent's or DIR's interests in this CTSA, the Services, and any documents executed with respect to this CTSA, including, without limitation, its obligation for all or any portion of the payments due hereunder.

8.6.5 Impermissible Assignment

Any attempted assignment that does not comply with the terms of this section shall be null and void ab initio; provided, however, that if Successful Respondent assigns this CTSA in contravention of this section by operation of law, such assignment shall be voidable at the option of DIR.

8.7 RFO Errors and/or Omissions

Successful Respondent will not take advantage of or exploit any errors and/or omissions in the RFO or the resulting CTSA. Successful Respondent must promptly notify DIR of any such errors and/or omissions that are discovered.

8.8 Abandonment or Default

Abandon means to relinquish or renounce the CTSA for any reason other than for a Force Majeure Event. If the Successful Respondent abandons the CTSA, DIR reserves the right to cancel the CTSA without notice and either re-solicit and re-award the CTSA or take such further action or no action in the best interest of the State.

8.9 Time is of the Essence

In consideration of the need to ensure uninterrupted and continuous Services, the Parties agree that time is of the essence in the performance of this CTSA.

8.10 Place of Performance

Unless otherwise agreed to in writing, all Services performed by Successful Respondent, its Subcontractors, and agents under the CTSA must be performed in the contiguous United States.

8.11 Education Department General Administrative Regulations (EDGAR)

The Education Department of General Administrative Regulations (EDGAR) are the federal regulations that govern all federal grants awarded by the U.S. Department of Education on or after December 26, 2014. EDGAR encourages the use of cooperative agreements for procurement or use of common or share goods and services in order to foster greater economy and efficiency. DIR uses an open market competitive procurement process to award contracts as required by State law, including Texas Government Code Chapters 2054 and 2157. If Successful Respondent provides evidence of its EDGAR compliance to DIR's satisfaction, DIR may identify Successful Respondent as certifying that all or a portion of Successful Respondent's listings are EDGAR eligible, and DIR may then permit Successful Respondent to so identify all or part of its offerings on Successful Respondent's DIR website. In such

cases, upon request from eligible Customer(s), Successful Respondent must complete EDGAR certification affirmation forms to satisfy Customer requirement(s).

9 AMENDMENTS, MODIFICATIONS, AND PROCEDURES

9.1 General Amendments and Modifications

The Parties developed appropriate procedures for amending or modifying the CTSA in this Section 9. Except for the amendments subject to the below subsections, this CTSA may be amended by mutual written agreement. Amendments may be made for changes in law, circumstances affecting performance of the Services, or as otherwise agreed to by the Parties.

9.2 Amendments and Modifications Resulting from Changes in Law or Contract and as Mutually Agreed

Except for changes subject to Section 9.1 above, this CTSA may be amended by mutual written agreement of the Parties if changes in federal or State laws, rules, regulations, policies, guidelines, or circumstances affect the performance of the Services, provisions need to be added or amended within the CTSA, or as otherwise agreed to in writing by the Parties.

9.3 Required Compliance with Amendment and Modification Procedures

No different or additional Services will be authorized or performed except pursuant to amendment or modification of this CTSA that is executed in compliance with the CTSA. No waiver of any term, covenant, or condition of this CTSA will be valid unless executed by both Parties. Successful Respondent shall not be entitled to payment for any Services that are not authorized by this CTSA or a properly executed amendment or modification to the CTSA.

9.4 Modifications Resulting from Imposition of Remedies

This CTSA may be modified under the terms of CTSA Article 16 Remedies and Disputes.

9.5 Adjustments to *Exhibit B, Attachment B-1* Initiated by Either Party.

- a) The Successful Respondent may propose changes in the contents of **Exhibit B** for Services of this CTSA.
- b) The process for submitting, reviewing, and approving/disapproving and appealing proposed adjustments or recommendations for changes to any element contained in Exhibit B, or the Attachments, shall be in accordance with this section and Article 3 of Exhibit B to the CTSA. The Parties desire to develop and implement efficiency updates to the Electronic Administrative Update (EAU) fast-track system process for the continuous improvement of the Rates to DIR and Prices available to the Customers under the CTSA, and other non-substantive administrative updates, without reliance on a formal amendment process. An approved change to the contents of Attachments to Exhibit B, approved in accordance with this section and Article 3 of Exhibit B, shall be considered an approved amendment of the CTSA for all purposes.

9.6 Benchmarking

DIR reserves the right to benchmark pricing of Services offered by Successful Respondent throughout the Term of the Contract, and to request price reductions to Successful Respondent Services that benchmarking may show to be outside industry standard pricing. Successful Respondent agrees to work in good faith with DIR to bring pricing into alignment in the best interest of the State.

9.7 All Other Changes

All other modifications to the CTSA must be accomplished through a formal written amendment executed by an authorized representative of DIR and Successful Respondent. DIR reserves the right to require periodic updates of the CTSA hereto, to maintain alignment with new and changed legislation, legal requirements, rules, and regulatory requirements relevant to the performance by Successful Respondent of this CTSA.

9.8 Mutual Covenant of Cooperation

For all such CTSA amendments, the Parties covenant to cooperate in the good faith and timely negotiation of such matters and to proceed to execution of necessary instruments without delay.

10 AVAILABILITY OF APPROPRIATED FUNDS AND STATUTORY AUTHORITY

- a) This CTSA is expressly conditioned on the availability of State and local government appropriated funds. Successful Respondent will have no right of action against DIR in the event that DIR is unable to perform its obligations under this CTSA as a result of the suspension, termination, withdrawal, or failure of funding to DIR or lack of sufficient funding of DIR, or, by extension, failure or lack of funding from Customers, including non-appropriation or exercise of emergency budget execution authority for any Services, activities, or functions contained within the scope of this CTSA. DIR will negotiate in good faith with Successful Respondent to resolve any Successful Respondent claims for payment for Accepted Services that are pending at the time funds become unavailable. DIR will make reasonable efforts to provide written advance notice to Successful Respondent upon learning that funding for this CTSA may be changed or discontinued as set forth above.
- b) If DIR, any Customer(s), and/or the subject matter of this CTSA become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would (1) render the continued provision of the Services impossible or unnecessary, (2) render this CTSA invalid, illegal, or otherwise unenforceable, (3) substantially decrease the amount and types of the Services, or (4) terminate the appropriations for this CTSA, then DIR may, upon notice to Successful Respondent, terminate this Agreement, in whole or in part, as of the termination date specified in the notice.

11 GOVERNING LAW AND REGULATIONS

11.1 Governing Law and Venue

This CTSA and the rights and obligations of the Parties under this CTSA is governed by and construed in accordance with the laws of the State of Texas without regard to conflict of laws principles. Provided Successful Respondent first complies with the procedures set forth in Section 16.11 Dispute Resolution,

proper venue for a claim arising from this CTSA will be in a State court in Travis County, Texas. Nothing in this CTSA shall be construed to waive the State's sovereign immunity.

11.2 Successful Respondent Responsibility for Compliance with Laws and Regulations

- a) Successful Respondent represents, warrants, and covenants that, with respect to the provision of the Services and the performance of any of Successful Respondent's other legal and contractual obligations hereunder, Successful Respondent is and shall be in compliance in all material respects with all applicable laws and shall remain in compliance with such laws during the Term, including, but not limited to, all State and federal telecommunications laws, tax laws, State and federal employment and immigration laws, State and federal regulatory requirements, licensing provisions, and identifying and procuring applicable permits, certificates, approvals, and inspections required under such laws.
- b) Successful Respondent is responsible for ensuring each of its Successful Respondent Personnel who are involved in the provision of Services under this CTSA are legally eligible to work in the State and the United States, properly licensed, certified, and/or have proper permits to perform any activity related to the Services.
- c) If any charge of non-compliance by Successful Respondent with any such laws occurs or Successful Respondent is aware that it is not in compliance with such laws that could have a material adverse impact on the performance, receipt, or use of the Services, Successful Respondent shall promptly notify DIR of such charge or non-compliance, as applicable. Successful Respondent warrants that the Services comply with all applicable federal, State, county, and municipal laws, regulations, codes, ordinances, guidelines, and policies. Successful Respondent will indemnify DIR and any Customer from and against any losses, liability, claims, damages, penalties, costs, fees, or expenses arising from or in connection with Successful Respondent's (including Successful Respondent Personnel, third party providers, or Subcontractors) failure to comply with or violation of any federal, State, county, and/or municipal law, regulation, code, ordinance, or policy.
- d) At no additional charge, Successful Respondent shall provide DIR with data and reports in Successful Respondent's possession as reasonably necessary for DIR to comply with all laws applicable to the Services (including the Equipment, materials, and other resources it provides or has assumed operational responsibility hereunder).
- e) Successful Respondent represents, warrants, and covenants that the materials, Equipment, and systems owned, developed, implemented, provided, or used by Successful Respondent in providing the Services are in compliance with all applicable laws and shall remain in compliance with such laws during the Term.
- f) In the event of any changes in laws (including laws other than applicable to the provision of the Services and the performance of any of Successful Respondent's other legal and contractual obligations hereunder), Successful Respondent shall implement any necessary modifications to the Services, materials, Equipment, and systems prior to the deadline imposed by the regulatory or governmental body having jurisdiction for such requirement or change. Successful Respondent shall bear the costs associated with compliance with laws.

11.3 Compliance with Immigration Laws

Successful Respondent shall comply with the requirements related to federal immigration laws and regulations, including but not 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) hired on or after the effective date of the IIRIRA, who will perform any labor or services under this CTSA. Nothing herein is intended to exclude compliance by Successful Respondent with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

11.4 Equal Opportunity Compliance

Successful Respondent represents, warrants, and covenants that it shall abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal or State laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Successful Respondent agrees that no person in the United States will, on the grounds of race, color, religion, national origin, sex, age, veteran status, or disability, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any Services or activity performed by Successful Respondent under this CTSA. If Successful Respondent is found by DIR, in its sole and absolute discretion, any regulator with jurisdiction over Successful Respondent's Services, or a court of competent jurisdiction to not be in compliance with these requirements during the Term of this CTSA, Successful Respondent agrees to take appropriate steps to correct these deficiencies. Upon request, Successful Respondent will furnish to DIR information regarding its non-discriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

11.5 Historically Underutilized Business (HUB) Program

Successful Respondent shall comply with Chapter 2161, Texas Government Code, in the provision of Services under this CTSA. Successful Respondent's HUB Subcontracting Plan is incorporated into the CTSA. Successful Respondent shall comply with DIR's then-current Policy on Utilization of Historically Underutilized Businesses for reporting HUB subcontractor participation in the CTSA and for changing the HUB Subcontracting Plan throughout the Term.

12 PERFORMANCE MEASUREMENT

Successful Respondent performance of this CTSA will be measured by:

- a) Adherence to this CTSA, including all representations, warranties, certifications, and covenants;
- b) Delivery of the Services in accordance with the Service Level Agreements agreed to in Exhibit C Performance Management;
- c) Results of audits performed by DIR or its representatives in accordance with Article 13;
- d) Timeliness, completeness, and accuracy of required reports agreed to in this CTSA and as stated in the Master Vendor Reporting Guide; and
- e) Achievement of other performance measures developed and agreed to by Successful Respondent and DIR and as modified from time to time by written agreement.

13 AUDIT AND FINANCIAL COMPLIANCE

13.1 CTSA Record Retention and Audit

Successful Respondent agrees, and shall cause its agents and its Subcontractors to agree, to maintain complete and accurate records of, and supporting documentation for, all charges, transactions, authorizations, changes, implementations, reports, filings, returns, analyses, procedures, controls, records, data or information created, generates, collected, processed, or stored by Successful Respondent in the performance of its obligations this CTSA or any CSA, and are sufficient to ensure the accuracy and validity of Monthly Consolidated Invoices to DIR and direct billing to Customers for certain Direct Sales Transaction Services (collectively “CTSA Records”). Successful Respondent agrees, and shall cause its agents and Subcontractors to agree, to maintain and retain CTSA Records, including all original forms, records, and associated documentation, for a period of seven (7) years after the date of submission of the final billing or until the resolution of all litigation, claims, financial management reviews, or audits pertaining to this CTSA, whichever is longer.

13.2 Access to Records, Books, and Documents

- a) Upon notice by DIR, Successful Respondent must provide, and cause its agents and its Subcontractors to provide, the officials and/or entities identified in this Section 13.2 with prompt, reasonable, and adequate access to any requested CTSA Records.
- b) Successful Respondent and its agents and its Subcontractors must provide the access described in this Section 13.2 upon DIR’s request. This request may be for, but is not limited to, the following purposes:
 - 1) Examination;
 - 2) Audit;
 - 3) Investigation;
 - 4) CTSA administration;
 - 5) Compliance with the Texas Public Information Act; or
 - 6) The making of copies, excerpts, or transcripts.
- c) The access required must be provided to the following officials and/or entities:
 - 1) Any Independent Verification and Validation contractor or quality assurance contractor, when acting on behalf of DIR;
 - 2) The Office of the State Auditor, the CPA Claims Division, or their designee;
 - 3) A State or federal agency;
 - 4) A special or general investigating committee of the Texas Legislature or its designee; and
 - 5) Any auditor or other entity identified by DIR.
- d) Successful Respondent agrees, and will require its agents and its Subcontractors to agree, to provide the access described wherever Successful Respondent maintains such books, records, and supporting documentation. Successful Respondent further agrees, and will require its agents and its Subcontractors to agree, to provide such access in reasonable comfort and to provide any furnishings, Equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this Section 13.2.

13.3 Audits by Governmental Authorities

Acceptance of funds under the CTSA by Successful Respondent acts as acceptance of the authority of the State Auditor's Office, the CPA Claims Division, and any successor governmental authorities, to conduct audits and investigations in connection with those funds. The State Auditor's Office and the CPA Claims Division shall at any time have access to and rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Successful Respondent relating to this CTSA, notwithstanding any other provision of this CTSA. Successful Respondent, and its agents and its Subcontractors, agree to cooperate fully with and provide all assistance requested by the State Auditor's Office or the CPA Claims Division or its successor in the conduct of such audits or investigations, including providing all records requested. In addition to and without limitation on the other audit provisions of this CTSA, pursuant to Section 2262.154, Texas Government Code, the State Auditor's Office may conduct an audit or investigation of Successful Respondent or any other entity or person receiving funds from the State directly through this CTSA or indirectly through a subcontract under this CTSA. The acceptance of funds by Successful Respondent or any other entity or person directly under this Agreement or indirectly through a subcontract under this CTSA acts as acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. This CTSA may be unilaterally amended by DIR upon notice to Successful Respondent to bring this CTSA into compliance with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Section 2262.154, Texas Government Code. Successful Respondent will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Successful Respondent and the requirement to cooperate is included in any subcontract it awards pertaining to the CTSA. Under the direction of the Legislative Audit Committee, a Successful Respondent that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

13.4 Audits of Services, Deliverables, and Inspections

- a) Upon notice from DIR, Successful Respondent will provide, and will cause its agents and its Subcontractors to provide, such auditors and inspectors as DIR may from time to time designate, with access to:
 - 1) Successful Respondent, agent, and Subcontractor Service locations, facilities, or installations; and
 - 2) Successful Respondent, agent, and Subcontractor Software and Equipment.
- b) Successful Respondent must provide, and shall cause its agents and its Subcontractors to provide, as part of the Services, any assistance that such auditors and inspectors may require to complete such audits or inspections.

13.5 Response/Compliance with Audit or Inspection Findings

- a) If an audit by a governmental body, standards organization, or regulatory authority having jurisdiction over DIR, a Customer, or Successful Respondent results in a finding that Successful Respondent is not in compliance with any applicable law or standard, including any generally accepted accounting principle or other audit requirement relating to the performance of its obligations under this CTSA, Successful Respondent shall, if and to the extent such audit deficiency or finding of non-compliance results from Successful Respondent's failure to comply with its obligations under this CTSA, at its own expense and within the time period specified by

such auditor, address and resolve the deficiency(ies) identified by such audit governmental body, standards organization, or regulatory authority, in the manner approved by DIR, to the extent necessary to comply with Successful Respondent's obligations under this CTSA.

- b) Successful Respondent must take action to ensure its employees', agents', or Subcontractors' compliance with or correction of any finding of non-compliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services or any other Deficiency contained in any audit, review, or inspection conducted under this Article 13. This action will include Successful Respondent's delivery to DIR, for DIR's approval, a Corrective Action Plan in accordance with Section 17.2 that addresses deficiencies identified in any audit(s), review(s), or inspection(s) within ten (10) days of the close of the audit(s), review(s), or inspection(s).
- c) As part of the Services, Successful Respondent must disclose to DIR, upon DIR's request, and will include in its Subcontracts a requirement that each of its Subcontractors will disclose upon request, a copy of those portions of its internal audit reports relating to the Services. If Successful Respondent determines as a result of its own internal audit that it has overcharged DIR or Customer, then Successful Respondent shall promptly pay to DIR or Customer the amount of such overcharge, together with interest at the rate specified by the CPA in accordance with Section 2251.025(b), Texas Government Code, from the date of receipt by Successful Respondent of the overcharged amount until the date of payment to DIR or Customer. In the event such an audit results in a determination that Successful Respondent has undercharged DIR or Customer, then, subject to DIR's right to dispute the amount of such undercharge, Successful Respondent shall promptly report such undercharge to DIR and may invoice DIR for such undercharged amounts.

13.6 Audit of Telecommunications Fees and Surcharges, Rates to DIR, Prices, and Assessments Conducted Pursuant to Section 13.3 of the CTSA

- a) Successful Respondent will provide, and will cause its agents and its Subcontractors to provide, to DIR and its designees access to such financial records and supporting documentation requested by DIR to audit telecommunications fees and surcharges, Rates to DIR, Prices, and any assessment conducted pursuant to Section 13.3 of the CTSA. Successful Respondent's obligations hereunder with respect to its Subcontractors shall be fulfilled by complying with the Subcontractor Compliance Obligations.
- b) In addition to its monthly review and payment of Monthly Consolidated Invoices under the CTSA, DIR may audit the applicable telecommunications fees and surcharges, Rates to DIR, Prices, and any assessments conducted under Section 13.3 of the CTSA to determine that such telecommunications fees and surcharges, Rates to DIR, Prices to Direct Sales Transaction Service Customers, and any assessments conducted pursuant to Section 13.3 of the CTSA are accurate and in accordance with this CTSA.
- c) If, as a result of such audit, DIR determines that Successful Respondent has overcharged the State, DIR will notify Successful Respondent in writing of the amount of such overcharge, and provide to the Successful Respondent the work papers supporting such position. Successful Respondent will promptly pay to DIR the undisputed amount of the overcharge, plus interest as calculated in accordance with Chapter 2251, Texas Government Code, for late payments, and the Parties will use good faith efforts to resolve any disputed amounts as soon as practicable. In the event such audit reveals an overcharge of five percent (5%) or more to DIR which is not disputed and is in excess of five percent (5%) of the total invoiced amounts for such period, Successful Respondent will reimburse DIR for the reasonable cost of this audit.

14 TERMS AND CONDITIONS OF SUCCESSFUL RESPONDENT BILLING AND DIR AND CUSTOMER PAYMENT

14.1 Monthly Consolidated Invoice to DIR

The Successful Respondent shall provide DIR with a Monthly Consolidated Invoice for all Services whereby DIR acts as the Successful Respondent's billing agent provided by the Successful Respondent, 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 Appendix B, the Master Vendor Reporting Guide and Exhibit D, Billing Plan.

14.2 Invoices for Direct Sales Transaction to Customers

The Successful Respondent shall provide to each Direct Sales Transaction Service Customer a monthly Invoice for the Direct Sales Transaction Service Services provided to such Customer, in electronic format, at the Prices (Rates to DIR plus Administrative Fee) and with any applicable telecommunications fees and surcharges as allowed by this CTSA.

14.3 Limitations on the Right to Bill

The Successful Respondent shall not bill for any Services prior to the Service Order Completion Notice (SOCN) date for new Orders, and for disconnect Orders, the billing end date shall equal the disconnect date on a SOCN.

14.4 Telecommunications Fees, Surcharges, and Taxes

- a) All applicable Federal Communication Commission (FCC), Texas Public Utilities Commission (PUC), or other authorized telecommunications fees and surcharges in effect as of the date of this CTSA which may appear on billings to Customers are disclosed in the appropriate section per Service in Exhibit B to the CTSA. Any additional FCC, PUC, or other authorized telecommunications fees or surcharges applicable to any Service may only be imposed during the Term, upon a written amendment of the CTSA to authorize such imposition under the CTSA. Successful Respondent acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Successful Respondent agrees to not bill for any items which are not permitted by the FCC, PUC, or other proper authority and which are otherwise not applicable to the Services and for which Successful Respondent has requested and received valid exemption certificates from Customers. Successful Respondent agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Successful Respondent acknowledges that DIR makes no representation about the exemption status of any Customers. Successful Respondent must request and receive any exemption certificates that may apply from each assistance organization directly.
- b) During the Term, all changes in the law or fee structures, which creates or authorizes Successful Respondent to impose an unlisted telecommunications fee or surcharge on the Services, which Successful Respondent desires to impose, shall require an amendment in order to be effective

against the State, DIR, and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR, and/or Customers, Successful Respondent shall give effect to the exemption without the necessity of an amendment hereto.

- c) Successful Respondent acknowledges that certain Government Entity Customers are exempt from State sales, use, and excise taxes, Section 151.309, Texas Tax Code, and federal excise tax, 26 USC Sections 4253 (i) and (j). Successful Respondent further acknowledges that State agency Customers are exempt from the assessment and collection of sales taxes imposed by political subdivisions of the State, in accordance with Sections 321.208 (municipalities) and 323.207 (counties), Texas Tax Code. The Government Entity Customers shall issue a tax exemption certificate upon request to Successful Respondent. Successful Respondent acknowledges that DIR makes no representation about the exemption status of any Customers. Successful Respondent must request and receive any exemption certificates that may apply from each assistance organizations directly.

14.5 No Rights of Set-off

There is no general right of set-off for Successful Respondent against amounts owed to DIR under this CTSA. To collect Credits under Article 17, Remedies and Disputes, DIR may set-off the amount of assessed Credits from amounts otherwise owed to Successful Respondent in accordance with the terms of Section 17.10. There is no general right of set-off for Successful Respondent against amounts owed by a Customer under any CSA.

14.6 Expenses

Except as provided in this CTSA with respect to Rates to DIR, Prices, and authorized telecommunications fees and surcharges, all other expenses incurred by Successful Respondent in connection with its provision of the Services (including management; travel and lodging; document reproduction and shipping; Equipment, Software required by Successful Respondent Personnel; and long-distance telephone) will not be paid by DIR or Customer unless agreed upon by DIR or Customer in writing. Successful Respondent hereby waives any and all claims for additional compensation related to the Services except as set forth in Exhibit B hereto.

14.7 Dispute Handling and Adjustments

- a) A Billing Inquiry is any question or issue about a Monthly Consolidated Invoice that may lead to a Billing Dispute. It is DIR's responsibility to validate Successful Respondent Monthly Consolidated Invoices each month. During that process, Billing Inquiries will arise, and the Successful Respondent shall timely answer or respond to billing inquiries. The Successful Respondent shall respond within one (1) Business Day of receipt of the Billing Inquiry.
- b) DIR may withhold any amount of any Invoice in dispute as provided in and in accordance with Chapter 2251, Texas Government Code. DIR shall comply with Chapter 2251, Texas Government Code, with respect to timely notice of such disputed amounts.
- c) For Invoice amounts that have been paid by DIR that become the subject of a Billing Dispute, in addition to any amounts that Successful Respondent may subsequently credit to DIR arising from resolution of such dispute, Successful Respondent shall include interest on the reimbursed amounts accrued monthly at the rate specified by the CPA in accordance with Section 2251.025(b), Texas Government Code, calculated from the ninetieth (90th) day following the date of DIR's Billing Dispute.

- d) DIR and Customer have the right to file a Billing Dispute. The Successful Respondent shall promptly resolve Billing Disputes that involve amounts less than or equal to \$15,000 no later than sixty (60) calendar days from the date DIR or Customer notifies Successful Respondent of the Billing Dispute and, for Billing Disputes that involve amounts greater than \$15,000, no later than ninety (90) calendar days from the date DIR or Customer notifies Successful Respondent of the Billing Dispute. This time frame starts with the notification of the Billing Dispute by DIR and ends with the satisfactory resolution of the Billing Dispute. Billing Disputes not resolved within one-hundred twenty (120) days of submission of the Billing Dispute will automatically resolve in favor of DIR or Customer. Successful Respondent shall issue Adjustment(s) within thirty (30) calendar days of resolution. DIR may require a revised Monthly Consolidated Invoice that does not contain the disputed item(s). Successful Respondent shall allow non-payment by DIR for the disputed amount until there is a dispute resolution, as allowed by Chapter 2251, Texas Government Code.
- e) Direct Sales Transaction Service Customers shall have the same rights as DIR under Section 14.7, Subsection (a) and (b) above, for the Invoices they receive for Direct Sales Transaction Services.
- f) If DIR or a Direct Sales Transaction Service Customer disputes payment of all or any portion of an Invoice from the Successful Respondent, DIR or the Direct Sales Transaction Service Customer, respectively, will notify Successful Respondent of such Billing Dispute and the Parties, either DIR and Successful Respondent or the Direct Sales Transaction Service Customer and Successful Respondent, as appropriate, will attempt in good faith to resolve the Billing Dispute in conformance with Chapter 2251, Texas Government Code. DIR and the Direct Sales Transaction Service Customer will not be required to pay any disputed portion of a Successful Respondent Invoice. Notwithstanding any such Billing Dispute, the Successful Respondent must continue to perform the Services in compliance with the terms of this CTSA pending resolution of Billing Disputes so long as all undisputed amounts continue to be paid to Successful Respondent.

14.8 Billing Adjustments

- a) A billing Adjustment is a modification or correction of a billing amount of an element of a Service or a Service Level Agreement (SLA) Credit. Billing Adjustments may be made on both recurring and non-recurring charges, and are used to settle Disputes and financial discrepancies.
- b) Successful Respondent shall include in its Monthly Consolidated Invoice to DIR or its Invoices to Direct Sales Transaction Service Customers, the following minimum items as billing Adjustments:
 - 1) Correction of a billing error and any related interest discovered by Successful Respondent, DIR, or the Direct Sales Transaction Service Customer, as appropriate;
 - 2) Back-billing, as discussed below;
 - 3) SLA Credits; and
 - 4) Any other elements Successful Respondent considers Adjustments as set forth in its Billing Plan, Exhibit D hereto.
- c) The Successful Respondent shall resolve all Billing Disputes by any one of the three following approaches:
 - 1) Issue a proposed dispute resolution for the full amount;
 - 2) Provide evidence acceptable to DIR or the Direct Sales Transaction Service Customer, as appropriate that the disputed amount will be reduced; or

- 3) Provide evidence acceptable to DIR or the Direct Sales Transaction Service Customer, as appropriate, that the Billing Dispute is not valid.
- d) For all Billing Disputes, Successful Respondent shall receive agreement or denial from DIR or the Direct Sales Transaction Service Customer, in their sole and absolute discretion, as appropriate, on the proposed resolution before issuing a billing Adjustment.

14.9 Back-billing and POP Moves

- a) Rates to DIR or Prices for Services inadvertently left off previous Monthly Consolidated Invoices or direct Invoices by the Successful Respondent shall be back-billed no more than ninety (90) calendar days for usage and one-hundred twenty (120) calendar days for circuits (however, in no case may the back-billing include a time period prior to the delivery of the SOCN). Pursuant to PUC Rule, 16 Texas Administrative Code 26.27, a six (6) month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments.
- b) Successful Respondent Initiated POP location moves shall not adversely affect the existing Rates to DIR and/or Prices to Direct Sales Transaction Service Customers for a Service.

14.10 Liability for Taxes, Insurance, and Indemnification

- a) SUCCESSFUL RESPONDENT AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CTSA, SUCCESSFUL RESPONDENT WILL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF SUCCESSFUL RESPONDENT PERSONNEL'S TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CTSA. SUCCESSFUL RESPONDENT AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. SUCCESSFUL RESPONDENT AGREES AND ACKNOWLEDGES THAT SUCCESSFUL RESPONDENT'S PERSONNEL WILL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. DIR AND/OR THE STATE WILL NOT BE LIABLE TO THE SUCCESSFUL RESPONDENT, SUCCESSFUL RESPONDENT PERSONNEL, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
- b) SUCCESSFUL RESPONDENT AGREES TO INDEMNIFY AND HOLD HARMLESS DIR, ALL CUSTOMERS, THE STATE, AND/OR EACH OF THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE, AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY SUCCESSFUL RESPONDENT OR SUCCESSFUL RESPONDENT PERSONNEL IN THEIR PERFORMANCE UNDER THIS CTSA. SUCCESSFUL RESPONDENT WILL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES AND OUT OF POCKET EXPENSES. THE DEFENSE WILL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

- c) NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, THE PARTIES AGREE THAT TO THE EXTENT THE FOREGOING PROVISIONS IMPOSE OBLIGATIONS WITH RESPECT TO SUBCONTRACTORS UPON SUCCESSFUL RESPONDENT, SUCCESSFUL RESPONDENT'S OBLIGATIONS WILL BE MET BY FULFILLMENT OF THE SUBCONTRACTOR COMPLIANCE OBLIGATIONS. AFTER COMPLIANCE WITH THE SAME, SUCCESSFUL RESPONDENT SHALL HAVE NO LIABILITY TO ANYONE UNDER THIS PROVISION WITH RESPECT TO ITS SUBCONTRACTORS.

14.11 Independent Contractor Status

Successful Respondent, in furnishing Services hereunder, is acting as an independent contractor, and Successful Respondent has the sole obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed, all work to be performed by Successful Respondent under this CTSA. The relationship of the Parties under this CTSA shall not constitute a partnership or joint venture for any purpose. Successful Respondent is not an agent of DIR or the Customers and has no right, power, or authority, expressly or impliedly, to represent or bind DIR or any Customer as to any matters.

14.12 No Additional Consideration

Successful Respondent, its agents, its Subcontractors, and Successful Respondent Personnel will not be entitled to nor receive from DIR any additional consideration, compensation, salary, wages, or any other type of remuneration for Services rendered under this CTSA, except as set forth in Exhibit B. Specifically, Successful Respondent will not be entitled by virtue of this CTSA to any consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever. In addition, all costs associated with transportation, delivery, and insurance relating to the Successful Respondent's, agents', Subcontractors', or Successful Respondent Personnel's performance of this CTSA will be paid for by the Successful Respondent.

14.13 Prompt Payment Act

When payments by DIR or Customers are necessary under this CTSA, or a CSA, payment by Government Entities will be made in accordance with the Texas Prompt Payment law, Chapter 2251, Texas Government Code. Non-governmental entities shall follow Chapter 2251, Texas Government Code, in making payments due hereunder.

14.14 Payments for Services

During the term of this CTSA, Successful Respondent will receive funds in consideration for the Services, calculated in accordance with Exhibit B. Payment for Disentanglement Services will be in accordance with a written agreement between the Parties.

14.15 DIR Administrative Fee and Direct Sales Transaction Services Reporting

14.15.1 DIR Administrative Fee

DIR's TEX-AN 2021 Program is a cost recovery program. The Successful Respondent shall pay an Administrative Fee to DIR to defray the DIR costs of operating and administering the TEX-AN 2021 Program.

- a) DIR, in its discretion with DIR Board approval, formulates the Administrative Fee per Service designed to fulfill its program needs, as authorized in Chapter 2170, Texas Government Code. Such Administrative Fee may change over time, and DIR may change the amount of the Administrative Fee upon thirty (30) calendar days written notice to Successful Respondent without the need for a formal CTSA amendment.
- b) With the exception of Direct Sales Transaction Services, DIR shall bill for such Administrative Fee and collect same from the Customers.
- c) Successful Respondent shall include the applicable Direct Sales Transaction Service Administrative Fee, as a component of its Price, in its bills to the Direct Sales Transaction Service Customers and shall remit the Administrative Fee to DIR on a monthly basis. See Section 14.15.2(b), Reporting of Direct Sales Transactions and Payment of Administrative Fees, below.
- d) Successful Respondent consents to DIR retaining the Administrative Fee portion of receipts received from Direct Sales Transaction Service Customers and consents to receiving the net proceeds as payment in full for its non-Direct Sales Transaction Service sold hereunder. Such payment shall be made as long as the net amount received by Successful Respondent is equal to the undisputed billed amount.

14.15.2 Direct Sales Transaction Service Reporting

- a) Successful Respondent shall be responsible for reporting all Direct Sales Transaction Services purchased under the CTSA. Successful Respondent shall file the monthly reports and Subcontract reports in accordance with the due dates specified in this Section 14.15.
- b) Successful Respondent 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 are due on the fifteenth (15th) calendar day of the month following the month of the sale. If the fifteenth (15th) calendar day falls on a weekend or 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 estimated Administrative Fee for the reporting period, Subcontractor name, the electronic product environmental assessment Tool (EPEAT) designation (if applicable), configuration (if applicable), CTSA discount percentage, actual discount percentage, negotiated CTSA price (if fixed price is offered instead of discount off of MSRP), and other information as required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Successful Respondent for correction in accordance with this section. Successful Respondent shall report in a manner required by DIR which is subject to change dependent upon DIR's business needs. Failure to do so may result in CTSA termination.
- c) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this Section, including but not limited to, audits and investigations in accordance with terms and conditions of Article 13.
- d) DIR will review monthly vendor sales reports (VSR), close the sales period, and notify the Successful Respondent of the Administrative Fee due to DIR. The monthly VSR is due the fifteenth (15th) of the month following the reporting month, or the next business day if the 15th falls on a weekend or State holiday. DIR will send notification of the final Administrative Fee and any late fees by the fourteenth (14th) calendar day in the second month following the reporting month. Successful Respondent shall pay the total fee by the twenty-fifth (25th) calendar day in the second month following the reporting month. For example, vendor sales reports for

invoiced sales during the month of January is due by February 15. DIR reviews and closes January sales reports and notifies Successful Respondent of final Administrative Fees by March 14th and Successful Respondent must submit payment by March 25th.

- e) Successful Respondent shall reference the DIR Contract number, reporting period, and Administrative Fee amount on any remittance instruments.
- f) Successful Respondent shall correct any inaccurate reports or Administrative Fee payments and deliver such corrected reports and Administrative Fee payments within three (3) Business Days upon written notification by DIR. If Successful Respondent is unable to correct inaccurate reports or Administrative Fee payments within three (3) Business Days or delivers late reports or Administrative Fee payments, Successful Respondent must contact DIR and provide a Corrective Action Plan, including the timeline for completion of fee payments correction. The Corrective Action Plan shall be subject to DIR approval and discretion.
- g) Should Successful Respondent fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the Corrective Action Plan timeline, DIR reserves the right to require an independent third party audit of the Successful Respondent's records as specified in CTSA Section 13.5, at Successful Respondent's expense.

15 DISCLOSURE AND CONFIDENTIALITY OF INFORMATION

15.1 Confidentiality

- a) Confidential Information.
 - 1) Successful Respondent and DIR each acknowledge that the other possesses and shall continue to possess information that has been developed or received by it, has commercial, proprietary, or other value in its or its constituents' or customers' activities or operations, and is not generally available to the public, subject, however to the applicability of the Texas Public Information Act (Chapter 552, Texas Government Code) and other applicable law. Except as otherwise specifically agreed in writing by the Parties, "Confidential Information" means:
 - i. all information marked confidential, restricted, or proprietary by either Party and
 - ii. any other information that is treated as confidential by the disclosing Party and would reasonably be understood to be confidential, whether or not so marked.
 - 2) In the case of DIR and the Customers, Confidential Information also shall include developed materials, DIR or Customer Data, Customer information, attorney-client privileged materials, attorney work product, research information, information that contains trade secrets, human resources and personnel information, or other information or data obtained, received, transmitted, processed, stored, archived, or maintained by Successful Respondent under this CTSA. Successful Respondent's Confidential Information shall not include Confidential Information of DIR or Customers, and provided further, however characterization of information as Confidential Information of Successful Respondent shall not limit or restrict the rights of DIR or Customers to exercise their rights (including rights related to auditing and benchmarking) provided for under this CTSA.
 - 3) Successful Respondent shall cause its agents and Subcontractors to treat all information that is obtained through performance of the Services under this CTSA, including information relating to DIR and Customers as Confidential Information to the extent that

confidential treatment is provided under State and federal law, regulations, or administrative rules.

- b) Successful Respondent is responsible for understanding and causing its agents and Subcontractors to understand the degree to which information obtained through performance of this CTSA is confidential under State and federal law, regulations, or administrative rules.
- c) Successful Respondent shall not and shall cause its agents and Subcontractors to not use or access any information obtained through performance of this CTSA in any manner except as is necessary for the fulfillment of requested Services under this CTSA.
- d) Successful Respondent shall securely store DIR's and Customer's Confidential Information until such Confidential Information is returned or destroyed in accordance with this section. Successful Respondent must have systems in effect to protect all records and all other documents deemed Confidential Information that are maintained in connection with the Services. Any disclosure or transfer of Confidential Information by Successful Respondent, including information required by DIR, will be in accordance with applicable State and federal law, regulations, or administrative rules. If the Successful Respondent receives a request for information deemed to be Confidential Information, the Successful Respondent shall immediately notify DIR of such request, and shall make best efforts to protect such information from public disclosure.
- e) In addition to the requirements expressly stated in this Section 15.1, Successful Respondent must comply with any policy, rule, or requirement of DIR that relates to the safeguarding or disclosure of information relating to the TEX-AN 2021 Program recipients, Successful Respondent's operations, or Successful Respondent's performance of this CTSA.
- f) Within thirty (30) days of the expiration or termination of this CTSA for any reason, all Confidential Information of a Party, disclosed to another Party, including all copies made by the other Party, will be returned to the disclosing Party or, and to the extent authorized by applicable record retention laws and policies, at the disclosing Party's option, erased or destroyed. The recipient of the Confidential Information will provide the disclosing Party certificates evidencing such erasure or destruction. Notwithstanding anything in this CTSA to the contrary, the Successful Respondent may retain, for the duration of the seven (7) year audit period, safeguarded (and encrypted if Sensitive Personal Information as defined under the laws of the State is included) copies of the following records and Data it receives or prepares during or in connection with the TEX-AN 2021 Program and CTSA, to comply with the record keeping requirements of Section 13.1 and for archival and defense purposes:
 - 1) Supporting financial information and documents that are adequate to ensure CTSA compliance and are sufficient to ensure the accuracy and validity of Successful Respondent Invoices;
 - 2) Financial information, records and reports;
 - 3) Transaction logs;
 - 4) Successful Respondent's customer database data files;
 - 5) Successful Respondent human resources documentation;
 - 6) Audit reports;
 - 7) Operational reporting (e.g., security logs, security metrics reporting/audits, and relevant network reports/logs); and
 - 8) Data for the TEX-AN 2021 Program and CTSA and its applications, including maintenance log files, uptime log files, relevant network access log files, and other required analytics.
- g) With the exception of Confidential Information of Customers, Confidential Information of a Party will not be afforded the protection of this CTSA if such data:

- 1) is, at the time of disclosure, generally available to the public other than through a breach of the receiving Party's or a third party's confidentiality obligations;
 - 2) after disclosure, is published by the disclosing Party or otherwise becomes generally available to the public other than through a breach of the receiving Party's or a third party's confidentiality obligations;
 - 3) was lawfully in the possession of the receiving Party immediately prior to the time of disclosure to it;
 - 4) is received from a third party having a lawful right to disclose such information; or
 - 5) is independently developed by the receiving Party without reference to the disclosing Party's Confidential Information. The exclusions in this section shall not apply to sensitive or regulated Data such as personal health information and personal identifying information
- h) DIR will require its agents, Subcontractors, and Successful Respondent Personnel to comply with the terms of this Section 15.1 as it relates to Successful Respondent Confidential Information. Prior to disclosing Successful Respondent Confidential Information to other Contract Holders, DIR will obtain an executed confidentiality agreement in a form acceptable to Successful Respondent, whose consent to use will not be unreasonably withheld or delayed.

15.2 Disclosure or Loss of DIR's and Customers' Confidential Information

- a) Successful Respondent shall within seventy-two (72) hours report to DIR and the affected Customer any and all unauthorized disclosures, exposures, uses, or losses of DIR's and/or the Customer's Confidential Information, including Security Incidents, of which it or Successful Respondent Personnel is aware or has knowledge, including the Successful Respondent's reasonable belief that the Confidential Information may have been disclosed or exposed in an unauthorized manner. Successful Respondent acknowledges that any publication, exposure, loss, or disclosure of DIR's and/or Customer's Confidential Information may cause immediate and irreparable harm to DIR and /or the Customer and may constitute a violation of State or federal laws.
- b) In the event Successful Respondent discovers or is notified of a breach, apparent breach, exposure, loss, or inappropriate disclosure of Confidential Information, including Security Incidents, Successful Respondent shall, in addition to its other obligations in this CTSA, immediately once Successful Respondent knows or should have known such a breach, apparent breach, exposure, loss, or inappropriate disclosure has occurred:
 - 1) notify DIR of such breach, apparent breach, exposure, loss, or inappropriate disclosure;
 - 2) investigate (with DIR's participation if so desired by DIR) such breach, apparent breach, exposure, loss, or inappropriate disclosure and perform a risk assessment, root cause analysis, and Corrective Action Plan thereon;
 - 3) provide a written report to DIR of such risk assessment, root cause analysis, and Corrective Action Plan;
 - 4) remediate the effects of such breach, apparent breach, exposure, loss, or inappropriate disclosure as soon as practicable or coordinate such remediation if Successful Respondent does not have responsibility for the matters which are the source of the breach, apparent breach, exposure, loss or inappropriate disclosure; and
 - 5) provide DIR with reasonable assurances that such breach, apparent breach, exposure, loss, or inappropriate disclosure shall not recur.

- c) If Successful Respondent or Successful Respondent Personnel should publish, expose, lose, or disclose such Confidential Information without authorization, DIR and/or the affected Customer will immediately be entitled to seek injunctive relief or any other remedies to which it is, or they are, entitled under law or equity without requiring a cure period as described in Article 17. DIR and/or Customers will have the right to recover from Successful Respondent all damages and liabilities caused by or arising from Successful Respondent's, its agent(s) and/or its Subcontractors', failure to protect DIR's and Customers' Confidential Information, including but not limited to the cost of providing notice to affected individuals, the cost of providing thirty-six (36) months of credit-monitoring services, the cost of creating a call center to support affected individuals for thirty (30) days past notification, any related governmental fees or fines assessed against DIR or Customers, any damages assessed by a court of competent jurisdiction against DIR or Customer(s) related to such event, and any other losses related to such event. Successful Respondent will defend with counsel approved by DIR and/or the affected Customer, indemnify and hold harmless DIR and the affected Customer from all damages, costs, liabilities, and expenses as described above (including without limitation reasonable attorneys' fees and costs) caused by or arising from Successful Respondent Personnel's failure to protect DIR's and/or Customers' Confidential Information. Defense and settlement matters shall be coordinated by the Texas Office of the Attorney General for State agency Customers and by counsel of Customer's choice for non-State agency Customers.
- d) Successful Respondent will require its agent(s) and/or its Subcontractor(s), to comply with the terms of this Article 15.

15.3 Public Information

- a) Successful Respondent acknowledges that DIR and some of the Customers are subject to the Texas Public Information Act (Chapter 552, Texas Government Code). Notwithstanding the provisions of this article, Successful Respondent also acknowledges that DIR will comply with the Texas Public Information Act, and with all opinions of the Texas Office of the Attorney General concerning the Public Information Act. DIR agrees that it will promptly notify Successful Respondent of each request for disclosure of public information filed in accordance with the Texas Public Information Act that requests any of the Successful Respondent's Confidential Information, including data to which Successful Respondent has a proprietary or commercial interest. DIR will deliver all copies of such requests for public information to Successful Respondent in accordance with Chapter 552, Texas Government Code.
- b) With respect to any information that is subject to the Texas Public Information Act, Successful Respondent is solely responsible for demonstrating to the Texas Office of the Attorney General, the specific reasons why the requested information is confidential or otherwise exempted from required public disclosure under the Texas Public Information Act. Successful Respondent will provide DIR with copies of all such communications.
- c) Under the terms of the CTSA, DIR may provide Successful Respondent with information related to Customers and/or the TEX-AN 2021 Program. Successful Respondent will not re-sell or otherwise distribute or release any such information to any party in any manner without DIR's or the Customer's, as appropriate, express written consent (which consent shall be in their sole and absolute discretion), unless such disclosure is required by law or pursuant to Section 15.1(g) herein.

15.4 Unauthorized Acts

Each Party agrees to:

- a) Notify the other Party promptly of any unauthorized exposure, disclosure, possession, use, or knowledge, or any unauthorized attempt to possess, use, or gain knowledge, of any Confidential Information by any person or entity that may become known to it;
- b) Promptly furnish to the other Party full details of the unauthorized exposure, disclosure, possession, use, or knowledge, or any unauthorized attempt to possess, use or gain knowledge, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information. For DIR the reasonable efforts to assist Successful Respondent shall be subject to and limited by the Texas Public Information Act and any other applicable laws; and
- c) Cooperate with the other Party in any litigation and investigation against third parties deemed necessary by such Party to protect its proprietary rights. For DIR the reasonable efforts to assist the Successful Respondent shall be subject to and limited by the Texas Public Information Act and any other applicable laws.

15.5 Legal Action

Successful Respondent may not commence any legal action or proceeding in respect to any unauthorized possession, use, or knowledge, or any unauthorized attempt to possess, use, or gain knowledge, of Confidential Information by any person or entity, which action or proceeding identifies DIR and/or the Customers or their Confidential Information without consent from DIR and/or Customers, which consent shall be in their sole and absolute discretion.

16 LIABILITY

16.1 Property Damage

- a) Successful Respondent will protect DIR's and Customers' real and personal property from damage arising from Successful Respondent's, Successful Respondent Personnel's, and its Subcontractors' performance of this CTSA, and Successful Respondent will be responsible for any loss, destruction, or damage to DIR's and Customers' property that results from or is caused by Successful Respondent's, Successful Respondent Personnel's, or its Subcontractors' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of DIR and Customers, Successful Respondent will notify DIR and the applicable Customer promptly and, subject to direction from DIR and the applicable Customer, will take all steps to protect that property from further damage.
- b) Successful Respondent agrees to observe and require Successful Respondent Personnel and Subcontractors to observe no less than industry standard safety measures and proper operating procedures at DIR's and Customers' sites at all times and otherwise to comply with the procedures and safety standards imposed by DIR and Customers, whichever is the more rigorous standard.
- c) Successful Respondent will distribute a policy statement to all of Successful Respondent Personnel and Subcontractors that directs the Successful Respondent Personnel or Subcontractor to immediately report to DIR and the applicable Customer and Successful Respondent the

existence of any special defect or unsafe condition encountered while on DIR's or Customers' premises. Successful Respondent shall immediately report to DIR and the applicable Customer the existence of any special defect or an unsafe condition it encounters or otherwise learns about.

16.2 Risk of Loss

As applicable to any Equipment used in the performance of Services by Successful Respondent, during the period such Equipment is in possession of Successful Respondent, its carriers, or DIR or Customers, prior to being Accepted by DIR and/or the applicable Customer, Successful Respondent will insure and bear the risk of loss or damage thereto, unless such loss or damage is caused by the negligence or intentional misconduct of DIR or the applicable Customer.

16.3 Limitation of Liability

- a) For any claim or cause of action arising under or related to the CTSA, neither Party will be liable to the other Party for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages.
- b) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AMOUNT OF DIRECT DAMAGES RECOVERABLE FROM A PARTY UNDER THIS AGREEMENT (EXCLUDING SECURITY BREACHES) IS LIMITED TO SIX TIMES THE TOTAL AMOUNT PAID OR TO BE PAID BY DIR OR A DIR CUSTOMER FOR THE SERVICES PERFORMED UNDER THE RELEVANT SOW DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY, WHICHEVER THE CASE MAY BE.
- c) Items Not Considered as Damages. The following will not be considered damages subject to, and will not be counted toward the liability exclusion or cap specified herein:
 - 1) SLA Credits assessed against Successful Respondent pursuant to this CTSA.
 - 2) Amounts withheld by DIR in accordance with this CTSA due to incorrect charges or Services not provided.
 - 3) Amounts paid by DIR but subsequently recovered from Successful Respondent due to incorrect charges or services not provided.
 - 4) Successful Respondent Invoiced Rates to DIR, Prices, telecommunications fees and surcharges and other amounts that are due and owing to Successful Respondent for Services under this CTSA.
- d) Duty to Mitigate. Each Party shall use appropriate efforts to mitigate its damages to the extent within its reasonable control and consistent with the Parties' respective performance obligations under this Agreement; provided, however, this provision is not intended to expand or diminish a Party's rights or obligations under this Agreement, alter the plain meaning of the provisions contained herein, or limit a Party's rights to act in its own self-interest.

17 REMEDIES AND DISPUTES

17.1 Understanding and Expectations

DIR can choose any and all remedies including all others afforded by law at its own discretion.

17.2 Tailored Remedies

17.2.1 Understanding of the Parties

Successful Respondent agrees and understands that DIR may pursue tailored contractual remedies for noncompliance with this CTSA. At any time and at its sole and absolute discretion, except as agreed upon by the parties in Exhibit C, and as otherwise as expressly provided in this Article 17, DIR may impose or pursue one or more remedies for each item of noncompliance and will determine remedies on a case-by-case basis. DIR's pursuit or non-pursuit of a tailored remedy does not constitute a waiver of any other remedy that DIR may have at law or equity, including, but not limited to, the remedies set forth in Section 17.3 below. Except as agreed upon by the Parties in Exhibit C ("Performance Management") and as other-wise expressly provided in this Article 17, prior to imposing any remedies, DIR will provide notice to the Successful Respondent of the non-compliance, and such notice shall include a reasonable cure period as determined by the Parties in accordance with Section 17.2.2.2 5) (ii), or as specified elsewhere in this CTSA. In all instances under which DIR may pursue multiple remedies, DIR has the option, in its sole and absolute discretion, to collect either Credits or actual damages.

17.2.2 Notice and Opportunity to Cure for Deficiencies

- a) In the event that DIR reasonably determines that Successful Respondent has failed or is reasonably likely to fail to meet performance expectations, standards, SLAs, or schedules (a Deficiency), but that, in the determination of DIR, in its sole and absolute discretion, do not result in a Material Breach or delay in the delivery or operation of the Services, DIR shall notify Successful Respondent in writing. If Successful Respondent has determined that it has failed or is reasonably likely to fail to meet performance expectations, standards, SLAs, or schedules, Successful Respondent shall notify DIR.
- b) Upon notice or discovery, Successful Respondent will take immediate steps to mitigate any harmful effects of such Deficiency and promptly perform a root cause analysis. Successful Respondent will, within ten (10) calendar days (or another date approved in writing by DIR) of receipt of written notice of a Deficiency from DIR or delivery of such notification to DIR, provide DIR a written response that:
 - 1) Explains the reasons for the Deficiency, Successful Respondent's plan to address or cure the Deficiency, and the date and time by which the Deficiency will be cured; or
 - 2) If Successful Respondent disagrees with DIR's findings, its reasons for disagreeing with DIR's findings.
- c) Successful Respondent's proposed cure of a Deficiency is subject to the approval of DIR, in its sole and absolute discretion. Successful Respondent's repeated commission of Deficiencies or failure to resolve any Deficiencies may be regarded by DIR as a Material Breach and entitle DIR to pursue any other remedy provided in this CTSA or any other appropriate remedy DIR may have at law or equity. At any time, DIR may, in its own discretion and based on the passage of time and information discovered by DIR or provided by Successful Respondent, determine that a Deficiency is a Material Breach. In that instance, DIR will notify Successful Respondent in accordance with the below requirements.

17.2.2.1 Notice and Opportunity to Cure for Material Breach

- a) DIR will notify Successful Respondent in writing of specific areas of Successful Respondent performance that fail to meet performance expectations, standards, SLAs, or schedules, and that, in the determination of DIR, in its sole and absolute discretion, do constitute a Material Breach in the delivery or operation of the Services or a Material Breach of the CTSA.

Successful Respondent may also commit a Material Breach if it attempts or threatens to commit a Material Breach

- b) Upon notice or discovery of a Material Breach, Successful Respondent will take immediate steps to mitigate any harmful effects of such Material Breach and promptly perform a root cause analysis. Successful Respondent will, within ten (10) calendar days (or another date approved by DIR) of receipt of written notice of a Material Breach, provide DIR a detailed written Corrective Action Plan to correct or resolve a Material Breach of this CTSA.
- c) The Corrective Action Plan must provide:
 - 1) A detailed explanation of the reasons for the cited Material Breach as determined by the root cause analysis;
 - 2) A specific proposal to cure or resolve the Material Breach promptly and completely.
- d) The Corrective Action Plan is subject to approval or modification by DIR, in its sole and absolute discretion.
- e) DIR will notify Successful Respondent in writing of DIR's final disposition of the Corrective Action Plan. If DIR accepts Successful Respondent's proposed Corrective Action Plan, DIR may:
 - 1) Condition such approval on completion of tasks in the order or priority that DIR may prescribe;
 - 2) Disapprove portions of Successful Respondent's proposed Corrective Action Plan; or
 - 3) Require additional or different Corrective Action Plan(s).
- f) At any time during this process, DIR reserves the right, in its sole and absolute discretion, to:
 - 1) Suspend all, or part of, this CTSA; or
 - 2) Issue a written Stop Marketing Order which prohibits Successful Respondent or any of its agents, or Subcontractors, third party providers or from further marketing the Services during investigation of the alleged Material Breach and pending corrective action, if necessary, by Successful Respondent, or a decision by DIR to terminate the CTSA for Cause. DIR may delay the implementation of the Stop Marketing Order if it affects the completion of any of the Services in accordance with a Customer's approved schedule under a CSA.
- g) DIR's acceptance of a Corrective Action Plan under this Section 17.2 will not:
 - 1) Excuse Successful Respondent's prior Material Breach(es);
 - 2) Relieve Successful Respondent of its duty to comply with performance standards; or
 - 3) Prohibit DIR from assessing additional tailored remedies or pursuing other appropriate remedies for continued Deficiencies or Material Breaches.

17.2.2.2 Administrative Remedies

- a) At its sole and absolute discretion, DIR may impose one or more of the following remedies for each item of non-compliance, both Deficiencies and Material Breaches, and will determine the scope and severity of the remedy on a case-by-case basis:
 - 1) Assess Credits in accordance with the terms of this CTSA;
 - 2) Conduct accelerated monitoring of Successful Respondent including more frequent or more extensive monitoring by DIR or its agents;

- 3) Require additional, more detailed, marketing, and/or performance reports to be submitted by Successful Respondent;
 - 4) Decline to extend this CTSA; and/or
 - 5) Terminate this CTSA, in its entirety or in part, in accordance with Section 17.3, provided, however, that the right to terminate hereunder shall be limited to those instances where:
 - i. The non-compliance constitutes a Material Breach;
 - ii. DIR gives Successful Respondent written notice of such Material Breach and a thirty (30) calendar day cure period, or other greater cure period that DIR in its sole discretion agrees to in writing; and
 - iii. Successful Respondent does not cure the Material Breach within the applicable cure period.
- b) For purposes of this CTSA, an item of non-compliance, both Deficiencies and Material Breaches, means a specific action of Successful Respondent that:
- 1) Violates a provision of this CTSA and/or a TEX-AN 2021 Customer Service Agreement;
 - 2) Fails to meet an agreed SLA; or
 - 3) Represents a failure of Successful Respondent to be responsive to a request of DIR and/or a Customer relating to the Services for information, assistance, or support within the timeframe specified by DIR and/or the Customer provided that such request for information, assistance, or support is within the Services specified to be provided in this CTSA and/or CSA, as amended from time to time.
- c) DIR will provide notice to Successful Respondent of the imposition of an administrative remedy in accordance with this Section 17.2, with the exception of accelerated monitoring, which may be unannounced. DIR may require Successful Respondent to file a written response in accordance with this Section.

17.2.2.3 Damages

- a) DIR will be entitled to actual damages resulting from the Successful Respondent's failure to comply with any of the terms of this CTSA. In some cases, the actual damage to DIR or the Customers as a result of Successful Respondent's failure to meet any provision of, or obligation under, this CTSA and/or to meet specific SLAs or performance standards set forth in this CTSA are difficult or impossible to determine with precise accuracy. Therefore, agreed Credits may be assessed in writing against and in such event will be paid by Successful Respondent for failure to meet any aspect of Successful Respondent's responsibilities under this CTSA and/or to meet the specific performance standards identified in Exhibit C Performance Management. Credits will be assessed if DIR determines, in its sole and absolute discretion, such failure is the fault of Successful Respondent (including the Successful Respondent Personnel) and is not materially caused or contributed to by DIR, Customers, or their agents. If at any time, DIR determines, in its sole and absolute discretion, that Successful Respondent has not met a provision of, or has not fulfilled an obligation under this CTSA and/or the specific performance standards due to mitigating circumstances, DIR reserves the right to waive all or part of the Credits. All such waivers must be in writing, contain the reasons for the waiver, and must be signed by the appropriate executive of DIR.

- b) The Credits prescribed in this Section 17.2 are not intended to be in the nature of a penalty, but are intended to be reasonable estimates of DIR's projected financial loss and damage resulting from the Successful Respondent's nonperformance, including financial loss as a result of Service delivery delays to DIR and/or the Customers. Accordingly, in the event Successful Respondent fails to perform in accordance with this CTSA, DIR may assess Credits as provided in this Section 17.2.
- c) If Successful Respondent fails to perform any of the Services as ordered by DIR or the Customers, DIR may assess Credits for each occurrence of such failure, to the extent consistent with DIR's tailored approach to remedies and State law.
- d) In accordance with Exhibit C Performance Management, DIR may elect, in its sole and absolute discretion, to collect Credits:
 - 1) Through direct assessment and demand for payment; or
 - 2) By deduction of amounts assessed as Credits as set-off against payments then due to Successful Respondent for the Services or that become due at any time after assessment of the Credits. DIR will make deductions until the full amount payable by the Successful Respondent is received by DIR or Customer.
- e) Credits and actual damages imposed under any provision of this CTSA will be limited to the amounts and triggering events specified in this CTSA.
- f) Acknowledgment of Direct Damages

The absence of direct damages listed in this section shall not be construed or interpreted as an agreement to exclude it as a direct damage under this CTSA. For the avoidance of doubt, the following, except for items 1) and 9) below related to security breaches, shall be considered direct damages that are subject to the direct damage cap set forth in Section 16.3 b) of this CTSA and Successful Respondent shall not assert that they are indirect, incidental, collateral, consequential, or special damages, or lost profits to the extent they result directly from the Successful Respondent's failure to perform in accordance with this CTSA:

- 1) Costs and expenses of restoring or reloading any lost, stolen, or damaged Data;
- 2) Costs and expenses of implementing a work-around in respect of a failure to provide the Services or any part thereof;
- 3) Costs and expenses of replacing lost, stolen, or damaged Equipment and materials;
- 4) Cover damages, including the costs and expenses incurred to procure the Services or corrected Services from an alternate source;
- 5) Costs and expenses incurred to bring the Services in-house or to contract to obtain the Services from an alternate source;
- 6) Straight time, overtime, or related expenses incurred by DIR or Customer in performing 1) through 5) above, including overhead allocations for employees, wages, and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges, and similar charges;
- 7) Fines, penalties, sanctions, interest, or other monetary remedies incurred as a result of a failure to comply with applicable laws;
- 8) Credits assessed against Successful Respondent in accordance with this CTSA; and

- 9) Costs and expenses of protecting and compensating the State and its constituents after a Security Incident, including but not limited to notifications, fines and penalties, damages established by a court of law, costs to establish a call center, and thirty-six (36) months of credit monitoring for effected individuals.
- g) Liquidated Damages [Requirements regarding Liquidated Damages will be negotiated per contract.]

17.2.2.4 Equitable Remedies

- a) Successful Respondent acknowledges that, if Successful Respondent commits a Material Breach (or attempts or threatens to commit a Material Breach) of its obligations under this CTSA, DIR, the Customers, and the State will be irreparably harmed. In such a circumstance, DIR, for and on behalf of its Customers and the State, may proceed directly to court.
- b) If a court of competent jurisdiction finds that Successful Respondent has committed an uncured Material Breach (or attempted or threatened to commit a Material Breach), Successful Respondent agrees that, without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an appropriate injunctive order compelling performance by Successful Respondent and restraining it from committing any further Material Breaches (or attempted or threatened Material Breaches).

17.2.2.5 Suspension of CTSA

- a) DIR may suspend performance of all or any part of this CTSA if:
 - 1) DIR determines that Successful Respondent has committed a Material Breach of this CTSA and, after written notice from DIR, such Material Breach is not cured by Successful Respondent during the cure period as further described in Section 17.2.2.2 5) (ii) of the CTSA; provided however, if no specific cure period is specified under this CTSA, such cure period will be not less than thirty (30) calendar days.
 - 2) DIR has reason to believe that Successful Respondent, Successful Respondent Personnel, and/or Successful Respondent's Subcontractors, have committed, assisted in the commission of, or failed to take appropriate action concerning fraud, malfeasance, or misfeasance concerning this CTSA and if DIR, in its sole and absolute discretion, believes that the suspension is necessary to prevent a material loss or material damages to the State, and the portion of the CTSA being suspended has a direct relationship to the alleged fraud, malfeasance, or misfeasance concerning this CTSA.
 - 3) DIR determines that suspension of this CTSA in whole or in part is convenient or in the best interests of the State or the TEX-AN 2021 Program.
- b) DIR will notify Successful Respondent in writing of its intention to suspend this CTSA in whole or in part. Such notice will:
 - 1) Be delivered in writing to Successful Respondent; and
 - 2) Include a concise description of the facts or matter leading to DIR's decision.

17.3 Termination of CTSA

In addition to other provisions of this Article 17 allowing termination, this CTSA will terminate upon the Expiration Date unless extended in accordance with the terms of this CTSA, or terminated sooner under the terms of this CTSA. Prior to completion of the Term, all or a part of this CTSA may be terminated for any of the following reasons:

17.3.1 Termination by Mutual Agreement of the Parties.

This CTSA may be terminated by mutual agreement of the Parties. Such agreement must be in writing.

17.3.2 Termination in the Best Interest of the State.

DIR may terminate this CTSA, in whole or in part, without penalty to or other liability on DIR, at any time when, in its sole discretion, DIR determines that termination is in the best interests of the State. The termination will be effective on the date specified in DIR's notice of termination.

17.3.3 Termination for Cause

Subject to the applicable notice and cure provisions in Section 17.2, DIR reserves the right to terminate this CTSA, in whole or in part, without recourse, upon the following conditions (each a Cause):

17.3.3.1 Successful Respondent Insolvency

Subject to relevant law, DIR may terminate this CTSA if Successful Respondent:

- a) makes an assignment for the benefit of all or substantially all of its creditors;
- b) admits in writing its inability to pay its debts generally as they become due, including passing a resolution for voluntary liquidation;
- c) consents to or is subject to the appointment of a receiver, trustee, manager, or liquidator over all or any part of its property;
- d) becomes or is declared insolvent or is the subject of any bona fide proceedings related to its liquidation, administration, provisional liquidation, insolvency, or the appointment of a receiver or similar officer for it; or
- e) enters into an agreement or arrangement for the composition, extension, or readjustment of substantially all of its obligations or any class of such obligations.

17.3.3.2 Failure to Adhere to Laws, Rules, Ordinances, or Orders

- a) DIR may terminate this CTSA upon making a determination, in its sole and absolute discretion, that Successful Respondent failed to adhere to any laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Successful Respondent's duties under this CTSA.
- b) DIR may terminate this CTSA if a court of competent jurisdiction finds Successful Respondent failed to adhere to any laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Successful Respondent's duties under this CTSA.

17.3.3.3 Breach of Confidentiality

DIR may terminate this CTSA if DIR determines, in its sole and absolute discretion, that Successful Respondent breached Article 15 or any confidentiality or privacy laws with respect to the Services provided under this CTSA and related Data.

17.3.3.4 Failure to Maintain Adequate Personnel or Resources

DIR may terminate this CTSA if, after providing notice and an opportunity to cure, DIR determines, in its sole and absolute discretion, that Successful Respondent has failed to supply sufficient personnel or resources and such failure results in Successful Respondent's inability to fulfill its duties to provide Services in any way under this CTSA.

17.3.3.5 Termination for Gifts and Gratuities

- a) DIR may terminate this CTSA following its determination that Successful Respondent, Successful Respondent Personnel, or Successful Respondent's Subcontractors have either offered or given any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service (collectively "Thing of Value") to an officer or employee of DIR, a Customer, or the State in violation of State law. DIR may terminate this CTSA following a determination by a competent judicial or quasi-judicial authority and Successful Respondent's exhaustion of all legal remedies that Successful Respondent, Successful Respondent Personnel, or Successful Respondent's Subcontractors have either offered or given a Thing of Value to an officer or employee of DIR, a Customer, or the State in violation of State law.
- b) Termination of a Subcontract by Successful Respondent pursuant to this provision will not be a cause for termination of this CTSA unless:
 - 1) Successful Respondent fails to replace such terminated Subcontractor within a reasonable time; and
 - 2) Such Failure constitutes Cause as described in this Section 16.3.

17.3.3.6 Material Adverse Change in Successful Respondent's Financial Condition

If (1) Successful Respondent receives a "going concern" qualification from its external auditor or (2) Standard & Poor's lowers Successful Respondent's long term credit rating to lower than BB- and in the reasonable opinion of DIR such change in the financial condition of Successful Respondent may impair or otherwise compromise the ability of Successful Respondent to perform its obligations under this Agreement, then DIR may, in its sole discretion, terminate this Agreement by giving Successful Respondent at least thirty (30) calendar days prior notice. With respect to the events described in (2) above, prior to exercising its right to terminate, DIR shall meet with Successful Respondent within ten (10) calendar days following notification (or awareness) of such event and permit Successful Respondent to submit to DIR within fifteen (15) calendar days of such meeting a plan that comprehensively addresses DIR's concerns related to Successful Respondent's ability to perform its obligations under this Agreement (the "Service Delivery Plan"). DIR shall not unreasonably withhold its approval of such Service Delivery Plan. If DIR does not approve the initial Service Delivery Plan it shall inform the Successful Respondent of its reasons and the Successful Respondent shall take those reasons into account in the preparation of a further Service Delivery Plan, which shall be resubmitted to DIR within ten (10) calendar days. If in DIR's reasonable discretion the updated Service Delivery Plan does not address DIR's concerns related to Successful Respondent's ability to continue delivering the Services, then DIR will have the right to terminate this Agreement as described above.

17.3.3.7 Termination for Successful Respondent's Material Breach of this CTSA

DIR has the right to terminate this CTSA, in whole or in part, if DIR determines, in its sole and absolute discretion, that Successful Respondent has committed a Material Breach. Prior to exercising its right to terminate all or a part of this CTSA, DIR will provide the Successful Respondent written notice and an opportunity to cure the Material Breach in accordance with

Section 17.2, and if such cure is made and accepted by DIR, in its sole and absolute discretion, DIR will not terminate the CTSA.

17.3.3.8 Prohibited Vendor's List

DIR has the absolute right to terminate this CTSA, without recourse, in the event that:

- a) Successful Respondent becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control, or
- b) Successful Respondent becomes suspended or debarred from doing business with the federal government as listed in the Excluded Parties List System (EPLS) maintained by the General Services Administration, or
- c) Successful Respondent is found by DIR to be ineligible to hold this CTSA under Section 2155.006(b), Texas Government Code.

17.4 DIR Rights Upon Successful Respondent's Bankruptcy

17.4.1 General Rights

In the event of Successful Respondent's bankruptcy or other formal procedure or of the filing of any petition under bankruptcy laws affecting the rights of Successful Respondent which is not stayed or dismissed within thirty (30) days of filing, in addition to the other rights and remedies set forth herein, to the maximum extent permitted by law, DIR and Customers shall have the immediate right to retain and take possession for safekeeping all DIR and Customer Data, DIR and Customer Confidential Information, DIR and Customer licensed third party materials, DIR and Customer owned Equipment, DIR and Customer owned Materials, DIR and Customer owned developed materials, and all other materials, Equipment, or systems to which DIR and/or the Customers are or would be entitled during the Term or upon the expiration or any termination of this CTSA. Successful Respondent shall cooperate fully with DIR and the Customers and assist DIR and the Customers in identifying and taking possession of the items listed in the preceding sentence. DIR and Customers shall have the right to hold such Data, Confidential Information, materials, Equipment, and systems until such time as the trustee or receiver in bankruptcy or other appropriate insolvency office holder can provide adequate assurances and evidence to DIR and Customer that they shall be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material, or filing. Successful Respondent and DIR agree that without this material provision, DIR would not have entered into this CTSA or provided any right to the possession or use of such Data, Confidential Information, or materials covered by this CTSA.

17.4.2 DIR Rights in Event of Bankruptcy Rejection

Notwithstanding any other provision of this CTSA to the contrary and to the maximum extent permitted by applicable laws, in the event that Successful Respondent becomes a debtor under the United States Bankruptcy Code (11 U.S.C. §101 et. seq. or any similar Law in any other country (the "Bankruptcy Code")) and rejects this Agreement pursuant to Section 365 of the Bankruptcy Code (a "Bankruptcy Rejection"):

- a) any and all of the licensee and sublicensee rights of DIR and the Customers arising under or otherwise set forth in this CTSA, including the rights of DIR and the Customers shall be deemed fully retained by and vested in DIR and the Customers as protected intellectual property rights under Section 365(n)(1)(B) of the Bankruptcy Code and further shall be deemed to exist immediately before the commencement of the bankruptcy case in which Successful Respondent is the debtor;

- b) DIR and the Customers shall have all of the rights afforded to non-debtor licensees and sublicensees under Section 365(n) of the Bankruptcy Code; and
- c) to the extent any rights of DIR and the Customers under this CTSA which arise after the expiration or any termination of this CTSA are determined by a bankruptcy court not to be "intellectual property rights" for purposes of Section 365(n),

all of such rights shall remain vested in and fully retained by DIR and/or the Customers after any bankruptcy rejection as though this CTSA were terminated or expired. DIR shall under no circumstances be required to terminate this CTSA, in whole or in part, after a bankruptcy rejection in order to enjoy or acquire any of its rights under this CTSA, including any of the rights of DIR or the Customers unless and to the extent required by applicable law.

17.5 Effective Date of Termination

Termination will be effective as of the date specified in the notice of termination.

17.6 Extension of Termination Effective Date

Any termination date may be extended upon the mutual agreement of the Parties; however, such date shall not be extended beyond the Expiration Date of this CTSA.

17.7 Payment and Other Provisions at CTSA Termination

- a) DIR further agrees to negotiate in good faith with Successful Respondent to equitably adjust and settle any accrued or outstanding liabilities for a Service which has not been Accepted that:
 - 1) Is due or delivered prior to or upon termination of this CTSA; and
 - 2) Benefits DIR, a Customer, or the State, notwithstanding its status as not having been Accepted.
- b) Successful Respondent agrees to negotiate in good faith with DIR and/or Customer to equitably adjust and settle any outstanding disputes currently on file between the parties.
- c) Successful Respondent must provide DIR access to records, facilities, and documentation as is required to efficiently and expeditiously close out the Services under this CTSA.
- d) Successful Respondent must prepare a Disentanglement Plan, upon notice of termination and within ten (10) Business Days, which is acceptable to and approved by DIR, in its sole and absolute discretion. Such Disentanglement Plan will be implemented during the time period between DIR's Acceptance of the Disentanglement Plan and the termination date.
- e) Subsections 17.7 a) and 17.7 b) shall only be applicable to time and materials work performed under the CTSA and/or CSAs or as otherwise allowed hereunder.
- f) For all other Rates to DIR and Prices set forth in Exhibit B, DIR or Direct Sales Transaction Service Customers, as appropriate, will pay for all Services provided as of the effective termination date. Article 14 Terms and Conditions of Successful Respondent Billing and DIR and Customer Payment, shall govern the billing and payment for Services under this Section 11.7.

17.8 Amendment of CTSA in the Event of Remedies

DIR may propose an amendment of this CTSA in response to the imposition of a remedy under this Article 17. Any amendments offered pursuant to this Section 17.8 must be limited to the matters causing

the exercise of a remedy and in writing. Successful Respondent must negotiate such proposed amendments in good faith.

17.9 Disentanglement Assistance

Upon receipt of notice of full or partial termination of this CTSA by DIR, Successful Respondent shall provide all Disentanglement assistance necessary to enable DIR and/or its designee to effectively close out this CTSA and transition the Services and Customers to another TEX-AN 2021 Contract Holder as provided in the Disentanglement Plan (see Article 21. Transition Plan for Expiration).

17.10 Successful Respondent Responsibility for Associated Costs

If DIR terminates this CTSA for Cause, the Successful Respondent will be responsible to DIR for all reasonable costs incurred by DIR, the State, or any of its Customers to replace the Successful Respondent. These costs include, but are not limited to, the costs of transitioning all Customers to a new TEX-AN 2021 Contract Holder or procuring a substitute, and the cost of any claim or litigation that is attributable to Successful Respondent's failure to perform the Services in accordance with the terms of this CTSA. For purposes of clarity, the Successful Respondent's liability for State's costs of transitioning all Customers to a new TEX-AN 2021 Contract Holder will be limited to the total charges incurred by DIR and the Customers from the new TEX-AN 2021 Contract Holder in transitioning.

17.11 Dispute Resolution

17.11.1 General Agreement of the Parties

The Parties mutually agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any Dispute under this CTSA. The Parties express their mutual commitment to using all reasonable and informal means of resolving Disputes prior to invoking a remedy provided elsewhere in this Article 17.

17.11.2 Duty to Negotiate in Good Faith.

Any Dispute that in the judgment of any Party to this CTSA may materially or substantially affect the performance of any Party will be reduced to writing and delivered to the other Party per the formal notice procedures discussed above. The Parties must then negotiate in good faith and use reasonable efforts to resolve such dispute and the Parties will not resort to pursuing further remedies unless they have reasonably determined that a negotiated resolution is not possible. The resolution of any dispute disposed of by agreement between the Parties will be reduced to writing and delivered to all Parties within ten (10) Business Days.

17.11.3 Claims for Breach of CTSA

17.11.3.1 General Requirement

As required by and in accordance with Chapter 2260, Texas Government Code, Successful Respondent's claim for breach of this CTSA must be resolved in accordance with the dispute resolution process established by DIR.

17.11.3.2 Negotiation of Claims

- a) The Parties expressly agree that the Successful Respondent's claim for breach of this CTSA that the Parties cannot resolve in the ordinary course of business or through the use of all reasonable and informal means will be submitted to the negotiation process provided in Chapter 2260, Subchapter B, Texas Government Code.

- b) The Parties expressly agree that the Successful Respondent's compliance with Chapter 2260, Subchapter B, Texas Government Code, is a condition precedent to the filing of a contested case proceeding under Chapter 2260, Subchapter C, Texas Government Code.

17.11.3.3 Contested Case Proceedings

The contested case process provided in Chapter 2260, Subchapter C, Texas Government Code, will be Successful Respondent's sole and exclusive process for seeking a remedy for any and all alleged breaches of the CTSA by DIR if the Parties are unable to resolve their disputes under Subsection 17.11.3.2 of this section. The Parties expressly agree that compliance with the contested case process provided in Chapter 2260, Subchapter C, Texas Government Code, is a condition precedent to seeking consent to sue from the Texas Legislature under Chapter 107, Texas Civil Practices & Remedies Code. Neither the execution of this CTSA by DIR nor any other conduct of any representative of DIR relating to this CTSA shall be construed as or be considered a waiver of the State's sovereign immunity.

17.11.3.4 DIR Rules

The submission, processing, and resolution of Successful Respondent's claim is governed by the rules adopted by DIR pursuant to Chapter 2260, Texas Government Code, found at Title 1, Chapter 201, Texas Administrative Code.

17.11.3.5 Successful Respondent's Duty to Perform

Neither the occurrence of an event constituting an alleged breach of CTSA nor the pending status of any claim for breach of CTSA is grounds for the suspension of performance, in whole or in part, by Successful Respondent of any duty or obligation with respect to the performance of Services under this CTSA and all CSAs. Any changes to this CTSA as a result of a dispute resolution will be implemented in accordance with Article 9.

17.12 Liability of Successful Respondent

- a) Successful Respondent bears all risk of loss or damage due to:
 - 1) Defects in Services;
 - 2) Unfitness or obsolescence of Services; and
 - 3) The negligence or intentional misconduct of Successful Respondent or its employees, agents, or Subcontractors;
- b) Successful Respondent shall defend, indemnify and hold harmless the State, DIR and Customers, and/or their employees, agents, representatives, contractors, Assignees, officers, directors, successors, and/or designees from any and all liability, actions, claims, demands, or suits and all related costs, attorney fees, and expenses (collectively "Claims") arising out of, or resulting from any acts or omissions of the Successful Respondent, Successful Respondent Personnel, Successful Respondent's Subcontractors, or suppliers of Subcontractors in the execution or performance of the CTSA, a CSA and any Purchase Orders issued under the CTSA regardless of the negligence of the Customer, the State, DIR, and/or their employees, agents, representatives, contractors, Assignees, officers, directors, successors, and/or designees. Notwithstanding the foregoing, Successful Respondent is not responsible for the proportional share of any Claims to the extent caused by the negligence of the Customer, the State, DIR, and/or their employees, agents, representatives, contractors, Assignees, officers, directors, successors, and/or designees. The defense shall be coordinated by the Texas Office of the Attorney General for State agency Customers and by Customer's legal counsel for non-State agency Customers.

- c) Successful Respondent will ship all Equipment, if any, related to the provision of Services under this CTSA and any CSAs entered into pursuant hereto, freight prepaid, freight on board (FOB) DIR's or Customer's destination or other designated location. The method of shipment will be consistent with the nature of the Equipment and hazards of transportation. Regardless of FOB point, Successful Respondent agrees to carry adequate freight insurance and bear all risks of loss, damage, or destruction of Equipment, in whole or in part, ordered hereunder that occurs prior to written Acceptance, except loss or damage attributable to DIR's or Customer's fault or negligence; and such loss, damage, or destruction will not release Successful Respondent from any obligation hereunder. After written Acceptance, the risk of loss or damage will be borne by DIR or the Customer, as appropriate, except loss or damage attributable to Successful Respondent's fault or negligence.

17.13 Disclaimer of Warranties

EXCEPT AS EXPRESSLY SET FORTH ELSEWHERE IN THIS CTSA, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR, FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY ARISING BY USAGE OF TRADE OR COURSE OF DEALING. FURTHER, VENDOR MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER).

18 ASSURANCES AND CERTIFICATIONS

18.1 Conflicts of Interest

18.1.1 Representation

Successful Respondent agrees to comply with applicable State and federal laws, rules, and regulations regarding conflicts of interest in the performance of its duties under this CTSA. Successful Respondent warrants that it has no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with its performance under this CTSA.

18.1.2 General Duty Regarding Conflicts of Interest

- a) Successful Respondent will establish safeguards to prohibit Successful Respondent Personnel and Subcontractors from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Successful Respondent shall, and Successful Respondent shall cause its Successful Respondent Personnel and Subcontractors, to operate with complete independence and objectivity without actual, potential, or apparent conflict of interest with respect to the activities conducted under this CTSA. Successful Respondent has disclosed, in its Response to the RFO, any existing conflicts of interest, including any situations that create an appearance of a conflict of interest. Successful Respondent has also disclosed the current or past employment of former state employees within two (2) years of the date of its Response to the RFO, under the terms of the disclosure requirement contained in the RFO.
- b) Successful Respondent shall for itself and on behalf of its Subcontractors, has identified (and will identify for the duration of the Term): A. all current or former employees of the State assigned or proposed to work on the CTSA twenty percent (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 (2) degrees of consanguinity or affinity, and, if these facts change during the course of the CTSA, Successful Respondent 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 (2) degrees of consanguinity or affinity, and B. any former executive head of a State agency employed by Successful Respondent;

19 REPRESENTATIONS, WARRANTIES, AND COVENANTS

19.1 Authorization

Successful Respondent hereby represents and warrants the following:

- a) The execution, delivery, and performance of this CTSA has been duly authorized by Successful Respondent and no approval, authorization, or consent of any governmental or regulatory agency is required to be obtained in order for Successful Respondent to enter into this CTSA and perform its obligations under this CTSA.
- b) Successful Respondent has obtained all licenses, assignments, certifications, permits, and authorizations necessary to perform the Services under this CTSA and currently is in good standing with all regulatory agencies that regulate any or all aspects of Successful Respondent's performance of Services under this CTSA. Successful Respondent will maintain all required certifications, licenses, permits, and authorizations during the term of this CTSA.

19.2 Ability to Perform

Successful Respondent warrants that it has the financial resources to fund the expenditures required to provide the Services under this CTSA without advances by DIR or assignment of any payments by DIR to a financing source.

19.3 Successful Respondent Certifications

Successful Respondent certifies, for itself, its agents, and on behalf of Subcontractors, as follows (all references within this section to Successful Respondent include Successful Respondent's agents and Subcontractors):

- a) Successful Respondent has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the CTSA;
- b) Successful Respondent is not currently delinquent in the payment of any franchise tax owed the State and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the CTSA may be terminated and payment withheld if this certification is inaccurate;
- c) neither Successful Respondent, nor anyone acting for it, has violated the antitrust laws of the United States or the State, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- d) Successful Respondent has not received payment from DIR or any of its employees for participating in the preparation of the CTSA;
- e) under Sections 2155.004, 2155.006, and 2261.053, Texas Government Code, Successful Respondent is not ineligible to receive the specified Contract and acknowledges that this CTSA may be terminated and payment withheld if this certification is inaccurate;

- f) to the best of its knowledge and belief, Successful Respondent knows there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to it will have a material adverse effect on the ability to fulfill its obligations under the CTSA;
- g) Successful Respondent and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration;
- h) as of the Effective Date of the CTSA, Successful Respondent is not listed in any of the divestment statute lists published on the CPA's website (<https://comptroller.texas.gov/purchasing/publications/divestment.php>);
- i) as of the Effective Date, Successful Respondent is not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control;
- j) Successful Respondent has identified (and will identify for the duration of the Term):
 - 1) all current or former employees of the State assigned or proposed to work on the CTSA twenty percent (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 (2) degrees of consanguinity or affinity, and, if these facts change during the course of the Agreement, Successful Respondent 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 (2) degrees of consanguinity or affinity, and
 - 2) any former executive head of a State agency employed by Successful Respondent;
- k) that, for its performance of this CTSA, Successful Respondent shall purchase products and materials produced in the State when available at the price and time comparable to products and materials produced outside the State, to the extent that such is required under Section 2155.4441, Texas Government Code;
- l) Successful Respondent agrees that all equipment and materials used in fulfilling the requirements of this CTSA are of high-quality and consistent with or better than applicable industry standards, if any. All work and Services performed pursuant to this CTSA shall be of high professional quality and workmanship and according consistent with or better than applicable industry standards, if any;
- m) to the extent applicable to this scope of this CTSA, Successful Respondent is in compliance with Subchapter Y, Chapter 361, Health and Safety Code, related to the Computer Equipment Recycling Program and its rules, 30 Texas Administrative Code Chapter 328;
- n) Successful Respondent agrees that any payments due under this CTSA will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State;
- o) Successful Respondent is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a State agency;
- p) the provision of goods and services or other performance under the CTSA will not constitute an actual or potential conflict of interest, Successful Respondent will not create the appearance of impropriety, and, if these facts change during the course of the CTSA, Successful Respondent certifies it shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;

- q) Successful Respondent has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures.
- r) Successful Respondent understands and acknowledges the applicability of Sections 2155.444 and 2155.4441, Texas Government Code, in fulfilling the terms of the CTSA;
- s) DIR's or the Customer's payment to Successful Respondent and Successful Respondent's receipt of appropriated or other funds under this CTSA are not prohibited by Sections 556.005 or 556.008, Texas Government Code;
- t) to the extent applicable to this scope of this CTSA, Successful Respondent is authorized to sell and provide warranty support for all products and Services listed in Exhibit B of this CTSA;
- u) in accordance with Section 2271.002 of the Texas Government Code, by signature hereon, Successful Respondent does not boycott Israel and will not boycott Israel during the term of this CTSA. Successful Respondent agrees to take all necessary steps to ensure this certification remains true during the Term of this CTSA;
- v) Successful Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.
- w) that in accordance with Section 2155.0061, Texas Government Code, the individual or business entity named in this CTSA is not ineligible to receive the specified contract and acknowledges that this CTSA may be terminated and payment withheld if this certification is inaccurate; and
- x) during the Term, Successful Respondent shall promptly disclose to DIR all changes that occur to the foregoing certifications, representations, and warranties. Successful Respondent covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations, and warranties.

19.4 Workmanship and Performance

- a) All Services provided under this CTSA will be provided in a manner consistent with the standards of quality as outlined in this CTSA.
- b) All Services must meet or exceed the required levels of performance specified in or pursuant to this CTSA, and will meet or exceed DIR's Goals and Objectives, as set forth in the RFO, Section 1.3.
- c) Successful Respondent shall, and it shall cause Successful Respondent Personnel and Subcontractors, to perform the Services in a workmanlike manner, in accordance with best practices and high professional standards consistent with applicable industry standards used in well-managed operations performing Services similar to the Services awarded in this CTSA.

19.5 Compliance with Agreement

Successful Respondent represents, warrants, and covenants that it will not take any action inconsistent with any of the terms and conditions set forth in this CTSA without the express, prior written approval of DIR, in DIR's sole and absolute discretion.

19.6 Infringement and Misappropriation

- a) Successful Respondent represents, warrants, and covenants that all Services provided by Successful Respondent will not infringe or misappropriate any right of, and will be free of any

claim of, any third person or entity based on copyright, patent, trade secret, or other Intellectual Property rights. Successful Respondent agrees that it shall include the indemnity provision provided in Section [14.10 b](#)) into its Subcontracts, in which Subcontractors participate in the development or delivery of the Services or Software.

- b) As of the Effective Date, there is, to Successful Respondent's knowledge, no pending claim, suit, or proceeding against or affecting Successful Respondent or any of its Affiliates or Subcontractors that would reasonably be expected to adversely affect Successful Respondent's ability to perform and fulfill its obligations under this CTSA including, without limitation, actions pertaining to the proprietary rights to the relevant intellectual property. Successful Respondent shall notify DIR within fifteen (15) days of Successful Respondent's knowledge of any such claim, suit, or proceeding. Successful Respondent shall notify DIR, within forty-eight (48) hours, if process is served on Successful Respondent in connection with this CTSA where such matter may affect the Services or a Party's rights including any subpoena for Successful Respondent's records, and shall send a written notice of the service together with a copy of the same to DIR within seventy-two (72) hours of such service.

19.7 Organizational Conflicts of Interest

19.7.1 Definition

An organizational conflict of interest is a set of facts or circumstances, a relationship, or other situation under which Successful Respondent, agent or Subcontractor has past, present, or currently planned personal or financial activities or interests that either directly or indirectly:

- a) Impairs or diminishes Successful Respondent's, agent's, or Subcontractor's ability to render impartial or non-discriminatory Services to DIR and the Customers; or
- b) Provides the Successful Respondent, agent, or Subcontractor an unfair competitive advantage in the Procurement and future DIR procurements.

19.7.2 Warranty

Except as otherwise disclosed and approved by DIR prior to the Effective Date of this CTSA, Successful Respondent warrants that, as of the Effective Date and to the best of its knowledge and belief, there are no relevant facts or circumstances that could give rise to an organizational conflict of interest affecting this CTSA. Successful Respondent affirms that it has neither given, nor shall give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, at any time during the procurement process or in connection with the procurement process except as allowed under relevant State and federal law.

19.7.3 Continuing Duty to Disclose

- a) Successful Respondent agrees that, if after the Effective Date, Successful Respondent discovers or is made aware of an organizational conflict of interest, Successful Respondent will immediately and fully disclose such interest in writing to DIR. In addition, Successful Respondent must promptly disclose any relationship that might be perceived or represented as a conflict after its discovery by Successful Respondent or by DIR as a potential conflict. DIR reserves the right, in its sole and absolute discretion, to make a final determination regarding the existence of conflicts of interest, and Successful Respondent agrees to abide by DIR's decision.
- b) The disclosure will include a description of the action(s) that Successful Respondent has taken or proposes to take to avoid or mitigate such organizational conflicts of interest.

19.7.4 Remedy

If DIR determines that an organizational conflict of interest exists, DIR may, at its sole discretion, terminate the CTSA. If DIR determines that Successful Respondent was aware of an organizational conflict of interest before the award of this CTSA and did not disclose the conflict in its Response to the RFO, such nondisclosure will be considered a Material Breach. Furthermore, the facts and circumstances related to such Material Breach may be submitted to the Texas Office of the Attorney General, Texas Ethics Commission, or appropriate State or federal law enforcement officials for further action.

19.7.5 Flow Down Obligation

Successful Respondent must include the provisions of CTSA Section 19.7 in all agent agreements and Subcontracts for work to be performed similar to the Services provided by Successful Respondent under this CTSA to preserve the State's rights against such agents and Subcontractors.

19.8 DIR Personnel Recruitment Prohibition

- a) Successful Respondent has not retained or promised to retain any agent, Subcontractor, person, or company, or utilized or promised to utilize an agent, or a Subcontractor that participated in DIR's development of specific criteria of this CTSA or who participated in the procurement that resulted in the selection of the Successful Respondent for this CTSA.
- b) Successful Respondent will not recruit or employ any DIR professional or technical personnel who have worked on Projects relating to the subject matter of this CTSA, or who have had any influence on decisions affecting the subject matter of this CTSA, for two (2) years following the expiration and/or termination of this CTSA.

19.9 Anti-kickback Provision

Successful Respondent certifies that it will comply with the Anti-Kickback Act of 1986, 41 USC §§51-58 and Federal Acquisition Regulation 52.203-7.

19.10 Debt or Back Taxes Owed to the State

In accordance with Section 403.055, Texas Government Code, Successful Respondent agrees that any payments due to Successful Respondent under this CTSA will be first applied toward any debt and/or back taxes Successful Respondent owes the State. Successful Respondent further agrees that payments will be so applied until such debts and back taxes are paid in full.

19.11 Outstanding Debts and Judgments

Successful Respondent certifies that it is not presently indebted to the State, and that Successful Respondent is not subject to an outstanding judgment in a suit by the State against Successful Respondent for collection of the balance. For purposes of this Section, an indebtedness is any amount sum of money that is due and owing to the State and is not currently under dispute. A false statement regarding Successful Respondent's status will be treated as a Material Breach.

19.12 Antitrust

In submitting a Response, and in executing this CTSA, Successful Respondent certifies and agrees as follows:

- a) Neither Successful Respondent, nor agent, nor Subcontractor, nor the person represented by the Successful Respondent, nor any person acting for the represented person has:
 - 1) violated the antitrust laws codified by Sections 15.01, et seq., Texas Business & Commerce Code or the federal antitrust laws; or
 - 2) directly or indirectly communicated the Response associated with this CTSA to a competitor or other person engaged in the same line of business.
- b) Successful Respondent hereby assigns to DIR any and all claims for overcharges associated with this CTSA arising under the antitrust laws of the United States, 15 U.S.C. Section 1, et seq. (1973), as amended, and the antitrust laws of the State, Sections 15.01, et seq., Texas Business & Commerce Code.

19.13 Agency Executive

Under Section 669.003, Texas Government Code, relating to contracting with an executive of a State agency, Successful Respondent represents that no employee, consultant, officer, or director of Successful Respondent, or any other person involved with Successful Respondent, has, in the past four (4) years, served as an executive of DIR, or any other State agency, was involved with or has any interest in the RFO or any CTSA resulting from the RFO. If Successful Respondent employs or has used the services of a former executive head of DIR or other State agency, then Successful Respondent shall provide DIR the following information concerning such individual: Name of former executive, name of State agency, date of separation from State agency, position with Successful Respondent, and date of employment with Successful Respondent.

19.14 Deceptive Trade Practices; Unfair Business Practices

Successful Respondent represents and warrants that it has not been the subject of allegations of deceptive trade practices violations under Chapter 17, Texas Business & Commerce Code, or allegations of any unfair business practice in any administrative hearing or litigation and that Successful Respondent has not been found to be liable for such practices in such proceedings. Successful Respondent certifies that it has no officers who have served as officers of other entities who have been the subject allegations of deceptive trade practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

19.15 Cybersecurity Training

In accordance with Section 2054.5192, Texas Government Code, for any contract with a State agency or institution of higher education, if Successful Respondent, or a Subcontractor, officer, or Successful Respondent Personnel, will have access to a State computer system or database, then Successful Respondent shall ensure that such Successful Respondent Personnel, officer, or Subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by the State agency Customer. The cybersecurity training program must be completed by such Successful Respondent Personnel, officer, or Subcontractor during the Term of the CTSA and during any renewal period. Successful Respondent shall verify to the Customer state agency or institution of higher education completion of the program by each such Successful Respondent Personnel, officer, or Subcontractor.

19.16 Drug Free Workplace Policy

Successful Respondent shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. §§8101-8106) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (Financial Assistance), issued by the Office of Management and Budget (2 C.F.R. Part 182) to implement the provisions of the Drug Free Work Place Act of 1988 is incorporated by reference and the Successful Respondent shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

19.17 Preservation of Records

In accordance with Section 552.372 of the Texas Government Code, Respondent agrees to (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the Agency for the duration of the contract, (2) promptly provide to the Agency any contracting information related to the contract that is in the custody or possession of the Respondent on request of the Agency, and (3) on termination or expiration of the contract, either provide at no cost to the Agency all contracting information related to the contract that is in the custody or possession of the Respondent or preserve the contracting information related to the contract as provided by the records retention requirements applicable to the Agency. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the contract and the Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

20 INTELLECTUAL PROPERTY

20.1 Infringement Indemnification

- a) Successful Respondent will, at its expense, indemnify, and hold harmless DIR and the Customers, their respective employees, officers, directors, contractors, and agents from and against any losses, liabilities, damages, penalties, costs, and fees, including without limitation attorneys' fees and expenses, from any claim or action against DIR and/or Customers that is based on a claim of breach of the warranty set forth in SECTION 19.7.2 OF THE CTSA, DIR and/or Customer will promptly notify Successful Respondent in writing of the claim, provide Successful Respondent a copy of all information received by DIR and/or Customers with respect to the claim, and cooperate with Successful Respondent in defending or settling the claim. The defense will be coordinated by the Texas Office of the Attorney General for Texas State agencies and by Customer's legal counsel for non-State agency Customers.
- b) If any Service, or part thereof, that is the subject of an action described in Section 19.1(a), is held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted or if a proceeding appears to Successful Respondent to be likely to be brought with respect there to, Successful Respondent will, at its own expense, either:
 - 1) Procure for DIR and/or the affected Customer the right to continue using the Services; or
 - 2) Modify or replace the Services to comply with the specifications in the CTSA, if any, and to not violate any Intellectual Property rights.

20.2 Exceptions

Successful Respondent is not responsible for any claimed breaches of the warranties set forth in Section 19.1 to the extent caused by:

- a) Modifications made to the Service in question by any party other than Successful Respondent or its agents or Subcontractors, or by DIR and/or Customer and/or their agents working at Successful Respondent's direction and in accordance with another vendors' specifications; or
- b) The combination, operation, or use of the Service with other items if Successful Respondent did not supply or approve for use with the item; or
- c) DIR's and/or Customer's failure to use any new or corrected versions of the Service made available or provided by Successful Respondent.

20.3 Rights in Data

- a) DIR or Customers will be and remain the owner of all Data made available by DIR or Customers to Successful Respondent or its agents, its Subcontractors or representatives pursuant to the CTSA. Successful Respondent and Successful Respondent Personnel will not use DIR or Customer Data for any purpose other than providing the Services, nor will any part of DIR or Customer Data be disclosed, sold, assigned, leased, or otherwise disposed of to the general public or to specific third parties (other than with respect to providing the Services) or commercially exploited by or on behalf of Successful Respondent, nor will any Successful Respondent Personnel other than those on a strictly need to know basis have access to DIR or Customer Data. Successful Respondent will not possess or assert any lien or other right against DIR or Customer Data. Without limiting the generality of this Section 20.3, Successful Respondent will only use personally identifiable information as strictly necessary to provide the Services and will disclose such information only to its employees who have a strict need to know such information, provided Successful Respondent obtains such employees' written agreement to keep such information confidential and to use it only as required in the performance of Services. Successful Respondent will comply at all times with all State and federal laws and regulations applicable to such personally identifiable information. Additionally, Successful Respondent may disclose such information to its Subcontractors who have a need to know in connection with the performance of Services, provided Successful Respondent obtains such Subcontractors' written agreement to keep such information confidential and to use it only as required in the performance of Services.
- b) DIR or Customer is and will remain the owner of all DIR or Customer Data pursuant to the CTSA. Except as otherwise provided in this CTSA, or as otherwise restricted by law, and excluding Successful Respondent Confidential Information, DIR and Customer may use the data provided by the Successful Respondent for any purpose relating to the operation and enhancement of TEX-AN 2021 Program. DIR or Customer will not possess or assert any lien or other right against the Successful Respondent's data.

20.4 Ownership of Pre-existing Materials

DIR or Customers and Successful Respondent will continue to own their respective proprietary technologies and information developed before entering into the CTSA. Any Software licensed through the Successful Respondent and sold to DIR or Customers as a part of a Service, will be licensed directly to DIR or Customers, as appropriate.

20.5 Third party Commercial Software

If applicable and necessary, all third party commercial Software used in performing the Services will be provided to DIR or Customers under a separate license agreement between DIR or Customers and the owner (or authorized licensor) of such software.

20.6 Pre-existing Materials for Custom Software Deliverables Related to Services

Neither Successful Respondent nor any of its agents, representatives, or Subcontractors will incorporate any pre-existing materials (including third party commercial software) into Services or use any pre-existing materials to produce Services if such pre-existing materials will be needed by DIR or Customer in order to use the Services unless:

- a) Such pre-existing materials and their owners are identified to DIR or Customer in writing prior to implementation or installation, and
- b) Such pre-existing materials are either readily commercially available products for which Successful Respondent or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by DIR, in its sole and absolute discretion) in the name of DIR or Customer, or are materials that Successful Respondent or its Subcontractor, as the case may be, has the right to license to DIR or Customer and has agreed to license to DIR or Customer on terms and conditions approved by DIR, in its sole and absolute discretion, prior to using such pre-existing materials to perform the Services. Successful Respondent represents, warrants, and covenants that it shall not, during the term of the CTSA or any time afterwards, assert any ownership rights, in any DIR-owned or Customer-owned Software, source code, and other materials.

20.7 Ownership of Work Product by DIR or Customer

The Services shall not be considered “work for hire” for DIR or Customers; however, the same shall be subject to licensing, on the same terms and provisions, as provided for herein, as reasonable, necessary, or required.

20.8 License to Intellectual Property

- a) If necessary to the performance of Services hereunder, upon notice from Successful Respondent, DIR and/or Customers shall enter into good faith negotiations to license to Successful Respondent any Intellectual Property owned by DIR and/or Customers.
- b) In the event the Successful Respondent makes or has made any modifications or configurations to any Software owned by DIR and/or a Customer under this CTSA, DIR and/or the Customer, as appropriate, shall own the modifications or configurations and the related scripts, processes, and documentation, and Successful Respondent hereby assigns all of its rights, titles and interests (including Intellectual Property rights) to such modifications or configurations and the related scripts, processes, and documentation to the appropriate party, either DIR or the Customer. Upon the request of DIR or the Customer, Successful Respondent will give a written assignment of the modifications or configurations and the related scripts, processes, and documentation to the requesting party. During the Term, Successful Respondent retains a terminable, non-transferable, non-exclusive and paid-up license to use the modifications in performing Services under this CTSA, and to use the modifications to provide Services to other Customers, including the right to sub-license or further license those modifications only to Customers.

- c) The Successful Respondent shall own all modifications to the Successful Respondent owned Software made by the Successful Respondent and any modifications to the Successful Respondent Proprietary Software made on behalf of DIR and/or a Customer. DIR and/or the affected Customer hereby assign its rights, titles, and interests (including Intellectual Property rights) to such modifications to the Successful Respondent. Successful Respondent shall provide DIR and/or Customer with a nonexclusive, non-transferable, royalty-free limited right and license during the Term to use the modifications for purposes of receiving Services. Successful Respondent's license to DIR and/or the Customer to use Successful Respondent Proprietary Software shall extend to such modifications; provided, however, Successful Respondent's warranties and indemnities with respect to Successful Respondent Proprietary Software do not extend to any modifications made on behalf of DIR and/or a Customer by contractors other than Successful Respondent and its Subcontractors.

21 TRANSITION PLAN FOR EXPIRATION OF THE CTSA

Refer to Section 9, Termination Assistance, of the TEX-AN 2021 Statement of Work (SOW).

21.1 Scope

This transition plan for expiration of the CTSA addresses the orderly Transition to DIR, or the successor service provider, of all Services provided by Successful Respondent to DIR and/or Customers pursuant to a CSA through the CTSA, that has an expiration date beyond the Expiration Date of the CTSA (the Transition Effective Date), including planning activities which will be conducted prior to the Transition Effective Date. This transition plan does not apply to other contracts that Successful Respondent may hold with DIR outside the scope of this CTSA. Successful Respondent agrees that all references in this Article 21 to DIR, includes all employees of the agency and all designated contractors or consultants that may assist DIR in the Transition. DIR and Successful Respondent agree that the term "Transition" as used in this Article 21 means disposition from Successful Respondent to DIR, or the successor service provider, by any lawful method, including by sale and purchase, assumption, transfer, assignment, or other method.

21.2 General Statement for Transition

No later than twelve (12) months before the Transition Effective Date (commencement of Transition Period), Successful Respondent shall commence planning for the orderly Transition of all of the Services that have an expiration date beyond the Transition Effective Date under this CTSA to DIR or the successor service provider, in accordance with the terms of this Article, as the same may be amended from time to time. DIR and Successful Respondent desire to provide for the Transition of all things and matters comprising the Services, which have expiration dates beyond the Transition Effective Date. This Article shall not be construed narrowly, but broadly, to ensure the Transition of all Services with expiration dates beyond the Transition Effective Date occurs on or by that date. The parties do not intend for there to be residual Service-related matters that do not Transition on or by the Transition Effective Date.

21.3 Agreement for Transition Assistance Services

Transition Assistance Services, as specified in this Article 21, shall be provided from the commencement of the Transition Period and for up to twelve (12) months after the Transition Effective Date, unless further extended by the Parties. DIR will provide Successful Respondent with written notice of its intent to have Transition Assistance Services, in whole or in part, provided by Successful Respondent after the

Transition Effective Date, by giving at least sixty (60) calendar days advance notice. Such notice shall contain a list of the specific Transition Assistance Services required and the duration for each of the Transition Assistance Services sought. Successful Respondent shall review the notice and provide a written proposal response for the specific services sought, as more particularly described in Section 21.04(b)(5), within thirty (30) calendar days of receipt of DIR's notice. The parties agree to negotiate in good faith to conclude a written agreement for the required Transition Assistance Services no later than one-hundred twenty (120) calendar days prior to the Transition Effective Date.

21.4 Transition Assistance Services

Transition Assistance Services shall include:

- a) Full cooperation and participation in the Transition planning process, as more particularly described in Section 21.6, which shall commence no later than the commencement of the Transition Period, at DIR's sole and absolute discretion, and shall involve a series of meetings among the representatives of DIR, Vendor, the successor service provider, if known, representatives of Successful Respondent's current State agency Customers and other parties whose participation would enhance the planning process, which process is more fully described in Phase Four (4) set forth in this Section 21.4; and
- b) Successful Respondent providing to DIR, or the successor Service Provider, all of the items and matters called out for in this Article 21, and other items or information reasonably necessary to complete the transition of the Services under the CTSA. Without limiting the foregoing, the Transition Assistance Services shall occur in five (5) phases:
 - 1) Phase 1 – Initial Reporting of Services Subject to Transition. On or by December 31st two (2) years prior to the Transition Effective Date, Successful Respondent shall provide a written report, in the form required by DIR, disclosing all Services, as of December 1st of the same year, that have expiration dates beyond the applicable Transition Effective Date under the CTSA. Without limiting the foregoing, Successful Respondent shall report on and include:
 - i. All Software that Successful Respondent uses to perform its Services with each Customer under each of the Services, including complete source and machine readable data, associated manuals, procedures, processes, documentation, descriptions, data files, specifications, configurations, and other such items as available in accordance with existing third party licensing agreements. For each item of Software listed, Successful Respondent shall provide a copy of the associated Software license held by Successful Respondent. Successful Respondent shall ensure the transferability of the associated licenses to a successor entity under conditions similar to that of this Transition with no fees or costs for Transition to DIR or the successor service provider, if any;
 - ii. All hardware and other Equipment, including all hardware leases for Equipment used to perform each Service, including leases which have a term beyond the Transition Effective Date. Successful Respondent shall provide a copy of the assignment/transfer and early termination clauses for each lease with a term beyond the Transition Effective Date and report on the status of transferability and any costs for transfer or early termination, if any. Successful Respondent shall report all known costs for transfer or termination of such leases, including the existing leases or as the same may be amended prior to the Transition Effective Date;

- iii. All maintenance agreements for Software, hardware, or other Equipment and assets, including copies of their assignment/transfer and early termination clauses, a status report on transferability to DIR or its designee and the costs for transfer or early termination, if any;
 - iv. All third party supplier agreements, which have an effective date beyond the Transition Effective Date, including copies of their assignment/transfer and early termination clauses, a status report on transferability to DIR or its designee and the costs for transfer or early termination, if any;
 - v. Copies of the CSAs with the Customers for Services.
- 2) Phase 2 – Ongoing Reports on Services through the Transition Effective Date. Phase 2 is composed of five (5) activities, as listed below:
- i. Follow Up Reporting. For each item reported in Phase I, Successful Respondent shall update DIR on a semi-annual basis up to the Transition Effective Date. The first such update after December 31st shall be due on or by June 30th of the following year.
 - ii. New TEX-AN 2021 CSA. For every CSA issued by Successful Respondent to a Customer between the initiation of the reporting period two (2) years out from the Transition Effective Date and the Transition Effective Date, Successful Respondent shall seek and receive DIR's approval prior to entering into any CSA. DIR shall be provided no less than five (5) Business Days in which to review the documentation for each proposed CSA, in substantially final form. In each instance Successful Respondent shall provide that the CSA contains: 1) a complete assignment or transfer to DIR, or its successor service provider, on or by the Transition Effective Date, preferably at no cost to DIR or its designee, and 2) a termination for convenience clause in favor of Successful Respondent and DIR in all such CSAs. Successful Respondent shall use commercially reasonable efforts to minimize the fee for assignment or transfer to DIR, or its successor service provider.
 - iii. Equipment Condition Report. Successful Respondent will develop a checklist and conduct checks/reviews of the installed Equipment and produce a report on or by six (6) months prior to the Transition Effective Date. Such report shall detail, at a minimum, the then-current condition of each piece of installed Equipment and the preventative maintenance needed within the next six (6) months after the report is issued. For all items, Successful Respondent shall provide details about existing maintenance contracts.
 - iv. Subcontractor Report. On or by January 1st two (2) years prior to the Transition Effective Date, and semi-annually thereafter up to the Transition Effective Date, Successful Respondent shall identify all then-current Subcontracts that provide Services under any CSA issued pursuant to the CTSA, in a form and level of detail approved by DIR, in its sole and absolute discretion.
 - v. Notwithstanding any other provision in this Article 21, Successful Respondent agrees to provide another updated report for all CSAs on or by August 31st, one (1) year prior to the Transition Effective Date, and six (6) months prior to the Transition Effective Date.
- 3) Phase 3 – Completion of all documentation for Transition
- i. DIR, or the successor service provider and Successful Respondent shall complete Transition associated documentation necessary to effect the Transition of all CSAs

- under the CTSA in a timely manner, including, at a minimum, the Transition of all CSAs reported to DIR under Subsections (1) and (2) hereof. Successful Respondent shall facilitate interactions and necessary documentation with third party vendors, its Subcontractors, lessors, and other providers, at the request of DIR, or at the request of the successor service provider. DIR reserves the right, in its sole and absolute discretion, to require that DIR, the successor service provider, and Successful Respondent conduct a formal closing for the Transition, in order to ensure the completion of all necessary documentation.
- ii. DIR, or the successor service provider, shall cause each Transition document to provide the complete transfer of all right, title, and interest in and to the CSAs, including any related lease or third party contract related to the underlying Equipment, from Successful Respondent to DIR, or the successor service provider, effective as of the Transition Effective Date. Each Transition document shall also provide that from and after the Transition Effective Date, Successful Respondent shall have no obligation or liability to any third party vendor or lessor whatsoever related to the underlying Equipment. Successful Respondent shall ensure that the granting of such license, sublicense, assignment, and other relevant rights is not subject to third party approval or payment by DIR, Customer, or the successor service provider of license, assignment, or transfer fees or penalties. Successful Respondent shall have no responsibility to pay any third party vendor or lessor from and after the Transition Effective Date.
- 4) Phase 4 – Planning Phase for Transition from the CTSA to an Agreement with a successor service provider. Successful Respondent shall fully and completely participate in all meetings called by DIR for the purpose of planning and implementing the transition of CSAs from the CTSA to the successor service provider. The goal of this planning phase is to provide an orderly transition of CSA operations under the CTSA to the operations with a successor service provider. Such planning activities shall commence no later than January 1st of the year of the Transition Effective Date, at DIR’s direction and shall continue until all transition activities are complete. These Transition activities shall include, but not be limited to, the following:
- i. Pre-planning no later than January 1st to March 31st of the year of the Transition Effective Date. These DIR meetings will include the Successful Respondent’s current Customers, as determined by DIR, the successor service provider, Successful Respondent, and DIR. The scope of the pre-planning is to plan for the transfers of the current Customers' CSA operations, scheduling of all necessary activities, development of roles and responsibilities matrix related to Transition of the CSA, and planning for all the other steps of the Transition process, as listed below. The goal of this pre-planning phase is to produce a mutually acceptable Transition Plan document that defines roles and responsibilities for accomplishing each step in the Transition among the participating parties.
 - ii. Turnover of CSA operations to the successor service provider. In each step in the Transition planning and execution process, Successful Respondent is required to provide information as requested by DIR, the successor service provider and /or the current Successful Respondent’s Customers in accordance with the agreed upon Transition Plan. Such information shall include, but not be limited to the following tangible items and matters of inherent knowledge:

- A. Assets Lists (hardware, Software, schematics, maintenance agreements, third party agreements)
 - B. Procedures
 - C. Policies
 - D. Practices
 - E. Protocols
 - F. Customer biographies
 - G. Organization charts
 - H. Customer and Successful Respondent (including Subcontractors) decision makers; authorized Successful Respondent Personnel
 - I. Institutional knowledge; unwritten rules; operational personnel; client background information; authorization lists;
 - J. Operational details
 - K. and
 - L. Quick reference manuals.
- 5) Phase 5 – Post-Transition Effective Date Services by Successful Respondent. At DIR’s option, DIR will request and Successful Respondent shall respond with a proposal for Successful Respondent to provide assistance for continuing management and operation of the CSA as conducted under the CTSA for a period beyond Transition Effective Date up to one (1) year after the Transition Effective Date, but only upon the execution of an appropriate contract for such services, on terms and conditions as agreed by DIR, or the successor service provider, and Successful Respondent. In the event that DIR, or the successor service provider, requires the services of Successful Respondent during the Post-Transition Effective Date period, then DIR shall execute a separate agreement with Successful Respondent to provide services on a time and material basis.

21.5 Covenant of Cooperation

During the period of time from the commencement of the Transition, as defined, to the completion of Transition Assistance Services, Successful Respondent agrees to fully cooperate with DIR, and as appropriate, with the successor service provider, to fulfill the terms of the CTSA. DIR and Successful Respondent agree to fulfill the terms of this Article 21 in a manner that is the least disruptive to the Customers under the CSA. DIR and Successful Respondent agree to notify the other Party in the event either discovers a condition, contract, or other matter that would benefit or adversely affect performance of the CSA, if generally known. In the event it is determined that amendment to this Article 21 is in the best interest of the State, Successful Respondent agrees to negotiate amendments to this Article 21 in good faith with DIR. In all events, the Parties agree to cooperate in the negotiation and execution of such other and further documents as necessary to fulfill the terms of this Article 21.

21.6 Other Successful Respondent Agreements with Customers

DIR and Successful Respondent agree that this Article does not apply to any other contracts that Successful Respondent has, or may have in the future, with Customer that are separate transactions from the CSA authorized under the CTSA.

22 MISCELLANEOUS

22.1 Entire Agreement

This CTSA, including with any documents, attachments, and exhibits specifically referred to herein or attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement with respect to the subject matter hereof between the Parties. On execution of this CTSA, all prior agreements and understandings between the Parties relating to the subject matter hereof shall be null and void. The Parties specifically acknowledge that there are no unwritten side agreements or oral agreements between them which alter, amend, modify, or supplement this CTSA as of the Effective Date.

22.2 Counterparts

This CTSA may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same single agreement. Electronic signatures shall be deemed original signatures.

22.3 Authority to Execute

IN WITNESS WHEREOF, the Parties have executed this TEX-AN 2021 Communications Technology Services Agreement in their capacities as stated below with authority to bind their organizations on the dates set forth by their signatures. This Agreement shall be effective from the date of the last signature thereto (the Effective Date).

Department of Information Resources

**CenturyLink Communications, LLC d/b/a
Lumen Technologies Group
(Successful Respondent)**

Signature on File

Amanda Crawford
Executive Director

Signature on File

Dennis Fisher
Director Offer Management

11/5/2021 _____

Date

10/27/2021 _____

Date

M.H. _____

Legal

Exhibit A To TEX-AN 2021 Communications Technology Services Agreement

Between

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

and

**CenturyLink Communications, LLC d/b/a Lumen Technologies
Group (Successful Respondent)**

EXHIBIT A. DEFINITIONS

1 INTRODUCTION

The purpose of *Exhibit A Definitions* is to define certain terms used for the CTSA. This only contains definitions for words or phrases to which DIR is ascribing a special meaning. Words and phrases not listed here are to be given their usual definition within the context of the sentence in which they are used.

2 DEFINITIONS AND ACRONYMS

Term	Definition
ADA	Americans with Disabilities Act.
ADC	Austin Data Center.
Acceptance	Agreement from DIR and/or its Customer(s) that Service installations, moves, or changes have been successfully completed.
Adjustment	Correction to an Invoice resulting from a billing error or as a result of Billing Dispute reconciliation.
Administrative Fee	In general, the fee paid to DIR to defray the DIR costs of operating and administering the TEX-AN 2021 Program. The fee is a percentage applied to Successful Respondent's Service costs.
Affiliate	(i) Any person or entity directly or indirectly owning, controlling or holding, with power to vote, fifty percent (50%) or more of the outstanding voting securities of Successful Respondent; (ii) any person or entity for which fifty percent (50%) or more of the outstanding voting securities are directly or indirectly owned, controlled or held, with power to vote by Successful Respondent; or (iii) any person, or entity directly or indirectly controlling, controlled by, or under common control with, Successful Respondent.
Assignee	An individual or organization that receives an assignment of all or part of the interests of one of the Party's to the CTSA, and that undertakes to assume the responsibilities of that original Party.
Assurance	Set of processes used to maintain and guarantee the required performance of a Service.
Attachment	A form or document appended to an exhibit to the CTSA.
Authorized End Users or Authorized User	Individuals or organizations that are eligible to use the Services by statute, also known as Customers .
Availability	The ratio of the time when a Service is functional and available to the user for the performance of prescribed functions (e.g., to originate and terminate Calls) to the total amount of time in the reporting interval, minus scheduled maintenance Downtime. Availability is expressed as a decimal between 0 and 1 and is normally calculated for one (1) calendar month.
Bill	A formal statement of charges. See also Invoice.
Billing Dispute	A Billing Inquiry may lead to a written notice from the DIR or Customer to the Successful Respondent regarding an error in data or billing element requiring an adjustment or correction to the Monthly Consolidated Invoice which may include any applicable Credits.

Term	Definition
Billing Inquiry	Question or inquiry submitted by DIR or Customer to the Successful Respondent regarding billing which, if not satisfactorily resolved by DIR and the Successful Respondent, may result in a Billing Dispute.
Billing Plan	A plan submitted with Successful Respondent's Response demonstrating compliance with the RFO for billing matters. The final Billing Plan, as approved by DIR per Exhibit D, Billing Plan.
BMIC	Basic Maintenance of Internal Connections.
Business Day	Monday through Friday, excluding State holidays, 7:30 a.m. to 5:00 p.m. local time. State holidays will include all holidays with the status "All Agencies closed" as designated by the State Auditor's Office. State holidays will not include State optional holidays or holidays that require skeleton crews. If the CTSA calls for performance on a day that is not a Business Day, then performance is intended to occur on the next Business Day.
Cause	Has the meaning as provided in Section 17.3 of this CTSA.
CFO	Chief Financial Office.
Change(s)	Any planned modification to a Service Instance or to a Successful Respondent's network. Changes may include corrections, enhancements, modifications, additions, and replacements.
Commercially Available	As applied to a Service in a geographic area, a Service or related Service feature provided legally by a Successful Respondent to one (1) or more entities, which as independent entities from such Successful Respondent, use the Services for its legal commercial business purposes.
Comptroller of Public Accounts (CPA)	A State agency. The State's chief tax collector, accountant, revenue estimator and treasurer. CPA includes the Texas State Treasury.
Confidential Information	Is defined in CTSA Section 15.1(a).
Consolidated State Network	Means the consolidated telecommunications system as defined by Section 2170.001(a)(2), Texas Government Code, as the network of telecommunications services serving the State government. This Consolidated State Network is composed of DIR, Customer, and Successful Respondent Network segments as defined herein.
Contract (or CTSA)	Means the TEX-AN 2021 Communications Technology Services Agreement, or (CTSA) – The final version of this contractually binding agreement between the Texas Department of Information Resources and the Successful Respondent awarded pursuant to the RFO, including all exhibits and attachments thereto.
Contract Anniversary Date	The date marking the end of the period commencing on the Effective Date and ending one (1) year later and for each year in the Term thereafter.
Contract Holder(s)	Other Successful Respondents awarded a Contract pursuant to RFO DIR-CPO-TMP-552 and part of the TEX-AN 2021 Program.
Corrective Action Plan	Has the meaning assigned in Section 17.2 , Tailored Remedies.
COTS	Commercial off-the shelf.
Credit(s)	Monetary assessments against amounts owed.
CTCD	Certified Texas Contract Developer.
CTCM	Certified Texas Contract Manager.

Term	Definition
CTS	Communication Technology Services.
Current Service Area	The geographic area where the Successful Respondent is currently providing Commercially Available services.
Customer	Any eligible purchaser of Services. Customers are defined in accordance with Section 2170.004, Texas Government Code.
Customer Circuit Record Code (CKR)	DIR internal tracking number based on the agency/division of the Customer and the type of Service ordered.
Customer Facilities	Building and infrastructure owned or operated by Customer.
Customer Network	Customer networks are built and maintained by the Customer. Customer Networks may or may not connect to the DIR Network or a Successful Respondent Network, depending upon whether the Customer needs access to Services provided by the DIR Network or a Successful Respondent Network. Network to network demarcation points are determined on a case by case basis depending upon type of Service.
Customer Premises Equipment (CPE)	All communications terminal Equipment that is located on the Customer's premises.
Data	Information available in physical and/or electronic form.
Data Destruction	Handling, securing and disposing of data in both physical and electronic form, in compliance with, federal and State Laws that include, but are not limited to: 1 Texas Administrative Code Chapter 202; Section 403.278, Texas Government Code; Chapter 2175, Texas Government Code; the Internal Revenue Code; the Fair and Accurate Credit Transactions Act; the Family Educational Rights and Privacy Act ; the Health Insurance Portability and Accountability Act of 1996 ; and the Gramm-Leach-Bliley Act.
Deficiency(ies)	Has the meaning as used in Section 17.2.2 of this CTSA.
Deliverable	A report or item that must be completed and delivered under the terms of the CTSA or a CSA. The measurable result or output of a process prepared, developed, or procured by Successful Respondent as part of the Services under the CTSA or a CSA.
Department of Information Resources (DIR)	State agency that oversees and assists in managing the information resource assets of the State pursuant to Chapters 2054, 2059, and 2170, Texas Government Code, as the same may be amended from time to time.
Descriptions	The description(s) of the awarded Services set forth in Exhibit B.
Developing Technologies	Includes technologies Respondents currently have and those that are in work and soon to become available.
DIR Contractor	Has the meaning as defined in Section 4.5 of this CTSA.
DIR Cooperative (Coop) Contracts Program	A streamlined cooperative purchasing program for state, local, public education, and other public entities within and outside the State of Texas, administered by the CPO of DIR.
DIR Facilities	Building and infrastructure owned or operated by DIR.
DIR Network(s)	The DIR Network provides connectivity for primarily State government agencies but also includes educational institutions, political subdivisions, and assistance organizations. Customer and Contract Holder Networks connect to the DIR Network for interconnectivity and for enterprise services such as connectivity to the State data centers and internet service.
DIR Rules	Rules and procedures promulgated by DIR in accordance with the Texas Administrative Procedures Act and Texas Administrative Code.

Term	Definition
Direct Sales Transaction Services	Direct Sales Transaction Services – Refer to Section 4.1 of this CTSA Services that are direct billed as determined by DIR.
Disentanglement	The process of winding up all issues in the business relationship between DIR, Customer, and Successful Respondent in the event of any termination of the CTSA. See Section 17.7 , Payment and Other Provisions at CTSA Termination.
Disentanglement Plan	The plan developed and submitted by Successful Respondent and approved by DIR, in its sole and absolute discretion, to provide for the orderly and efficient winding up of the issues of the business relationship between Successful Respondent, Customer, and DIR in the event of any termination of the CTSA. See Section 17.7 , Payment and Other Provisions at CTSA Termination .
Disputes	A Billing Dispute is a disagreement over the accuracy of charges in an Invoice either to DIR or a Customer. Other Disputes may be disagreements over actions taken or not taken pursuant to the CTSA or a CSA, which are subject to the provisions of Section 16.10 Dispute Resolution of the CTSA.
Downtime	Period of time when the system is unavailable, in whole or in part. Downtime may be scheduled or unscheduled.
DWDM	Dense wave division multiplexing.
Effective Date	The commencement date for the CTSA, which is the date on which the last Party signs the CTSA.
Electronic Administrative Update (EAU)	An electronic fast-track system process for the continuous improvement of the Rates to DIR and Prices available to the Customers under the CTSA, and other non-substantive administrative updates, without reliance on a formal amendment process.
Electronic State Business Daily	A web portal operated by the CPA, to which all State agencies must post procurement opportunities, in compliance with Section 2155.083, Texas Government Code.
Emerging Technologies	Any technology within scope of the RFO currently not available from a Successful Respondent that may become available during the term of the CTSA.
EPLS	Excluded Persons List System.
Equipment	Computer hardware, routers, telecommunication devices, peripherals, and similar materials (and all modifications, replacements, upgrades, enhancements, documentation, materials, and media related thereto) that are used or provided in connection with this CTSA or Services related to this CTSA.
ESBD	Electronic State Business Daily.
Executive Leadership Team	A committee of DIR executives tasked with helping resolve issues that may arise between DIR and Successful Respondent.
Expiration Date	As defined in CTSA Section 3.1.
Failure	A detected cessation of capability to perform a specified function or functions within previously established limits, which is beyond adjustment by the operator through means of controls normally accessible during routine operations of the system.
FCC	The Federal Communication Commission, with regulatory authority over the telecommunications industry, including certain telecommunications carriers.

Term	Definition
Feature	Additional capability beyond the basic Service that may be selected at the Customer's option. Features normally are separately priced, although some Features have been defined to be Not Separately Priced .
Force Majeure Event	An event experienced by a Party that is within the scope of the CTSA clause found at Section 8.3.2.
Government Entity or Entities	Has the meaning provided in Texas Government Code § 2170.004.
Grade of Service	A number of network design variables used to provide a measure of adequacy for a group of resources under specified conditions.
HUB	Historically Underutilized Business.
HSP	HUB Subcontracting Plan.
HVAC	Heating, ventilation, and air conditioning.
IC	Internal connections.
ID	Identification.
Independent Verification and Validation contractors	A third party provider of independent assessment and testing methodologies for quality assurance or performance verification purposes.
Initial Term	Has the meaning provided in Section 3.1 of the CTSA.
Intellectual Property	Any trademarks, patents, inventions, copyrights, trade secrets, or domain names created prior to, on, or after the Effective Date.
Invoice	Depending on the context in which used, may mean the Monthly Consolidated Invoice issued by Successful Respondent to DIR, or an Invoice issued to a Direct Sales Transaction Service Customer for Direct Sales Transaction Services. In the proper context, Invoice may refer to both types of Invoices.
Invoice File	Summarized Invoice data that are delivered by the Successful Respondent to DIR, or a Customer, in a machine-readable format.
IT	Information technology.
IVR	Interactive voice response.
Key Performance Indicator (KPI)	Measurable Service attribute that is critical to its proper functioning and delivery to the Customer.
LAN	Local area network.
Local Services	A type of Service as discussed in Section 11.2 e) of the SOW, which may be directly sold to Customers by Successful Respondent as set forth in Article 4 of the CTSA, if awarded to Successful Respondent under this CTSA.
Managed Network Services	Has the meaning set forth in RFO Section 2.1.a) including facility, power, and HVAC solutions.
Managed Services	Has the meaning set forth in RFO Section 2.1.
Management Plan(s)	Has the meaning provided in Section 2.3 and in the CTSA's Exhibit named Plans.
Marketing Plan	A plan submitted with Successful Respondent's Response to demonstrate Successful Respondent's resources and activities to promote the CTSA and gain Customers. The Marketing Plan, as approved by DIR, in its sole and absolute discretion, shall become an attachment to the CTSA.
Material Breach	Has the meaning set forth in Section 16.2 Tailored Remedies.
MIBS	Managed internal broadband services.
MPLS	Multiple protocol label switching.

Term	Definition
Monthly Consolidated Invoice	A formal, single statement of charges provided by Successful Respondent to DIR, which includes the Invoice file, Detailed Billing File, Adjustment file, and monthly informational memorandum for all Services provided by Successful Respondent.
Monthly Recurring Charge (MRC)	Regular fees repeatedly billed each month by Successful Respondents for Services performed. See also Non-Recurring Charge (NRC).
Move, Add, Change, or Delete (MACD)	Term describing a variance to Services.
Network Access	Has the meaning set forth in RFO Section 2.1.a) and 2.1.b).
Network Power Management Services	Has the meaning set forth in Section ??? of the SOW addressing Network Power Management Services and Section ??? of the SOW addressing Network Power Management Services Response Instructions.
Network Security Operations Center (NSOC)	The NSOC, which is owned by DIR, protects TEX-AN 2021 computer systems and information assets from unauthorized external intervention or improper use, in accordance with Chapter 2059, Texas Government Code.
Next Generation 911 (also NextGen 911)	Has the meaning set forth in Section ??? of the SOW addressing 911 Services to a 911 Administrative Entity and Section ??? addressing 911 Services to a 911 Administrative Entity Response Instructions.
Non-Recurring Charge (NRC)	Extraordinary or unusual fees that are unlikely to occur again in the normal course of performing Services. They include fees for facilities, Services, or products that occurred one time or infrequently. Examples include expedite fees, installations, or special construction.
Not Separately Priced (NSP)	The price and or cost for a particular cost or fee element which includes another cost or fee element.
NSOC	Network and security operations center.
Order	A request or authorization by DIR or Customer, as applicable, to acquire a Service.
Parties or Party	Has the meaning given in the Preamble to CTSA.
PBX	Private branch exchange.
Performance Data	Measured and recorded data that reflect resource utilization.
Performance Management	Has the meaning given in the Performance Management Exhibit.
Point of Presence (POP)	Successful Respondent-owned or controlled physical location (1) where Successful Respondent-owned or controlled network facilities used to provide Services are located and (2) where access to or from on-net locations is connected to the Successful Respondent's Network.
Prices	Are the values for Direct Sales Transaction Services as reflected in Exhibit B to the CTSA which Successful Respondent is allowed to directly bill to Customers and are composed of the Successful Respondent's price plus the Administrative Fee, and also includes the values billed to Customers by DIR acting as the Successful Respondent's billing agent.
Project	A transaction that requires special, custom, or unique treatment by the Successful Respondent due to size, complexity, or importance of the Services ordered.
Public Information	As defined by the Texas Public Information Act, Texas Government Code, Chapter 552.

Term	Definition
Public Safety	Has the meaning as describe in Section 4.1 of the SOW addressing 911 Services to a 911 Administrative Entity and in Section 11.9 of the SOW addressing 911 Services to a 911 Administrative Entity Response Instructions.
PUC	The Texas Public Utility Commission.
Purchase Order	DIR's or Customer's fiscal form or format, which is used when making a purchase of Services (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or another authorized instrument).
Rates to DIR	The Successful Respondent's charges to DIR for Services, as established and agreed to between DIR and the Successful Respondent in the CTSA. Rates to DIR do not include the Administrative Fee.
Renewal Term(s)	Has the meaning set forth in Section 3.2 of the CTSA.
Request for Offer (RFO)	Has the meaning given in the Preamble to the CTSA.
Respondent	A firm, company, entity or individual that responds to the solicitation. Unless the Contract clearly indicates otherwise, all terms and conditions of the Contract that refer to Respondent apply with equal force to Successful Respondent.
Response	Has the meaning given in the Preamble to the CTSA.
RFO	Request for offer.
RFRO	Request for revised offer.
SAM	System for Award Management.
SD WAN	Software defined wide area network.
SDC	San Angelo Data Center.
SDN	Software defined networking.
Security Incident	An event which results in accidental or deliberate unauthorized access, exposure, loss, disclosure, modification, disruption, or destruction of information resources, including DIR or Customer data.
Service Level Agreement(s) (SLA(s))	Agreement between DIR and Successful Respondent which establishes the minimum standard of performance for Services by the Successful Respondent under the CTSA. Compliance with SLAs is determined by measurement of KPIs and AQLs. The SLA(s) also specifies the amount of Credit to which DIR or the Customer is entitled if the Successful Respondent fails to meet the applicable AQL.
Service Instance	Has the meaning as used in Section 2.4 of the CTSA's Performance Management Exhibit.
Service Order Completion Notice (SOCN)	Written notice from Successful Respondent that contains data elements notifying DIR and/or the Customer that the Service for a given Order has been fully installed and is ready for Acceptance.
Service(s)	Means the TEX-AN 2021 Communications Technology Services (TEX-AN 2021 Services) as specified in the CTSA and awarded under the CTSA.
SHB	Sam Houston building
SIM Platform	Security information management system hardware and Software that monitors the security of the DIR Network.
Small Office/Home Office (SO/HO) Internet Connectivity	A type of Service as specified in Section 4.1 of the CTSA, which may be directly sold to Customers by Successful Respondent as set forth in Article 4 Relationship among DIR, Successful Respondent, other TEX-AN 2021 Contract Holders, and Customers of the CTSA, if awarded to Successful

Term	Definition
	Respondent under this CTSA. Service available only to locations with twenty-five (25) or less Internet users per location.
Software	All Materials consisting of software programs and programming (and all modifications, replacements, Upgrades, enhancements, documentation, materials and media related thereto), including Antivirus Software, Application Software, Development Tools, and System Software.
State	The State of Texas.
Statement of Work (SOW)	Document used to clarify project requirements and document additional terms, conditions, and payment details for services rendered.
Stop Marketing Order	Has the meaning set forth in Section 16.2 Tailored Remedies.
STS	Share Technology Services.
Subcontract	Any written agreement between Successful Respondent and other third party to fulfill the requirements of this CTSA.
Subcontractor	A party to a Subcontract which is not the Successful Respondent.
Subcontractor Compliance Obligations	Has the meaning set forth in Section 6.3.5 Subcontractor's Compliance.
Successful Respondent	The entity(ies) awarded a CTSA under this solicitation.
Successful Respondent Network	A Successful Respondent Network is built and maintained by Successful Respondent for supporting Customer and DIR Requirements. A Successful Respondent Network provides Customer connectivity similar to the DIR Network. Successful Respondent Networks also provide access between Customer Networks and the enterprise services on the DIR Network.
Successful Respondent Personnel	People, including employees, agents, and individuals serving as subcontractors to the Successful Respondent.
Successful Respondent's Proprietary Software	All software owned by Successful Respondent or its Affiliates and used in providing the Services.
Technology Based Conferencing Services	Audio, video, and web-based conferencing services available as part of an integrated solution, or as a subscription-based solution, but does not include the sale of hardware. Conferencing hardware is available through DIR Cooperative Contracts.
Telecommunication Managed Services (or Telecom Managed Services)	Offerings include, but are not limited to, management of Customer owned, or Successful Respondent provided Equipment in support of management of call processing architecture, call centers or contact center services, interactive voice response (IVR)/auto-attendant services, managed private branch exchange (PBX) services, management of voice and data networks, network optimization services, and hosted solutions on a subscriptions basis. Services are negotiated through an SOW process and a sample SOW document is located as Appendix A.
Telecommunications Service Priority (TSP)	The Services identified by DIR, or per applicable laws and regulations, as Services for Successful Respondents to initiate, restore, or otherwise provide on a priority basis to ensure the continued effective operation of State-defined critical Services.

Term	Definition
Term	The period of time during which the CTSA is in effect between DIR and the Successful Respondent, as more particularly described in CTSA Article 3 Term .
TEX-AN	The activities and contracts authorized by Chapter 2170, Texas Government Code, administered by DIR on behalf of the State.
TEX-AN 2021 Communications Technology Services Agreement, or (CTSA)	The final version of this contractually binding agreement between DIR and the Successful Respondent, including all exhibits and attachments thereto.
TEX-AN Next Generation or TEX-AN NG	Means the current TEX-AN Program as it exists today.
TEX-AN 2021 Customer Services Agreement (CSA)	A contractual document containing the terms, conditions, and scope for Services to be deployed and operated under this CTSA, and executed by the Customer, Successful Respondent, and DIR. Attachments H-1 and H-2 contain the template for the form of TEX-AN 2021 Customer Services Agreement.
Texas.gov	Official State internet portal in accordance with Chapter 2054, Texas Government Code.
The Electronic Product Environmental Assessment Tool (EPEAT)	A method for purchasers (governments, institutions, consumers, etc.) to evaluate the effect of a product on the environment. It assesses various lifecycle environmental aspects of a device and ranks products as Gold, Silver, or Bronze based on a set of environmental performance criteria.
Transition	Process for the coordinated transfer of any Service from the outgoing contract holder at the termination or expiration of this CTSA to an incoming Successful Respondent.
Transition Assistance Services	Are defined as set forth in Section 21.4, Transition Assistance Services.
Transition Effective Date	Has the meaning set forth in Section 21.1, Scope.
Transition Period	Has the meaning set forth in Section 21.2, General Statement for Transition.
Transition Plan for Expiration of the CTSA (Transition Plan)	The plan for the period of time and activities for the transition of TEX-AN 2021 Services under this CTSA from the Successful Respondent to DIR or a successor service provider designated by DIR at the end of the Term. See Article 21 of the CTSA.
VIS	Vendor Information System.
Voice	Has the meaning described in Section 3.1, Voice Services of the SOW.
VPAT	Voluntary Product Accessibility Template.
WAN	Wide area network.
WCAG	Web content accessibility guidelines
Wired	In the context of this RFO, Wired refers to the transmission of data over a wire-based communication technology.
Wireless	In the context of this RFO, Wireless is the electromagnetic transfer of information between two or more points that are not connected by an electrical conductor.

— End of Exhibit A —

Exhibit B To TEX-AN 2021 Communications Technology Services Agreement

Between

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

and

**CenturyLink Communications, LLC d/b/a Lumen Technologies
Group (Successful Respondent)**

EXHIBIT B.
DESCRIPTIONS, RATES TO DIR, PRICES, AND RELATED
TELECOMMUNICATIONS FEES AND
SURCHARGES FOR AWARDED SERVICES

1 INTRODUCTION

The purpose of Exhibit B is to address the agreed-upon Descriptions, Rates to DIR, Prices, and related telecommunications fees and surcharges for Awarded Services.

2 CONTRACTUAL PRINCIPLES

- a) This Exhibit B addresses the following principles:
- b) The specifics for the Descriptions, Rates to DIR, Prices, and related telecommunications fees and surcharges for Awarded Services within scope of this CTSA are contained in this Exhibit B, Attachment B-1 through Attachment B-4. The Successful Respondent's Descriptions, Rates to DIR, Prices, and fees are consistent with the terms of the CTSA.
- c) The Marketing Plan is the Successful Respondent's projection of the activities it will engage in to maximize the economic value of the CTSA during the Term of the CTSA. The Marketing Plan includes a statement of operations for the awarded Services and the narrative discussion including all key assumptions, risks, and risk mitigation strategies used to generate Purchase Orders from Customers.

3 METHODOLOGY FOR UPDATING ASSOCIATED ATTACHMENTS

3.1 Recommendations

Either DIR or Successful Respondent may submit to the other Party a recommendation for changes to Attachment C-1. Such recommendation will be in writing and will:

- a) Specifically identify the portion or portions of the Attachments to be changed,
- b) Include the specific Rates to DIR, Prices, or telecommunications fees and surcharges to be changed and/or Descriptions to be altered in the Attachments, and
- c) Identify the reasons for the proposal and anticipated revenue impact from the change or repercussions for Failure to adopt the change. A copy of the recommendation will be provided to the other Party. The Parties will use electronic communications to submit, review, and implement changes to the Attachments. Attachment changes shall be provided to Customers via the Successful Respondent's webpage and DIR's TEX-AN 2021 Program webpage.

3.2 Review and Input

- a) DIR will determine whether input on the recommendation from other Customers is appropriate and will promptly circulate the recommendation to those identified. If DIR does request input from any Customer, DIR will require any input to be provided in writing and submitted within a

specified period of time, not to exceed thirty (30) Business Days from the date of the recommendation.

- b) DIR and Successful Respondent will each receive a copy of the written input from the Customers, if applicable. The Party making the recommendation may propose adjustments to the recommendation to address any input of the Customers.

3.3 Approval

If DIR and Successful Respondent agree upon the recommendation, the Parties will execute a revision to Attachments, as applicable, which will be effective when signed by authorized representatives of both DIR and Successful Respondent. The revised Attachments will be posted in a location agreed to by Successful Respondent and DIR. Revisions may be in the form of electronic records of the new Descriptions, Rates to DIR, Prices, and/ or telecommunications fees and surcharges for changes to Attachment B-1. Successful Respondent shall update its webpage accessible to Customers immediately to have the revised portions of the Attachment B-1 available to Customers as soon as possible.

3.4 Appeal

If DIR and Successful Respondent cannot agree on a recommendation, the recommendation may be submitted to the Executive Leadership Team for resolution.

4 ATTACHMENTS TO EXHIBIT B

The following attachments are incorporated as part of Exhibit B:

Attachments to Exhibit B	Description and Contents
Attachment B-1 Descriptions, Rates to DIR, Prices, and related telecommunications fees and surcharges for Awarded Services	Attachment B-1 contains the Descriptions, Rates to DIR, Prices, and the telecommunications fees and surcharges for the Awarded Services.
Attachment B-2 Descriptions, Rates to DIR, Prices and related telecommunications fees and surcharges for Carrier Class Services; and only applicable to Successful Respondents that are awarded Carrier Class Services.	Attachment B-2 contains service descriptions, rates to DIR and customer prices and related telecommunications fees, taxes and surcharges related to Carrier Class Services and include the respective administrative fee (12% for services where DIR acts as billing agent, and 4% for direct sales services) for services described therein. Attachment B-2 is attached to the CTSA as referenced here.
Attachment B-3 Descriptions, Rates to DIR, Prices and related telecommunications fees and surcharges for Wireless Services; and only applicable to Successful Respondents that are awarded Wireless Services.	Attachment B-3 contains service descriptions, rates to DIR and customer prices and related telecommunications fees, taxes and surcharges related to Wireless Services and include the respective administrative fee of 2% for services described therein. Attachment B-3 is attached to the CTSA as referenced here.
Attachment B-4 Descriptions, Rates to DIR, Prices and related telecommunications fees and surcharges for Telecom Managed Services; and only applicable to Successful Respondents that are awarded Telecom Managed Services.	Attachment B-4 contains service descriptions, rates to DIR and customer prices and related telecommunications fees, taxes and surcharges related to Telecom Managed Services and include the respective administrative fee of .50% for services described therein. There is no pricing related to Attachment B-4, but the Sample Statement of Work Template for Telecom Managed Services is included as an attachment to the CTSA.

Attachment B-1.

The parties will agree which services at what prices will be contained in the tables in this section.

1. **Carrier Class Services**

Includes, but not limited to, Voice Service, local and long distance, VOIP, bundled voice services, managed PBX, and unified communications voice services, data services, including Ethernet, Internet, MPLS, broadband services, and Small Office/Home Office (SOHO) service, next generation 911 services, fiber based technologies, and network power management services. Carrier Class Services awarded under this contract are those specifically stated in Attachment B-2 to Exhibit B.

2. **Telecom Managed Services**

Includes, but not limited to, managed or hosted voice and data network solutions, network optimization analysis and review, network project management, call attendant, IVR, and relate services as detailed by customers through the Statement of Work Template and bid process.

Pricing for services awarded under this contract can be found in Attachment B-2, and Attachment B-3.

— End of Exhibit B —

TEX-AN 2021 Communications Technology Services Agreement

Between

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

and

**CenturyLink Communications, LLC d/b/a Lumen Technologies
Group (Successful Respondent)**

EXHIBIT C. PERFORMANCE MANAGEMENT

1 INTRODUCTION

The purpose of Exhibit C is to comprehensively address the agreed-upon Performance Management for delivery of awarded Services.

2 PERFORMANCE MANAGEMENT CONTRACTUAL PRINCIPLES

Exhibit C Performance Management addresses the following principles:

2.1 Credit Assessments

DIR has chosen to address a majority of the risks related to Successful Respondent performance through the assessment of Credits against Rates to DIR and Prices for Services. The following provisions form the basis for assessing Credits as described in the CTSA:

- a) If the Successful Respondent does not fulfill its Services as specified under the CTSA, DIR and the Customers will be damaged;
- b) Establishing the precise amount or value of such damage may be difficult to quantify; and
- c) Except as otherwise provided in the CTSA, Credits will start to accumulate immediately following the end of the Service billing period in which an applicable SLA was not met.

2.2 Service Level Agreements (SLAs)

- a) Successful Respondent will comply with the performance criteria outlined in this Exhibit C.
- b) For each Service, Successful Respondent and DIR have agreed on acceptable SLAs and acceptable Credits associated with failure to deliver on each SLA, as set forth in Service Level Agreement (SLA) Plan. Successful Respondent will provide continuous improvement of the SLAs over the life of the CTSA. DIR and the Successful Respondent will review all of the SLAs on an annual basis.
- c) All proposed plans and mechanisms to be used for reporting shall be subject to approval by DIR, and all approved SLAs will be governed by the CTSA, as well as any special provisions agreed upon by DIR, Customer, and the Successful Respondent with respect to each SLA and/or CSA.

2.3 Reporting

- a) Failure of the Successful Respondent to submit the Management Plans required in Exhibit D Plans and Reports required in Attachment C-1 may result in Credits in the amount of \$500 per day after a five (5) day cure period. The same Credits also apply to Management Plans that are changed due to any future updates or revision requests that may be required by DIR. A revised plan addressing changes recommended by DIR must be submitted to DIR within five (5) Business Days of receiving notice from DIR. Changes to Management Plans will be made in accordance with Exhibit D Plans, Article 3 Methodology for Updating Associated Exhibit Attachments and Plans.

- b) Due dates for the initial drafts and final drafts of the Management Plans are specified in Exhibit D Plans.

2.4 Service Instance Performance

- a) The Successful Respondent will measure SLAs per Service as defined below, and report on performance as described in the CTSA.
- b) Per Service, as applicable:
 - 1) Mean Time to Repair
 - 2) Service Availability
 - 3) Latency
 - 4) Packet Delivery Rate
 - 5) Jitter
 - 6) Chronic Outage

2.5 Reports

Tailored remedies as described in the CTSA, may be used by DIR if the Successful Respondent fails to produce and submit all required reports as documented by the schedule of reports agreed to by the Parties pursuant to the Master Vendor Reporting Guide and stated in this Attachment C-1. Successful Respondent will not be liable for any failure or delay in performing its obligations under this Section if such failure or delay is due to Force Majeure Events. Additional reporting may be required by DIR in accordance with the CTSA.

2.6 Reporting on Performance Management

All plans and mechanisms to be used for reporting shall be subject to approval by DIR.

3 METHODOLOGY FOR UPDATING ASSOCIATED ATTACHMENT C-1

Attachment C-1 sets forth the actual reports related to Performance Management due on a monthly basis and as related to Successful Respondent business functions.

3.1 Recommendations

Either DIR or Successful Respondent may submit to the other Party a recommendation for changes to reports listed in Attachment C-1. Such recommendation will be in writing and will:

- a) Specifically identify the portion or portions of the Master Vendor Reporting Guide to be changed,
- b) Include the specific information to be changed and/or descriptions to be altered, and
- c) Identify the reasons for the proposal and anticipated revenue impact from the change or repercussions for failure to adopt the change. A copy of the recommendation will be provided to the other Party. The parties will use electronic communications to submit, review, and implement changes to Master Vendor Reporting Guide and Attachment C-1. Attachment C-1 changes shall be provided to Customers via DIR's contract landing webpage.

3.2 Review and Input

- a) DIR will determine whether input on the recommendation from other Customers is appropriate and will promptly circulate the recommendation to those identified. If DIR does request input from any Customer, DIR will require any input to be provided in writing and submitted within a specified period of time, not to exceed thirty (30) Business Days from the date of the recommendation.
- b) DIR and Successful Respondent will each receive a copy of the written input from the Customers, if applicable. The Party making the recommendation may propose adjustments to the recommendation to address any input of the Customers.

3.3 Approval

If DIR and Successful Respondent agree upon the recommendation, the Parties will execute a revision to Attachment C-1 or Master Vendor Reporting Guide, as applicable, which will be effective when signed by authorized representatives of both DIR and Successful Respondent. The revised Attachment C-1 will be posted in a location agreed to by Successful Respondent and DIR. Revisions may be in the form of electronic records of the new, or updated reports related to Attachment C-1 or the Master Vendor Reporting Guide.

3.4 Appeal

If the DIR and Successful Respondent cannot agree on a recommendation, the recommendation may be submitted to the Executive Leadership Team for resolution.

4 DOCUMENTS REFERENCED IN EXHIBIT C PERFORMANCE MANAGEMENT

4.1 Attachments to Exhibit C

Attachment C-1 is incorporated herein as part of Exhibit C Performance Management.

Attachment C-1. Tables reflecting Performance Measurement Reports due on a monthly basis

The tables in Attachment C-1 set forth the actual Performance Measurement Reports as related to Successful Respondent business functions.

- (1) Change/Release Management Report.
- (2) After Action Reports,
- (3) Request for Change Report.
- (4) Trouble Ticket Aging Report
- (5) SLA Non-Compliance Report
- (6) Outbound CDR Report
- (7) Inbound CDR
- (9) Marketing Report
- (10) Invoice Summary Report
- (11) Status for Projects by Customer Report
- (12) HUB Subcontractor Report,
- (13) Direct Sales Transactions Reports
- (14) Monthly Recurring Charge (MRC) Report
- (15) Non-Recurring Charge (NRC) Report
- (16) Adjustments/Credits Report
- (17) Long Distance (LD) Usage

— End of Exhibit C —

TEX-AN 2021

Communications Technology

Services Agreement

Between

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

and

**CenturyLink Communications, LLC d/b/a Lumen Technologies
Group (Successful Respondent)**

EXHIBIT D. PLANS

1 INTRODUCTION

The purpose of Exhibit D Plans is to comprehensively address agreed-upon CTSA Management Plans related to services where DIR acts as the Successful Respondent's billing agent, with the exception of the Marketing Plan which is required of all Successful Respondents.

2 REQUIREMENTS

- a) The Successful Respondent is responsible for Services delivered under the CTSA.
- b) The Successful Respondent shall demonstrate strong project management practices.
- c) The Successful Respondent shall create, maintain, implement, and update Management Plans in accordance with this Exhibit D.
- d) Initial and final drafts of the Management Plans are to be submitted to DIR for approval within the timeframes specified in Table 1 of Section 4.2, Plans and Timelines in this Exhibit D.
- e) The Successful Respondent will provide updated Management Plans annually or as requested by DIR.
- f) The Management Plans and Services to be provided by Successful Respondent are included in Attachment D-1 to Exhibit D:

3 METHODOLOGY FOR UPDATING ASSOCIATED PLANS

3.1 Recommendations

Either DIR or Successful Respondent may submit to the other Party a recommendation for changes or additions to Plans. Such recommendation will be in writing and will:

- a) Specifically identify the portion or portions of the plan to be changed,
- b) Include the specific language to accomplish the proposed change, and
- c) Identify the reasons for the proposal and anticipated improvements from the change or repercussions for failure to adopt the change. A copy of the recommendation will be provided to the other Party.

3.2 Review and Input

- a) DIR will determine whether input on the recommendation from any other Customers is appropriate and will promptly circulate the recommendation to those identified. If DIR does request input from any other Customers, DIR will require any input to be provided in writing and submitted within a specified period of time, not to exceed sixty (60) Business Days from the date of the recommendation.
- b) DIR and Successful Respondent will each receive a copy of the written input from the other Customers, if applicable. The Party making the recommendation may propose adjustments to the recommendation to address any input of the other Customers.

3.3 Approval

- a) If DIR and Successful Respondent agree upon the recommendation, the Parties will execute a revision to the Plan, as applicable, which will be effective when signed by authorized representatives of both DIR and Successful Respondent and the revised Plan will be posted in a location agreed to by Successful Respondent and DIR.
- b) An approved Plan revision resulting in a substantial change to CTSA operations may trigger a formal amendment process.

3.4 Appeal

If the DIR and Successful Respondent cannot agree on a recommendation, the recommendation may be submitted to the Executive Leadership Team for resolution.

4 DOCUMENTS REFERENCED IN EXHIBIT D PLANS

4.1 Attachments to Exhibit D

Once accepted by DIR, the final version of the Exhibit D attachments will be incorporated as part of Exhibit D Plans.

4.2 Exhibit D Plans

The following plans are associated with Exhibit D Plans:

- 4.2.1 Attachments D-1 through D-7 to be determined by the Parties and posted to the contract landing page on the DIR website.

Plan #	Management Plan Name
D1	Program Management Plan
D2	Marketing Plan
D3	Service Delivery & Order Process Plan
D4	Help Desk Plan
D5	Change Management Plan
D6	Service Level Agreement (SLA) Plan
D7	Billing Plan

— End of Exhibit D —

Exhibit E to TEX-AN 2021 Communications Technology Services Agreement

Between

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

and

**CenturyLink Communications, LLC d/b/a Lumen Technologies
Group (Successful Respondent)**

EXHIBIT E. INSURANCE

1 INTRODUCTION

The purpose of Exhibit E Insurance is to address the Successful Respondent insurance requirements for the CTSA.

2 INSURANCE CONTRACTUAL PRINCIPLES

- a) Successful Respondent agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance with the specified minimum limits of liability during the term of this CTSA and shall provide proof of such insurance coverage to DIR within five (5) Business Days following the execution of the CTSA. Successful Respondent may not begin performance under the CTSA until such proof of insurance coverage is provided to, and approved by, DIR, in its sole and absolute discretion. All required insurance must be issued by companies whose A.M. Best Company Financial Strength Ratings are at least A – financially rated and duly licensed, admitted, and authorized to do business in the State. DIR will be named as Additional Insured on all required coverage (except for Worker’s Compensation coverage). Notwithstanding the foregoing, the parties agree that Successful Respondent’s carrier(s) for non-Worker’s Compensation and non-Business Automobile Liability coverages may be a company other than one admitted in the State, so long as the company has a minimum A.M. Best Company Financial Strength Rating of A- and complies with all other requirements stated herein. The minimum acceptable insurance provisions are as follows:
- 1) **Commercial General Liability:** Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:
 - i. Blanket contractual liability coverage for liability assumed under the CTSA;
 - ii. Independent Contractor coverage;
 - iii. State, DIR and Customer listed as an additional insured;
 - iv. Thirty (30)-day Notice of Termination in favor of DIR and/or Customer; and
 - v. Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.
 - 2) **Workers’ Compensation Insurance:** Workers’ Compensation Insurance and Employers’ Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers’ Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers’ Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit, and \$250,000 per disease per employee.
 - 3) **Business Automobile Liability Insurance:** Business Automobile Liability Insurance must cover all owned, non-owned, and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- i. Waiver of Subrogation;
 - ii. 30-day Notice of Termination; and
 - iii. Additional Insured.
- 4) Professional Liability (also known as Errors and Omissions Liability) and, as and to the extent becoming commercially available, Cyber Risk Insurance covering acts, errors and omissions arising out of Successful Respondent’s operations or Services. The per claim and policy aggregate amount(s) shall be negotiated by the Parties.
- b) Similar coverage as described above shall be required from Successful Respondent in each instance in which it agrees to perform work related to Services at a Customer’s premises. A certificate of insurance demonstrating compliance with these coverages and listing the Customer as the additional Insured shall be provided to the Customer prior to Successful Respondent commencing work at a Customer’s premises.

3 METHODOLOGY FOR UPDATING ASSOCIATED EXHIBIT E ATTACHMENTS AND PLANS

There is no need to update Attachment E-1 Successful Respondent’s Certificate of Insurance. Any changes to insurance requirements will be made at the exhibit level.

4 DOCUMENTS REFERENCED IN EXHIBIT E INSURANCE

4.1 Exhibit E Insurance Attachments

In Attachment E-1 Successful Respondent’s Certificate of Insurance, Successful Respondent has included its Certificate of Insurance, which sets forth the Successful Respondent’s insurance coverage.

Attachments to Exhibit E	Description
Attachment E-1 Successful Respondent’s Certificate of Insurance	Successful Respondent’s Certificate of Insurance

4.2 Attachment E-1. Successful Respondent’s Certificate of Insurance

— End of Exhibit E —

Exhibit F to TEX-AN 2021 Communications Technology Services Agreement

Between

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

and

**CenturyLink Communications, LLC d/b/a Lumen Technologies
Group (Successful Respondent)**

**EXHIBIT F.
FORM OF TEX-AN 2021
CUSTOMER SERVICES AGREEMENT**

1 INTRODUCTION

The purpose of *Exhibit F Form of TEX-AN 2021 Customer Services Agreement* is to address the agreed-upon form of the CSA.

2 CONTRACTUAL PRINCIPLES

- a) Attachment F-1 TEX-AN 2021 Customer Service Agreement is the template for the Form of the CSA among DIR and Customer.
- b) Attachment F-1 TEX-AN 2021 Customer Service Agreement is a template which will be the basis of negotiations with Customers, and contains the terms and conditions between and among the Customer and DIR. The terms and conditions of a CSA may be negotiated to meet Customer business needs, so long as the CSA terms and conditions do not conflict with or weaken the terms of the CTSA.

3 METHODOLOGY FOR UPDATING ASSOCIATED EXHIBIT ATTACHMENT

3.1 Recommendations

In addition to negotiations with Customers to reach an acceptable CSA, DIR or Customer may submit to the other Party a recommendation for changes or additions to Attachment F-1 TEX-AN 2021 Customer Service Agreement. Such recommendation will be in writing and will:

- a) Specifically identify the portion or portions of the attachment requested to be changed,
- b) Include the specific language to accomplish the proposed change, and

Identify the reasons for the proposal and anticipated improvements from the change or repercussions for failure to adopt the change.

4 DOCUMENTS REFERENCED IN EXHIBIT F FORM OF TEX-AN 2021 CUSTOMER SERVICES AGREEMENT

The following attachments are incorporated as part of Exhibit F Form of TEX-AN 2021 Customer Services Agreement:

<i>Attachments to Exhibit F</i>	Description and Contents
<i>Attachment F-1 Form of TEX-AN 2021 Customer Services Agreement</i>	<i>Attachment F-1 Form of TEX-AN 2021 Customer Services Agreement</i> provides the agreement to be executed by authorized representatives of the Customer and DIR to maximize standardization of the terms and conditions and provide DIR the opportunity for oversight of the contractual relationship between Customer and DIR.