



**Data Center Services
Service Component Provider
Master Services Agreement
DIR Contract No. DIR-DCS-SCP-MSA-002**

Between

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

and

ACS State & Local Solutions, Inc.

December 30, 2011

TABLE OF CONTENTS

	Page
MASTER SERVICES AGREEMENT.....	1
1. INTRODUCTION.....	1
1.1 Provision, Performance and Management by Service Provider.....	1
1.2 Service Provider's Experience and Qualifications.....	1
1.3 Definitions.....	1
1.4 Other Terms.....	2
1.5 Compliance with Procurement Laws.....	2
2. CONTRACT DOCUMENTS.....	2
3. TERM.....	3
3.1 Term.....	3
4. SERVICES.....	3
4.1 Overview.....	3
4.2 Transition Services.....	5
4.3 Transformation Services.....	8
4.4 Termination Assistance Services.....	10
4.5 Use of Third Parties.....	15
4.6 Acceptance.....	16
4.7 Projects.....	18
4.8 Additional Work or Reprioritization.....	19
5. REQUIRED CONSENTS.....	20
5.1 Service Provider Responsibility.....	20
5.2 Financial Responsibility.....	20
5.3 Contingent Arrangements.....	20
5.4 Termination.....	20
6. FACILITIES, MATERIALS, EQUIPMENT AND CONTRACTS ASSOCIATED WITH THE PROVISION OF SERVICES.....	20
6.1 Service Facilities.....	20
6.2 Use of Service Provider Facilities.....	23
6.3 DIR Rules/Employee Safety.....	24
6.4 Materials, Equipment and Third Party Contracts.....	24
6.5 Assignment of Licenses, Leases and Related Agreements.....	26
6.6 Managed Third Parties.....	27
6.7 Notice of Defaults.....	29
7. SERVICE LEVELS.....	29

TABLE OF CONTENTS
(continued)

		Page
7.1	General.....	29
7.2	Service Level Credits; Deliverable Credits.....	29
7.3	Problem Analysis.....	30
7.4	Continuous Improvement Reviews.....	30
7.5	Measurement and Monitoring.....	31
7.6	Satisfaction Surveys.....	31
7.7	Notice of Adverse Impact.....	32
8.	SERVICE PROVIDER PERSONNEL.....	32
8.1	Key Service Provider Personnel.....	32
8.2	Service Provider Account Manager.....	33
8.3	Compensation of Service Provider Account Manager and Key Service Provider Personnel.....	33
8.4	Service Provider Personnel Are Not State, DIR or DIR Customer Employees.....	34
8.5	Responsibility for Service Provider Personnel.....	34
8.6	Replacement, Qualifications, and Retention of Service Provider Personnel.....	35
8.7	Conduct of Service Provider Personnel.....	37
8.8	Substance Abuse.....	37
8.9	Union Agreements.....	37
8.10	Knowledge Transfer.....	37
9.	SERVICE PROVIDER RESPONSIBILITIES.....	38
9.1	Service Management Manual.....	38
9.2	Reports, Data Correction, Re-Performance.....	39
9.3	Governance: Meetings.....	40
9.4	DIR Customer Quality Assurance and Internal Controls.....	40
9.5	Processes, Procedures, Architecture, Standards and Planning.....	41
9.6	Change Control.....	43
9.7	Software Currency.....	45
9.8	Access to Specialized Service Provider Skills and Resources.....	46
9.9	Audit Rights.....	47
9.10	Authorization and Disbursements.....	51
9.11	Subcontractors.....	52
9.12	Technology Evolution.....	53
9.13	Retained Systems and Processes.....	55
9.14	Annual Reviews.....	55

TABLE OF CONTENTS
(continued)

		Page
	9.15 Multi-Supplier Integration and Cooperation	56
	9.16 Monitoring Tools	56
10.	DIR RESPONSIBILITIES	56
	10.1 Responsibilities.	56
	10.2 Savings Clause.	57
	10.3 Governance Escalation Event.	57
11.	FEES	58
	11.1 General.	58
	11.2 Pass-Through Expenses.	59
	11.3 Procurement.	60
	11.4 Taxes.	61
	11.5 New Services.	62
	11.6 Extraordinary Events.	63
	11.7 Unanticipated Change.	64
	11.8 Proration.	64
	11.9 Refundable Items.	65
	11.10 DIR Benchmarking Reviews.	65
	11.11 Pricing Commitment.	66
12.	INVOICING AND PAYMENT	67
	12.1 Invoicing.	67
	12.2 Payment Due.	68
	12.3 Set Off.	68
	12.4 Disputed Charges.	68
13.	DIR DATA AND OTHER CONFIDENTIAL INFORMATION	68
	13.1 Confidentiality.	68
	13.2 DIR Data.	71
	13.3 DIR Personal Data.	73
	13.4 File Access.	76
	13.5 DIR Data – Correction and Restoration.	76
	13.6 FTI Compliance.	77
	13.7 Survival.	79
	13.8 Requirements for Information in Legal Proceedings.	79
14.	MATERIALS	80
	14.1 DIR Owned and Licensed Materials.	80

TABLE OF CONTENTS
(continued)

		Page
14.2	Developed Materials	81
14.3	Service Provider Owned and Licensed Materials	82
14.4	Work Product; Other Materials	84
14.5	General Rights.	84
14.6	Ongoing DIR Rights.	85
15.	REPRESENTATIONS, WARRANTIES AND COVENANTS	88
15.1	Work Standards.....	88
15.2	Maintenance.....	88
15.3	Efficiency and Cost Effectiveness.....	89
15.4	Intellectual Property.....	89
15.5	Non-Infringement.....	90
15.6	General.....	91
15.7	Certifications.....	92
15.8	Inducements; DIR Code of Ethics.....	93
15.9	Malicious Code.	95
15.10	Disabling Code.....	95
15.11	Compliance with Laws.....	95
15.12	Equal Opportunity Compliance.....	97
15.13	Information Furnished to DIR.....	97
15.14	Previous Contracts.	97
15.15	Completeness of Due Diligence Activities.	98
15.16	Interoperability.....	98
16.	INSURANCE AND RISK OF LOSS	98
17.	INDEMNITIES	98
17.1	Indemnity by Service Provider.....	98
17.2	Infringement.....	100
17.3	Indemnification Procedures.	100
17.4	Subrogation.	101
18.	LIABILITY	101
18.1	General Intent.....	101
18.2	Force Majeure.	101
18.3	Limitation of Liability.....	102
19.	DISPUTE RESOLUTION	105
19.1	Informal Dispute Resolution.....	105

TABLE OF CONTENTS
(continued)

		Page
	19.2 Jurisdiction.....	106
	19.3 Continued Performance.....	106
	19.4 Governing Law.....	106
20.	TERMINATION.....	107
	20.1 Termination for Cause.....	107
	20.2 Termination for Convenience.....	108
	20.3 Termination Upon Service Provider Change of Control.....	108
	20.4 Termination for Insolvency.....	108
	20.5 DIR Rights Upon Service Provider's Bankruptcy.....	108
	20.6 Termination for Material Adverse Change in Service Provider's Financial Condition.....	109
	20.7 Critical Services.....	109
	20.8 Absolute Right.....	109
	20.9 Lack of Sufficient Funds or Statutory Authority.....	110
	20.10 General Termination Rights.....	110
21.	GENERAL.....	111
	21.1 Delegation of Authority.....	111
	21.2 No Waiver of Sovereign Immunity.....	111
	21.3 RFO Errors and/or Omissions.....	111
	21.4 Abandonment or Default.....	111
	21.5 Place of Performance.....	111
	21.6 Binding Nature and Assignment.....	111
	21.7 Entire Agreement; Amendment.....	112
	21.8 Notices.....	112
	21.9 Counterparts.....	115
	21.10 Headings.....	115
	21.11 Relationship of Parties.....	115
	21.12 Severability.....	115
	21.13 Consents and Approval.....	115
	21.14 Waiver of Default; Cumulative Remedies.....	115
	21.15 Survival.....	116
	21.16 Publicity.....	116
	21.17 Service Marks.....	116
	21.18 Export.....	116
	21.19 Third Party Beneficiaries.....	116

TABLE OF CONTENTS
(continued)

	Page
21.20 Covenant Against Pledging.....	117
21.21 Hiring of Employees.....	117
21.22 Further Assurances.....	117
21.23 Liens.....	117
21.24 Covenant of Good Faith.....	118
21.25 Acknowledgment.....	118
21.26 References.....	118
21.27 Guaranty.....	118

TABLE OF EXHIBITS:

Exhibit 1	Definitions	
	Attachment 1-A	Common Terms and Acronyms
Exhibit 2	Statements of Work Introduction	
	Exhibit 2.1.2	Cross-Functional Services SOW
	Exhibit 2.2	Mainframe Services SOW
	Exhibit 2.3	Server Services SOW
	Exhibit 2.4	Data Center Services SOW
	Exhibit 2.6	Network Services SOW
Exhibit 3	Service Levels	
	Attachment 3-A	Service Levels Matrix
	Attachment 3-B	SLA Definitions-Tools-Methodologies
	Attachment 3-C	Critical Deliverables
	Attachment 3-D	Service Level Examples
	Attachment 3-E	Severity Levels
Exhibit 4	Pricing and Financial Provisions	
	Attachment 4-A	Service Provider Pricing Forms
	Attachment 4-B	Financial Responsibility Matrix
	Attachment 4-C	Financial Base Case
	Attachment 4-D	Resource Baselines
	Attachment 4-E	Service Tier Matrix
	Attachment 4-F	Form of Invoice
Exhibit 5	Human Resources Provisions	
	Attachment 5-A	Key Service Provider Personnel
	Attachment 5-B	Personnel Projection Matrix
Exhibit 6	Governance Model	
	Attachment 6-A	DIR Functional Organization Chart
	Attachment 6-B	Service Management Manual
	Attachment 6-C	Operating Level Agreement Requirements
Exhibit 7	Sites	
	Attachment 7-A	DIR Facilities
	Attachment 7-B	Service Provider Facilities
Exhibit 8	Technical Solutions	
	Attachment 8-A	Technical Solution
Exhibit 9	Current and Planned Projects	
	Attachment 9-A	Project List
Exhibit 10	Assets	
Exhibit 11	Software Assets	
Exhibit 12	Third Party Contracts	
	Attachment 12-A	Third Party Software
	Attachment 12-B	Third Party Service Contracts
	Attachment 12-C	Third Party Equipment Contracts
Exhibit 13	Reports	
	Attachment 13-A	Description of Reports
Exhibit 14	Customer Satisfaction Surveys	
Exhibit 15	Business Continuity Planning	
Exhibit 16	IT Service Continuity Management	
	Attachment 16-A	Disaster Recovery Plan
Exhibit 17	Safety and Security	
	Attachment 17-A	Data Security
	Attachment 17-B	Physical Security
	Attachment 17-C	Security Assessment
Exhibit 18	Exceptions to DIR Rights	
Exhibit 19	Transition Plan	
	Attachment 19-A	Transition Plan Milestones
Exhibit 20	Transformation Plan	

Attachment 20-A Transformation Plan Milestones

- Exhibit 21 Subcontractors
- Exhibit 22 Managed Third Parties
- Exhibit 23 Termination Assistance Services
- Exhibit 24 Insurance and Risk of Loss
- Exhibit 25 Form of Work Order
- Exhibit 26 Form of Source Code Escrow
- Exhibit 27 Form of Non-Disclosure Agreement
- Exhibit 28 Form of Guaranty
- Exhibit 29 Form of Operating Level Agreement

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "**MSA**" or "**Agreement**") is entered into as of the Effective Date 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 ACS State & Local Solutions, Inc. ("**Service Provider**"), with a principal place of business at 8260 Willow Oaks Corporate Drive, Fairfax, Virginia 22031.

WHEREAS, in accordance with the Laws of the State, DIR issued the "Request for Offers for Data Center Services" on the Texas Comptroller of Public Accounts' "Electronic State Business Daily" Web site, agency requisition number DIR-SDD-TMP-162 (the "**RFO**");

WHEREAS, in response to the RFO, Service Provider submitted Service Provider's Response, dated January 19, 2011, as amended and supplemented thereafter (the "**Response**");

WHEREAS, after evaluation of all Responses and a determination that Service Provider should be invited to negotiations, DIR invited Service Provider to engage and Service Provider has engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this Agreement; and

WHEREAS, DIR desires to procure from Service Provider, and Service Provider desires to provide to DIR and the DIR Customers on the terms and conditions specified in this Agreement, the Services described in this Agreement, on the terms and conditions specified herein.

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

1. INTRODUCTION

1.1 Provision, Performance and Management by Service Provider.

DIR desires that certain services presently provided, performed and managed by or for DIR and the DIR Customers or otherwise required by the DIR Customers (including pursuant to Subchapter L, Chapter 2054, Texas Government Code) be provided, performed and managed by Service Provider as described in this Agreement. Service Provider has carefully reviewed DIR's and the DIR Customers' requirements, has performed all due diligence it deems necessary, and desires to deploy, perform and manage such services for DIR and the DIR Customers.

1.2 Service Provider's Experience and Qualifications.

Service Provider represents and warrants that it is an established provider of the Services (as defined in **Section 4.1** below) as awarded under this Agreement and has the skills, qualifications, expertise, financial resources and experience necessary to provide the Services (including the plans, reports, and other deliverables) described in this Agreement.

1.3 Definitions.

Except as otherwise expressly provided in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed to them in **Exhibit 1**. Capitalized terms used in this Agreement but not defined in **Exhibit 1** shall have the meanings ascribed to them in ITIL. Words having well-known technical or trade meanings, but not otherwise defined in **Exhibit 1** or in ITIL, shall be accorded such meaning unless expressly defined otherwise herein. Terms or phrases that are not capitalized are to be given their usual meaning.

1.4 Other Terms.

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. As stated in **Section 21.8**, the word "**notice**" and "**notification**" and their derivatives means 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.

1.5 Compliance with Procurement Laws.

This Agreement is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer RFO No. DIR-SDD-TMP-162, on November 5, 2010, for the Services. Service Provider responded and DIR after evaluation and a determination that Service Provider should be invited into negotiations, DIR and Service Provider have engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this Agreement. Upon execution of all agreements arising from the RFO, a notice of award for RFO DIR- SDD-TMP-162 shall be posted by DIR on the Electronic State Business Daily.

2. CONTRACT DOCUMENTS

This Agreement includes each of the Exhibits, Attachments and other documents attached to this Agreement which are hereby incorporated into and deemed part of this Agreement, and unless otherwise expressly stated all references to this Agreement shall include the Exhibits, Attachments and other documents attached to this Agreement. A listing of Exhibits and certain of the Attachments is included in the table of contents. Unless otherwise expressly stated, references to specific Exhibits and Attachments include all numbered subsidiary Exhibits and Attachments (e.g. references to **Exhibit 2** include not only **Exhibit 2**, but also **Exhibits 2.1** through **2.6** (i.e. all Statements of Work) and references to **Exhibit 3** include not only **Exhibit 3**, but also **Attachments 3-A, 3-B**, etc.).

In the event of a conflict between or among the various documents comprising the Agreement, the following order of precedence will control:

- (a) **Article 1** through **Article 21** of this Agreement;
- (b) **Exhibit 1**;
- (c) **Exhibits 2** (Statements of Work), **3** (Service Levels), **4** (Pricing and Financial Provisions), **5** (Human Resources Provisions), **6** (Governance Model), **7** (Sites), **8** (Technical Solutions), **9** (Current and Planned Projects), **10** (Assets), **11** (Software Assets), **12** (Third Party Contracts), **13** (Reports), **14** (Customer Satisfaction Surveys), **15** (Business Continuity Planning), **16** (IT Service Continuity Planning), **17** (Security and Safety), **18** (Exceptions to DIR Rights), **19** (Transition Plan), **20** (Transformation Plan), **21** (Subcontractors), **22** (Managed Third Parties), **23** (Termination Assistance Services), **24** (Insurance and Risk of Loss), **25** (Form of Work Order), **26** (Form of Source Code Escrow), **27** (Form of Non-Disclosure Agreement), **28** (Form of Guaranty), and **29** (Form of Operating Level Agreement);
- (d) The Service Management Manual;

- (e) The OLAs to which Service Provider is a party; and
- (f) Service Provider's Response, as amended and supplemented.

3. TERM

3.1 Term.

The term of this Agreement shall commence as of 12:00:00 a.m., Central Time on the Effective Date and continue until 11:59:59 p.m., Central Time, on August 31, 2020, unless this Agreement is terminated earlier as provided herein, in which case the term of this Agreement shall end at 11:59:59 p.m., Central Time, on the effective date of such termination (the "Term").

4. SERVICES

4.1 Overview.

- (a) **Services.** Commencing on the Commencement Date, Service Provider shall provide the Services to DIR, and, upon DIR's request, to DIR Customers and Authorized Users. Notwithstanding the foregoing, prior to the Commencement Date, the Service Provider will perform the Pre-Commencement Services pursuant to **Section 4.1(e)**. The "Services" shall consist of any or all of the following, as they may evolve during the Term or be supplemented, enhanced, modified or replaced, in each case in accordance with this Agreement:
 - (i) The services, functions and responsibilities described in this Agreement and its Exhibits and Attachments and the following:
 - (1) the Transition Services, as further described in **Section 4.2** and the Transition Plan;
 - (2) the Transformation Services (including any Equipment and Materials provided in connection therewith) as further described in **Section 4.3** and the Transformation Plan;
 - (3) the services, functions and responsibilities described in **Exhibit 2** (including any Equipment and Materials provided in connection therewith);
 - (4) the services, functions and responsibilities described in the Operating Level Agreements ("OLAs") entered into by and between Service Provider and the applicable DCS Service Provider in accordance with **Section 9.15** below;
 - (5) any Projects, upon DIR's authorization of such Project in accordance with the terms of this Agreement;
 - (6) any New Services, upon DIR's authorization of such New Services in accordance with the terms of this Agreement; and
 - (7) Termination Assistance Services, as further described in **Section 4.4** and **Exhibit 23**.
 - (ii) The related services, functions and responsibilities performed during the eighteen (18) months preceding the Effective Date by Incumbent Personnel who were displaced or whose functions were displaced as a result of this Agreement, even if the service,

function, or responsibility is not specifically described in this Agreement, provided that such services, functions, and responsibilities are not otherwise the exclusive obligations of the MSI or another Service Component Provider as expressly set forth in a Master Services Agreement between DIR and such MSI or other Service Component Provider, as applicable. Notwithstanding the foregoing, the related services, functions and responsibilities referenced in this Section 4.1(a)(ii) shall only be deemed in scope if they are reflected in the categories of the Financial Base Case.

- (b) **Included Services.** If any services, functions or responsibilities not specifically described in this Agreement are an inherent, necessary or customary part of the Services or are required for proper performance or provision of the Services in accordance with this Agreement, such services, functions or responsibilities are deemed to be included within the scope of the Services to be delivered for the Charges, as if such services, functions or responsibilities were specifically described in this Agreement.
- (c) **Required Resources.** Except as otherwise expressly provided in this Agreement, Service Provider is responsible for providing, and is financially and operationally responsible for, the facilities, personnel, Equipment, Materials, technical knowledge, expertise and other resources necessary to provide the Services (including all Upgrades, improvements, replacements and additions to such resources).
- (d) **Service Provider Responsibility.** Service Provider shall be responsible for the provision of the Services in accordance with this Agreement even if such Services are actually performed by, or dependent upon services performed by, other parties (including through the use of Subcontractors). Service Provider acknowledges that part of this responsibility includes managing the performance of Managed Third Parties in accordance with **Section 6.6** and otherwise interacting with non Service Provider Personnel (including personnel of DIR, DIR Customers, and other DCS Service Providers) as necessary in connection with the performance of the Services.
- (e) **Pre-Commencement Services.** DIR and Service Provider may agree that performance of certain Services by Service Provider prior to the Commencement Date is necessary to avoid adverse impact on activities, operations, facilities, processes, or systems of DIR or the DIR Customers. In such event, the Parties shall mutually agree to the scope of Services, roles and responsibilities of the Parties, deliverables and deliverable acceptance criteria associated with the Services, charges, and the timeframe for performance of the Services. Service Provider shall invoice DIR after the Commencement Date for any Services provided prior to the Commencement Date.
- (f) **Notification of Problems.** Service Provider shall provide to DIR written notice of any acts or omissions (whether by DIR, a DIR Customer, a DCS Service Provider, DIR Contractor, Service Provider or any third party), any failure to perform any of each such party's obligations under the Agreement and any other events that may affect Service Provider's performance of Service Provider's obligations under the Agreement. Service Provider shall provide such written notice within thirty (30) days after Service Provider 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 Service Provider's performance.
- (g) **Corrective Action Plan.** In the event that either (i) DIR reasonably determines that Service Provider has failed or is reasonably likely to fail to deliver the Services, or (ii) Service Provider has determined that it has failed or is reasonably likely to fail to deliver the Services, then DIR or Service Provider, as applicable, will notify the other Party of such failure (a "**CAP Notice**"). Concurrently with such CAP Notice, Service Provider will immediately take steps to mitigate any harmful effects of such failure, promptly (and in any event as soon as reasonably practical) perform a Root Cause Analysis, and prepare a corrective action plan (each a "**Corrective Action Plan**" or "**CAP**") with respect to such failure. If in DIR's reasonable judgment any such Correction Action Plan is not adequately addressing the failure, Service Provider will meet with

DIR and its designees in accordance with **Exhibit 6**. In the event that thirty (30) days after the CAP Notice, if Service Provider has not submitted a Corrective Action Plan or the Corrective Action Plan has not, in DIR's reasonable judgment remedied the failure identified in the CAP (a "**CAP Failure Event**"), DIR may impose a CAP Failure Credit as set forth in **Exhibit 3**.

- (h) **Additional Remedies.** In the event that Service Provider fails to identify and resolve any problems that may impede or delay the timely delivery of the Services, without prejudice to DIR's other rights and remedies under the Agreement or at law or equity, Service Provider will immediately provide, at its sole cost and expense, all such additional resources as are necessary to identify and resolve any problems that may impede or delay the delivery of the Services. In addition, without prejudice to DIR's other rights and remedies under the Agreement or at law or equity, in the event of a CAP Failure Event, DIR may equitably reduce the Charges set forth in **Exhibit 4** in an amount reasonably estimated by DIR to account for the Services that DIR and/or the DIR Customers are not receiving or did not receive.
- (i) **Termination for Cause.** In addition to any other termination right DIR may have under this Agreement, if Service Provider materially breaches its obligations with respect to the provision of the Services and fails to cure such breach within thirty (30) days after its receipt of notice, then DIR may, upon notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice.

4.2 Transition Services.

- (a) **Transition.** Service Provider shall perform the Transition Services, including provision of the deliverables described in the Transition Plan. DIR shall perform those tasks and provide such resources which are designated to be DIR's responsibility in the Transition Plan, but shall not be obligated to perform tasks or provide any resource beyond those so set forth in such Transition Plan. If DIR fails to perform such tasks or provide such resources, DIR will reimburse Service Provider's additional costs reasonably incurred as a direct result of such failure, provided that Service Provider notifies DIR of such failure and provides DIR with a reasonable opportunity to cure, obtains DIR's approval prior to incurring such costs and in all events uses commercially reasonable efforts to minimize such costs. Unless otherwise agreed, DIR shall not incur any charges, fees or expenses payable to Service Provider or any third party engaged by Service Provider in connection with the Transition Services, other than those charges, fees and expenses specified in **Exhibit 4**.
- (b) **Transition Plan.** The preliminary Transition Plan is attached to this Agreement as **Exhibit 19**. Service Provider shall complete, and submit to DIR for review a final Transition Plan on or before the date set forth in **Attachment 3-C**. DIR will review the submitted Transition Plan according to the procedures and criteria set forth in **Exhibit 19**. If a Transition Plan submitted by Service Provider is not acceptable to DIR, Service Provider will address and resolve any questions or concerns DIR may have and will promptly incorporate any modifications, additions or deletions requested by DIR. Service Provider will revise and resubmit the Transition Plan until Accepted by DIR. Upon DIR's Acceptance, the Transition Plan shall automatically be incorporated into this Agreement as **Exhibit 19** and shall supersede and replace all prior Transition Plans. The Transition Plan shall detail the specific activities to be performed by each Party, and, unless otherwise requested by Service Provider and agreed by DIR in its sole discretion, shall be consistent in all material respects with any preliminary Transition Plan attached as **Exhibit 19**, including with respect to the activities, deliverables, Transition Milestones, and Deliverable Credits described therein. The Transition Plan may thereafter be amended as mutually agreed by the Parties. Without limiting the foregoing, the Transition Plan shall specify, among other things, (i) the deliverables to be completed by Service Provider, (ii) the date(s) by which each such activity or deliverable is to be completed (the "**Transition Milestones**"), (iii) Service Provider's plans for the hiring and retention of Incumbent Personnel necessary to perform the Services, (iv) a process and set of standards to which Service Provider shall adhere in the performance of the Transition Services and that shall enable DIR to determine whether Service Provider has

successfully completed the transition and the activities and deliverables associated with each Transition Milestone, (v) any transition responsibilities to be performed or transition resources to be provided by DIR and/or DIR Customers, (vi) any transition responsibilities to be performed or transition resources to be provided by another DCS Service Provider, and (vii) a detailed description of the processes and procedures that Service Provider will implement (and associated implementation schedules) to effect the seamless integration and coordination of the Services with related services to be provided by other DCS Service Providers (including development and execution of the OLAs. The updated and final detailed Transition Plan also shall identify any related documents contemplated by this Agreement and/or required to effectuate the transition that shall be executed by either of the Parties.

- (c) **Performance.** Service Provider shall perform the Transition Services in accordance with the timetable and the Transition Milestones set forth in the Transition Plan. Service Provider shall assist DIR in connection with DIR's and the DIR Customers' evaluation or testing of the deliverables set forth in the Transition Plan. Except as otherwise expressly stipulated in the Transition Plan (which will appropriately acknowledge that some element of disruption may be inevitable as in any such transition, but shall in all events be minimized), Service Provider shall perform the Transition Services in a manner that shall not (i) disrupt or have an unnecessary adverse impact on the activities or operations of DIR or the DIR Customers, (ii) degrade the Services then being received by DIR or the DIR Customers or (iii) disrupt or interfere with the ability of DIR or the DIR Customers to obtain the full benefit of the Services. Without limiting its obligations or responsibilities, prior to undertaking any transition activity, Service Provider shall discuss with DIR and the relevant DIR Customers all known DIR and DIR Customer-specific material risks and shall not proceed with such activity until DIR is reasonably satisfied with the plans with regard to such risks (provided that, neither Service Provider's disclosure of any such risks to DIR, nor DIR's acquiescence in Service Provider's plans, shall operate or be construed as limiting Service Provider's responsibility under this Agreement). Service Provider will, at DIR's request, participate in transition meetings with other DCS Service Providers.
- (d) **Reports.** Beginning on the Effective Date, Service Provider shall meet at least weekly with DIR to report on Service Provider's progress in performing its responsibilities and meeting the timetable and Transition Milestones set forth in the Transition Plan. Service Provider also shall provide written reports to DIR at least weekly regarding such matters, and shall provide oral reports more frequently if requested by DIR. Promptly upon receiving any information indicating that Service Provider may not perform its responsibilities or meet the timetable or Transition Milestones set forth in the Transition Plan, Service Provider shall notify DIR of such delays and shall identify for DIR's consideration and approval specific measures to address such delays and mitigate the risks associated therewith.
- (e) **Notification of Problems.** Service Provider shall provide to DIR written notice of any acts or omissions (whether by DIR, a DIR Customer, a DCS Service Provider, DIR Contractor, Service Provider or any third party), any failure to perform any of each such party's obligations under the Agreement and any other events that may affect Service Provider's performance of the Transition Services. Service Provider shall provide such written notice within thirty (30) days after Service Provider 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 Service Provider's performance.
- (f) **Corrective Action Plan.** In the event that either (i) DIR reasonably determines that Service Provider has failed or is reasonably likely to fail to deliver the Transition Services, or (ii) Service Provider has determined that it has failed or is reasonably likely to fail to deliver the Transition Services, then DIR or Service Provider, as applicable, will notify the other Party of such failure (a "**Transition CAP Notice**"). Concurrently with such notice, Service Provider will (A) immediately take steps to mitigate any harmful effects of such failure, (B) promptly (and in any event as soon as reasonably practical) perform a Root Cause Analysis and prepare a Corrective Action Plan with respect to such failure, and (C) take all actions necessary to prevent its

recurrence, including, without limitation, providing all additional resources necessary to resolve such failure. If in DIR's reasonable judgment any such Corrective Action Plan is not adequately addressing the failure, Service Provider will meet with DIR and its designees in accordance with **Exhibit 6**. In the event that Service Provider is unable to complete the Transition Services on or before the Commencement Date (a "**Transition Failure Event**"), then Service Provider will meet with DIR and any affected DCS Service Provider to develop a workaround plan to address the Transition Failure Event, which plan may include, at DIR's option, obtaining the services to workaround the Transition Failure Event from another DCS Service Provider and/or the Incumbent Service Provider. If DIR elects to obtain such services from another DCS Service Provider and/or the Incumbent Service Provider, DIR will equitably adjust the Charges to reflect the reduction in Services being provided by Service Provider.

- (g) **Failure to Meet Transition Milestones.**
- (i) Neither the Transition Services nor the activities and deliverables associated with individual Transition Milestones shall be deemed complete until DIR's and/or DIR Customer's (as applicable) Acceptance of such activities and deliverables.
 - (ii) If Service Provider fails to meet a Transition Milestone that is identified in this Agreement as a Critical Deliverable, Service Provider shall pay DIR the applicable Deliverable Credits specified in **Exhibit 3** or the Transition Plan that are associated with such Transition Milestone as more particularly described in **Section 7.2(b)**.
- (h) **Additional Remedies.** In the event that Service Provider fails to identify and resolve any problems that may impede or delay the timely completion of each task in the Transition Plan, without prejudice to DIR's other rights and remedies under the Agreement or at law or equity, (i) Service Provider will provide, at its sole cost and expense, all such additional resources as are necessary to identify and resolve any problems that may impede or delay the timely completion of each task in the Transition Plan, and (ii) DIR may equitably reduce the Charges set forth in **Exhibit 4** in an amount reasonably estimated by DIR to account for the Services that DIR and/or the DIR Customers are not receiving or did not receive.
- (i) **Suspension or Delay of Transition Services.** DIR reserves the right, in its sole discretion, to suspend or delay the performance of the Transition Services and/or the transition of all or any part of the Services. If DIR elects to exercise this right and DIR's decision is based in material part on reasonable concerns about Service Provider's ability to perform material aspects of the Transition Services or Service Provider's material failure to perform its obligations under this Agreement, DIR and the DIR Customers shall not incur any additional Charges or reimbursable expenses in connection with such decision, provided that DIR shall work in good faith with Service Provider to minimize the period of any such suspension or delay. If DIR's decision is not based in material part on such reasonable concerns, DIR shall reimburse Service Provider for any additional incremental costs reasonably incurred by Service Provider as a direct result of such decision, but only to the extent Service Provider notifies DIR in advance of such costs, obtains DIR's approval prior to incurring such costs, and uses commercially reasonable efforts to minimize such costs.
- (j) **Termination for Cause.** In addition to any other termination right DIR may have under this Agreement, if Service Provider materially breaches its obligations with respect to the provision of Transition Services including (i) failure to obtain DIR's Acceptance of Service Provider's Transition Plan within ninety (90) days after the Effective Date, or (ii) failure to meet the Transition Milestone for commencement of Services as of the Commencement Date and fails to cure such breach within thirty (30) days after its receipt of notice, then DIR may, upon notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. In any such event, DIR may recover the damages suffered by DIR and the DIR Customers in connection with such a termination, provided that if such a termination is based on Service Provider's failure to meet a Transition Milestone, Service Provider shall be entitled to

set-off against such damages any Deliverable Credits that Service Provider has paid DIR for the failure to meet such Transition Milestone.

4.3 Transformation Services.

- (a) **Transformation Services.** Service Provider shall perform the Transformation Services, including provision of the deliverables described and provided for in the Transformation Plan. DIR shall perform those tasks that are designated to be DIR's responsibility in the Transformation Plan, but shall not be obligated to perform tasks or provide any resource beyond those set forth in such Transformation Plan. If DIR fails to perform such tasks or provide such resources, DIR will reimburse Service Provider's additional costs reasonably incurred as a direct result of such failure, provided that Service Provider notifies DIR of such failure and provides DIR with a reasonable opportunity to cure, obtains DIR's approval prior to incurring such costs and in all events uses commercially reasonable efforts to minimize such costs. Unless otherwise agreed in writing, DIR shall not incur any charges, fees or expenses payable to Service Provider in connection with the Transformation Services, other than those charges, fees and expenses specified in **Exhibit 4**.
- (b) **Transformation Plan.** The preliminary Transformation Plan is attached to this Agreement as **Exhibit 20**. Service Provider shall complete, and submit to DIR for review a final Transformation Plan on or before the date set forth in **Attachment 3-C**. The Transformation Plan shall detail the specific activities to be performed by each Party. Without limiting the foregoing, the Transformation Plan shall specifically identify, among other things, (i) the deliverables to be completed by Service Provider, (ii) the date(s) by which each such activity or deliverable is to be completed (the "**Transformation Milestones**"), (iii) the stabilization activities, including, without limitation, processes and procedures that Service Provider will correct to enable completion of the transformational activities. The Transformation Plan also shall identify any related documents contemplated by this Agreement and/or required to effectuate the transformation that shall be executed by either of the Parties. Upon the applicable dates set forth in **Attachment 3-C**, Service Provider shall deliver to DIR for DIR's review, comment and approval subsequent Transformation Plans describing the transformational activities during the succeeding period. Upon DIR's Acceptance, the Transformation Plan shall automatically be incorporated into this Agreement as **Exhibit 20** and shall supersede and replace all prior Transformation Plans.
- (c) **Performance.** Service Provider shall perform and provide the Transformation Services (including provision of the deliverables) in accordance with the timetable and the Transformation Milestones set forth in the Transformation Plan. Service Provider shall assist DIR in connection with DIR's and the DIR Customers' obligations associated with the Transformation Services. Except as otherwise expressly stipulated in the Transformation Plan (which will appropriately acknowledge that some element of disruption may be inevitable as in any such undertaking, but shall in all events be minimized), Service Provider shall perform the Transformation Services in a manner that shall not (i) disrupt or have an adverse impact on the activities or operations of DIR or the DIR Customers, (ii) degrade the Services then being received by DIR or the DIR Customers or (iii) interfere with DIR's or the DIR Customers' ability to obtain the full benefit of the Services. Without limiting its obligations or responsibilities, prior to implementing any Transformation Services, Service Provider shall discuss with DIR and the relevant DIR Customers all known DIR and DIR Customer-specific material risks and shall not proceed with such activity until DIR is reasonably satisfied with the plans with regard to such risks (provided that, neither Service Provider's disclosure of any such risks to DIR, nor DIR's acquiescence in Service Provider's plans, shall operate or be construed as limiting Service Provider's responsibility under this Agreement). Service Provider shall identify and resolve, with DIR's reasonable assistance, any problems that may impede or delay the timely completion of each task in the Transformation Plan that is Service Provider's responsibility and shall use all commercially reasonable efforts to assist DIR with the resolution of any problems that may impede or delay the timely completion of each task in the Transformation Plan that is DIR's responsibility.

- (d) **Implementation Plans.** Upon the applicable dates set forth in the Transformation Plan or **Attachment 3-C**, Service Provider shall deliver to DIR for DIR's review, comment and approval detailed plans for the implementation of transformational activities during the succeeding period. Unless otherwise requested by Service Provider and agreed by DIR in its sole discretion, such implementation plans shall be based on and shall be consistent in all material respects with the Transformation Plan. Such implementation plans shall identify each transformational activity to be performed by Service Provider Personnel and the particular changes in technology and processes to be implemented. If approved by DIR, each such plan shall become a part of the Transformation Plan and shall be deemed incorporated in **Exhibit 20** without the need for further action by the Parties.
- (e) **Reports.** Beginning on the Effective Date, Service Provider shall meet with DIR, at least weekly, or at a frequency otherwise specified by DIR, to report on its progress in performing its responsibilities and meeting the timetable and Transformation Milestones set forth in the Transformation Plan. Such meetings will be facilitated by DIR or its designee. Service Provider also shall provide written reports to DIR at least weekly regarding such matters, and shall provide oral reports more frequently if requested by DIR. Promptly upon receiving any information indicating that Service Provider may not perform its responsibilities or meet the timetable or Transformation Milestones, Service Provider shall notify DIR of such delays and shall identify for DIR's consideration and approval specific measures to address such delays and mitigate the risks associated therewith.
- (f) **Notification of Problems.** Service Provider shall provide to DIR written notice of any acts or omissions (whether by DIR, a DIR Customer, a DCS Service Provider, DIR Contractor, Service Provider or any third party), any failure to perform any of each such party's obligations under the Agreement and any other events that may affect Service Provider's performance of the Transformation Services. Service Provider shall provide such written notice within thirty (30) days after Service Provider 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 Service Provider's performance.
- (g) **Corrective Action Plan.** In the event that either (i) DIR reasonably determines that Service Provider has failed or is reasonably likely to fail to deliver the Transformation Services, or (ii) Service Provider has determined that it has failed or is reasonably likely to fail to deliver the Transformation Services, then DIR or Service Provider, as applicable, will notify the other Party of such failure (a "**Transformation CAP Notice**"). Concurrently with such notice, Service Provider will (A) immediately take steps to mitigate any harmful effects of such failure, (B) promptly (and in any event as soon as reasonably practical) perform a Root Cause Analysis and prepare a Corrective Action Plan with respect to such failure, and (C) take all actions necessary to prevent its recurrence, including, without limitation, providing all additional resources necessary to resolve such failure. If in DIR's reasonable judgment any such Corrective Action Plan is not adequately addressing the failure, Service Provider will meet with DIR and its designees in accordance with **Exhibit 6**.
- (h) **Failure to Meet Transformation Milestones.**
- (i) None of the Transformation Services, or the activities and deliverables associated with individual Transformation Milestones shall be deemed complete until DIR's Acceptance of such activities and deliverables.
- (ii) If Service Provider fails to meet a Transformation Milestone that is identified in **Exhibit 3** as a Critical Deliverable, Service Provider shall pay DIR the applicable Deliverable Credits specified in **Exhibit 3** or the Transformation Plan that are associated with such Transformation Milestone.

- (i) **Additional Remedies.** In the event that Service Provider fails to identify and resolve any problems that may impede or delay the timely completion of each task in the Transformation Plan, without prejudice to DIR's other rights and remedies under the Agreement or at law or equity DIR may equitably reduce the Charges set forth in **Exhibit 4** in an amount reasonably estimated by DIR to account for the Services that DIR and/or the DIR Customers are not receiving or did not receive.
- (j) **Suspension or Delay of Transformation Services.** DIR reserves the right, in its sole discretion, to suspend or delay the performance of the Transformation Services and/or the transformation of all or any part of the Services. If DIR elects to exercise this right and DIR's decision is based in material part on reasonable concerns about Service Provider's ability to perform material aspects of the Transformation Services or Service Provider's material failure to perform its obligations under this Agreement, DIR and the DIR Customers shall not incur any additional Charges or reimbursable expenses in connection with such decision, provided that DIR shall work in good faith with Service Provider to minimize the period of any such suspension or delay. If DIR's decision is not based in material part on such reasonable concerns, DIR shall reimburse Service Provider for any additional incremental costs reasonably incurred by Service Provider as a direct result of such decision, but only to the extent Service Provider notifies DIR in advance of such costs, obtains DIR's approval prior to incurring such costs, and uses commercially reasonable efforts to minimize such costs.
- (k) **Termination for Cause.** If Service Provider materially breaches its obligations with respect to the provision of Transformation Services including failure to obtain DIR's Acceptance of Service Provider's Transformation Plan and fails to cure such breach within thirty (30) days after its receipt of notice, then DIR may, upon notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. In any such event, DIR may recover the damages suffered by DIR and the DIR Customers in connection with such a termination, provided that if such a termination is based on Service Provider's failure to meet a Transformation Milestone, Service Provider shall be entitled to set-off against such damages any Deliverable Credits that Service Provider has paid DIR for the failure to meet such Transformation Milestone.

4.4 Termination Assistance Services.

- (a) **General.** Upon DIR's request, Service Provider shall provide Termination Assistance Services directly to DIR, any DIR Customer, any successors or assigns of such Entities and any of their designee(s).
 - (i) **Period of Provision.** Service Provider shall provide Termination Assistance Services commencing on the date a determination is made by DIR that there shall be an Assistance Event, which date may be up to six (6) months prior to the effective date of such Assistance Event or on such earlier date as DIR may request, and continuing for up to eighteen (18) months after the effective date of such Assistance Event, as designated by DIR, subject to such further extensions as permitted in **Section 4.4(a)(iii)**.
 - (ii) **Notice of an Assistance Event.** DIR will provide Service Provider with written notice of an Assistance Event. Such notice will include a description of the Services that are to be terminated or discontinued, the affected DIR Customers, and the anticipated effective date of the Assistance Event. DIR may modify or update any of the information provided in the initial notice of an Assistance Event from time to time by a supplemental notice from DIR to Service Provider.
 - (iii) **Extension of Services.** DIR may elect, upon forty-five (45) days prior notice to Service Provider, to extend the period for performance of Termination Assistance Services (in

whole or in part), in its sole discretion, provided that the total of all such extensions shall not result in Termination Assistance Services being performed beyond twenty-four (24) months following the effective date of the applicable Assistance Event without Service Provider's consent. In each case, if DIR provides less than forty-five (45) days prior notice of an extension, Service Provider shall nonetheless use commercially reasonable efforts to comply with DIR's request and provide the requested Services.

- (iv) **Firm Commitment.** Service Provider shall provide Termination Assistance Services regardless of the reason for the Assistance Event (including a termination for cause by Service Provider); provided that if Service Provider terminates for cause in accordance with **Section 20.1(b)**, DIR will provide reasonable assurance to Service Provider that DIR has sufficient funding to pay for any Termination Assistance Services.
 - (v) **Performance.** Service Provider shall provide all Termination Assistance Services subject to and in accordance with the terms and conditions of this Agreement. Service Provider shall perform Termination Assistance Services with at least the same degree of accuracy, quality, completeness, timeliness, responsiveness and resource efficiency as it is or was required to provide the same or similar Services in accordance with this Agreement. The quality and level of performance of Termination Assistance Services provided by Service Provider shall continue to meet or exceed the Service Levels and shall not be degraded or deficient in any respect. Service Level Credits shall be assessed for any failure to meet Service Levels during any period in which Termination Assistance Services are provided. If any period for performing any Termination Assistance Services extends beyond the expiration or the effective date of any termination of this Agreement, the provisions of this Agreement shall remain in full effect for the duration of such period.
- (b) **Scope.** As part of the Termination Assistance Services, Service Provider shall timely transfer the control and responsibility for Services previously performed by or for Service Provider to DIR, the DIR Customers and/or their designee(s), and upon DIR request, shall execute any documents reasonably necessary to effect such transfers. Service Provider shall also provide any and all information and assistance requested by DIR required for:
- (i) the Systems and processes associated with the Services to operate and be maintained and enhanced efficiently;
 - (ii) the Services to continue without interruption or adverse effect; and
 - (iii) the orderly transfer of the Services (or replacement or supplemental services) to DIR, the DIR Customers and/or their designee(s).
- (1) **General Support.** Service Provider shall (i) assist DIR, the DIR Customers and/or their designee(s) in developing a written plan for the migration of the Services to DIR, the DIR Customers and/or their designee(s), which plan shall include (as requested by DIR) capacity planning, process planning, facilities planning, human resources planning, technology planning, telecommunications planning and other planning necessary to effect the transition, (ii) perform programming and consulting services as requested to assist in implementing the transition plan, (iii) train personnel designated by DIR, the DIR Customers and/or their designee(s) in the use of any processes or associated Equipment, Materials, Systems or tools used in connection with the provision of the Services as needed for such personnel to assume responsibility for performance of the Services, (iv) provide a catalog of all processes, Materials, DIR Data, Equipment, Third Party Contracts and tools used to provide the Services, (v) provide machine readable and printed listings and associated documentation for source code for Software owned by DIR or any DIR Customer and source code to which DIR and/or the DIR Customers are entitled under this Agreement and assist in its re-configuration, (vi) provide technical

documentation for Software used by Service Provider to provide the Services as needed for continuing performance of the Services, (vii) analyze and report on the space required for the DIR Data and the Software needed to provide the Services, (viii) assist in the execution of a parallel operation, data migration and testing process until the successful completion of the transition to DIR, the DIR Customers and/or their designee(s), (ix) create and provide copies of the DIR Data in the format and on the media reasonably requested by DIR, the DIR Customers and/or their designee(s), (x) provide a complete and up-to-date, electronic copy of the Service Management Manual in the format and on the media reasonably requested by DIR, the DIR Customers and/or their designee(s) and (xi) provide other technical and process assistance, documentation and information as requested by DIR, the DIR Customers and/or their designee(s).

(2) **Personnel.**

- (i) **List of Service Provider Personnel.** Service Provider shall promptly provide to DIR a list, organized by location, of the Service Provider Personnel assigned primarily (fifty percent (50%) or more) to the performance of the Services that are implicated by each Assistance Event. Such list shall, subject to applicable Privacy Laws, specify each such Service Provider Personnel's name, job title, compensation package, leave status, years of service and job responsibilities. Service Provider shall provide aggregate or redacted information, as appropriate, with respect to (a) Service Provider Personnel's leave status and compensation package in accordance with Service Provider's human resources policy, and (b) in any instance where applicable Privacy Laws prohibit the disclosure of the aforementioned items. DIR agrees not to disseminate the personally identifiable information contained in such list without Service Provider's consent. Service Provider shall not terminate, reassign or otherwise remove from the performance of the Services any such dedicated Service Provider Personnel until after the end of the applicable Termination Assistance Services period.
- (ii) **Right to Hire.** DIR, the DIR Customers and/or their designee(s) shall be permitted, without interference (including through counter-offers) from Service Provider (subject to Section 4.4(b)(2)(iii) below), to meet with, solicit and hire, effective after the later of (A) the date of DIR's notice of an Assistance Event and (B) the completion of the Termination Assistance Services requiring such Service Provider Personnel, any Service Provider Personnel substantially dedicated to the performance of the Services during the twelve (12) month period prior to the date of DIR's notice of an Assistance Event who are implicated by that Assistance Event. Service Provider hereby waives its rights, if any, under contracts with such Service Provider Personnel restricting the ability of such Service Provider Personnel to be recruited or hired by DIR, the DIR Customers and/or their designee(s) (including waiving any right to restrict such personnel via non-compete agreements or other contractual means). Service Provider shall provide DIR, the DIR Customers and/or their designee(s) with reasonable assistance in their efforts to meet with, solicit and hire such Service Provider Personnel, and shall give DIR, the DIR Customers and/or their designee(s) reasonable access to such Service Provider Personnel for interviews, evaluations and recruitment. DIR shall endeavor, and shall cause the DIR Customers and their designee(s) to endeavor, to conduct the above-described activities in a manner that is not unnecessarily disruptive of Service Provider's performance of its obligations under this Agreement.
- (iii) **Subcontractor Employees.** With respect to Subcontractors, Service Provider shall (A) obtain for DIR, the DIR Customers and their designee(s) the rights specified in Section 4.4(b)(2)(ii) and (B) ensure that such rights are not subject to subsequent Subcontractor approval or the payment of any fees, charges or

other amounts. If Service Provider is unable to obtain any such rights with respect to a Subcontractor, it shall notify DIR in advance and Service Provider shall not subcontract any Services to such Subcontractor without DIR's prior approval (and absent such approval, Service Provider's use of any such Subcontractor shall obligate Service Provider to obtain or arrange, at no additional cost to DIR, the rights specified in **Section 4.4(b)(2)(ii)**, for DIR, the DIR Customers and their designee(s)).

- (3) **Materials.** DIR shall have the rights and licenses set forth in **Sections 14.6(b)** and **14.6(c)** in respect of Service Provider Owned Materials and Third Party Materials.
- (4) **Equipment.**
 - (i) **List of Equipment.** Service Provider shall promptly provide to DIR a list, organized by location, of the Equipment that is implicated by each Assistance Event. Such list shall specify information reasonably requested by DIR, including all fields tracked by Service Provider in any asset management system used by Service Provider for tracking and managing Equipment, such Equipment's function, manufacturer, model number, age, and other pertinent information.
 - (ii) **Right to Acquire.** DIR, the DIR Customers and/or their designee(s) shall have the right (but not the obligation) to purchase or (subject to **Section 6.4(c)**) assume the lease for any or all Equipment that is owned or leased by Service Provider which is used in the provision of the Services and that is implicated by the relevant Assistance Event. Subject to **Section 6.4(c)**, such Equipment shall be transferred in good working condition, reasonable wear and tear excepted, as of the later of the effective date of the relevant Assistance Event and the completion of the Termination Assistance Services requiring such Equipment. Service Provider shall maintain such Equipment through the date of transfer so as to be eligible for the applicable manufacturer's maintenance program. In the case of Service Provider-owned Equipment (including Equipment owned by Service Provider Affiliates and Subcontractors and further including any such Equipment leased to Service Provider), Service Provider (or such Affiliate or Subcontractor) shall grant to DIR, the DIR Customers and/or their designee(s) a warranty of title and a warranty that such Equipment is free and clear of all liens, security interests and other encumbrances. Such conveyance by Service Provider (or Affiliate or Subcontractor) to DIR, the DIR Customers and/or their designee(s) shall be at fair market value (as shall be determined by an agreed-upon appraisal); provided, however, in the case of any item of Equipment for which the acquisition cost has been the basis of Charges to DIR (e.g. as in the case of the Hardware Service Charge provided in **Exhibit 4**), such conveyance shall be at an amount not exceeding the amount of any then unrecovered acquisition cost computed in accordance with the method used to charge DIR therefor. At DIR's request, the Parties shall negotiate in good faith and agree upon the form and structure of the purchase. In the case of leased Equipment, Service Provider shall (1) represent and warrant that the lease is not in default, (2) represent and warrant that all payments thereunder have been made through the date of transfer and (3) notify DIR, the DIR Customers and/or their designee(s) of any lessor defaults of which it is aware at the time. The Equipment for which Service Provider is financially responsible but for which Service Provider is unable to obtain the rights set forth above are specified on **Exhibit 18**.
- (5) **DIR Facilities, Equipment and Materials.** Service Provider shall vacate the DIR Facilities and return to DIR, if not previously returned, any resources that are implicated

by the relevant Assistance Event and that are owned, leased or licensed by DIR, any DIR Customer or any DIR Contractor, including DIR owned or leased Equipment, DIR Owned Materials and DIR licensed Materials, in condition at least as good as the condition of such facilities and resources when they were made available to Service Provider, ordinary wear and tear excepted. Such facilities and resources shall be vacated and/or returned as of the later of the effective date of the relevant Assistance Event and the completion of the Termination Assistance Services requiring such facilities or resources.

- (6) **Third Party Contracts.** Service Provider shall promptly, but no less than thirty (30) days from DIR's issuance of notice of an Assistance Event provide to DIR a list of the Third Party Contracts that are implicated by the relevant Assistance Event. Subject to Section 6.4(c), Service Provider shall, at DIR's request, cause the counter-parties to such Third Party Contracts to permit DIR, the DIR Customers and/or their designee(s) to assume prospectively any or all such Third Party Contracts or to enter into new contracts with DIR, the DIR Customers and/or their designees on substantially the same terms and conditions, including price. Service Provider shall transfer or assign those Third Party Contracts that DIR elects to assume prospectively to DIR, the DIR Customers and/or their designee(s) as of the later of the effective date of the relevant Assistance Event and the completion of the Termination Assistance Services requiring such Third Party Contracts. Such transfers or assignments shall be on terms and conditions acceptable to all applicable parties, provided that (A) there shall be no fee, charge or other amount imposed on DIR, the DIR Customers and/or their designee(s) by Service Provider or the counter-parties to such Third Party Contracts for such transfer or assignment and (B) Service Provider shall: (1) promptly cure and, in accordance with Section 17.1(c), indemnify DIR against any default under such Third Party Contracts relating to the period prior to such transfer or assignment; (2) represent and warrant that all payments thereunder through the date of transfer or assignment are current; and (3) notify DIR, the DIR Customers and/or their designee(s) of any counter-party's default with respect to such Third Party Contracts of which it is aware at the time of such transfer or assignment.
- (7) **Other Subcontracts and Third Party Contracts.** With respect to Third Party Contracts implicated by the relevant Assistance Event that are not otherwise transferred or assigned to DIR, the DIR Customers and/or their designee(s) pursuant to **Section 4.4(b)(6)**, Service Provider shall make available to DIR, the DIR Customers and/or their designee(s), pursuant to reasonable terms and conditions, any third party services then being utilized by Service Provider in the performance of the Services. Service Provider shall retain the right to utilize any such third party services in connection with the performance of services for other Service Provider customers. DIR and the DIR Customers shall retain the right to contract directly with any third party previously utilized by Service Provider to perform any Services.
- (8) **Rates and Charges.** Except as provided in this Subsection and **Section 4.4(b)(9)**, Service Provider shall provide all Termination Assistance Services at no additional charge. The Parties anticipate that Termination Assistance Services requested by DIR shall be provided by Service Provider using Service Provider Personnel already assigned to the performance of the Services and without adversely affecting Service Provider's ability to meet its performance obligations. To the extent DIR requests that Service Provider perform only a portion (but not all) of the Services included in a particular Charge, the amount to be paid by DIR shall be equitably adjusted downward in accordance with **Exhibit 4**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Service Provider shall not be providing to the extent that **Exhibit 4** does not provide for such reduction. If and to the extent Termination Assistance Services requested by DIR cannot be provided by Service Provider using Service Provider Personnel then-assigned to the performance of the Services without adversely affecting Service Provider's ability to meet its performance

obligations, DIR, in its sole discretion, may (i) forego or delay any work activities or temporarily or permanently adjust the work to be performed by Service Provider, the schedules associated therewith or the Service Levels to permit the performance of such Termination Assistance Services using such personnel or (ii) authorize Service Provider to use additional Service Provider Personnel to perform Termination Assistance Services. To the extent DIR authorizes Service Provider to use additional Service Provider Personnel to perform Termination Assistance Services requested by DIR, DIR shall pay Service Provider the applicable rates and charges specified in **Exhibit 4** for such FTPs or FTEs or, if no such rates and fees are specified in **Exhibit 4**, a negotiated fee for the additional Service Provider Personnel required to perform such Termination Assistance Services (determined on the basis of pricing no less favorable to DIR than the pricing and labor rates set forth herein for comparable Services), provided that Service Provider notifies DIR in advance of any such charges, obtains DIR's approval prior to incurring such charges, and uses commercially reasonable efforts to minimize such charges. Notwithstanding the foregoing, DIR will not be obligated to pay Service Provider for any such additional Service Provider Personnel if at any time prior to DIR's issuance of the notice of Assistance Event, Service Provider failed to sufficiently staff the Services that are the subject of the Assistance Event (either with respect to number of personnel or personnel with the necessary skills and training) and in DIR's judgment such failure to sufficiently staff contributed to Service Provider's failure to deliver the Services.

- (9) **Proprietary Communications Network.** If Service Provider uses a proprietary communications network to provide the Services, then for a period of up to two (2) years following the effective date of the relevant Assistance Event, Service Provider shall, if requested by DIR, continue to provide such proprietary communications network and other network Services to DIR, the DIR Customers and/or their designee at the rates, and subject to the terms and conditions, set forth in this Agreement.
- (10) **Lease of Data Center.** Service Provider shall arrange that the owner or leaseholder of the DIR Consolidated Data Center lease such facility(s) to DIR, the DIR Customers and/or their designee(s) on commercially reasonable terms and conditions and providing at a minimum a level of access and use of such facility(s) reasonably necessary to continue the provision from such facility(s) of the Services that were performed from such facility(s) during the Term. In no event shall the term of such lease be required to exceed the term of the leaseholder's lease. Upon the occurrence of the event described in **Section 4.4(d)** or DIR's notice of an Assistance Event, Service Provider will provide to DIR, or its designee, copies of all leases and related information, including, without limitation, base rent, deposit, and all related financial information.
- (c) **Resources.** Service Provider shall maintain capability on at least thirty (30) days notice at all times during the Term to deploy all necessary resources to perform any Termination Assistance Services.
- (d) **Information.** Upon the occurrence of any breach by Service Provider under this Agreement or if DIR elects to evaluate re-procurement of all or any portion of the Services, Service Provider will provide to and/or make available for DIR review any and all reports, data and information that DIR deems necessary in order to evaluate all options related to such breach and/or re-procurement, including without limitation, all reports, data and information specified in **Section 4.4**. For the avoidance of doubt, Service Provider will be obligated to provide all such reports, data and information regardless of whether DIR has provided notice of or otherwise declared an Assistance Event.

4.5 Use of Third Parties.

- (a) **Right of Use.** Notwithstanding anything to the contrary contained in this Agreement, Service Provider acknowledges and agrees that (i) this is not a requirements contract and DIR and the DIR

Customers shall not be required to obtain their requirements for any of the Services from Service Provider and (ii) Service Provider is not the exclusive provider to DIR or the DIR Customers of any of the Services and DIR and the DIR 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). Nothing in this Agreement shall be construed or interpreted as limiting DIR's right or ability to add or delete DIR Customers, or DIR's or any DIR 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 DIR Customer obtains from DIR Contractors, or provides to itself, any of the Services, the Charges and Termination Charges shall be adjusted downward in accordance with **Exhibit 4**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Service Provider shall not be providing to the extent that **Exhibit 4** does not provide for such reduction. Such equitable adjustments shall include, if applicable, the unrecovered amounts set forth in Section 11.1(a), (b), and (d) of **Exhibit 4** in proportion to the portion of the Services that Service Provider shall not be providing; provided, however, that such unrecovered amounts have been incurred by Service Provider in good faith and with a reasonable expectation of providing the Services pursuant to this Agreement. Subject to the satisfying the requirements set forth in **Exhibit 4** (including Section 7 thereof), Service Provider will be eligible to recover, to the extent applicable, the unrecovered amounts set forth in Section 11.1(a), (b), and (d) of **Exhibit 4** for decreases in demand for Services below the bands associated with a Resource Baseline volume.

- (b) **Service Provider Cooperation.** Service Provider shall perform the Services in a manner that shall not (i) disrupt or have an unnecessary adverse impact on the activities or operations of DIR, the DIR Customers, or a DIR Contractor, (ii) degrade the Services then being received by DIR or the DIR Customers, or (iii) disrupt or interfere with the ability of DIR or the DIR Customers to obtain the full benefit of the Services. Service Provider acknowledges that its provision of the Services shall require significant cooperation with third parties, and Service Provider shall fully cooperate and work in good faith with third parties as described in this Agreement and to the extent otherwise requested by DIR. Such cooperation shall include providing (i) access to Service Provider Facilities (as necessary for the third parties to perform their work), (ii) access to Service Provider owned or leased Equipment and Service Provider owned or licensed Software (to the extent permitted under any underlying agreements with third parties), and (iii) such information regarding the operating environment, System constraints and other operating parameters as a person with reasonable commercial skills and expertise would find reasonably necessary for the third parties to perform their work. DIR and DIR Customer personnel and DIR Contractors shall comply with Service Provider's reasonable security and confidentiality requirements and shall, to the extent performing work on Software, Equipment or Systems for which Service Provider has operational responsibility, comply with Service Provider's reasonable standards, methodologies, and procedures as communicated in writing to such third parties by Service Provider.
- (c) **Notice by Service Provider.** Without limiting its obligations under this Agreement, Service Provider shall expeditiously notify DIR when it becomes aware that an act or omission of DIR or DIR Customer personnel or a DIR Contractor shall cause, or has caused, a problem or delay in providing the Services, and shall use commercially reasonable efforts to work with DIR, the DIR Customers and the DIR Contractor to prevent or circumvent such problem or delay. Service Provider shall cooperate with DIR, the DIR Customers and DIR Contractors to resolve differences and conflicts arising between the Services and other activities undertaken by DIR, the DIR Customers and DIR Contractors.

4.6 Acceptance.

- (a) **Deliverables.** DIR and/or DIR Customer, as applicable shall have the right to review and accept or reject all Materials, Equipment, Systems and other deliverables and milestones set forth in **Exhibit 19**, **Exhibit 20**, or otherwise as mutually agreed and specified in the Service Management Manual (each a "**Deliverable**") to be provided by Service Provider to DIR and/or

DIR Customers pursuant to the methodology set forth in this **Section 4.6**. DIR and/or DIR Customer, as applicable, will determine, in their reasonable discretion, pursuant to the provisions of this Agreement, when a Deliverable will be deemed "**Accepted**" following the implementation, installation, testing and execution in the production environment (as applicable) and confirmation that such Deliverables are in Compliance. Unless otherwise requested by DIR, each Deliverable shall be provided by Service Provider and subject to DIR (or, if designated in writing by DIR, DIR Customer's) "**Acceptance**" as described below in **Section 4.6(b)(i)** through **(v)**.

- (b) **Milestone Deliverables.** The Critical Deliverables, Transition Milestones and Transformation Milestones (and related deliverables) are "**Milestone Deliverables**" for purposes of this Agreement. Other Deliverables may also be classified as Milestone Deliverables by the Parties if so agreed in writing. Each Milestone Deliverable shall be provided by Service Provider and subject to DIR (or, if designated in writing by DIR, DIR Customer's) "**Acceptance**" as described below in **Section 4.6(b)(i)** through **(v)**.
- (i) **Acceptance Review Period.** For each Milestone Deliverable, DIR shall have either (1) the period of time set forth in the applicable plan, if any, or (2) if no such period is set forth in a DIR-approved plan, thirty (30) days following Service Provider's notification to DIR that Service Provider has completed any Milestone Deliverable, which shall include Service Provider's internal testing as required under this Agreement, to determine whether it Complies with its Acceptance Criteria (such period of time, the "**Acceptance Review Period**"). Unless otherwise specified in the applicable plan, the Acceptance Review Period for Milestone Deliverables identified as Interim Milestones (in the Transition Plan or the Transformation Plan) shall be ten (10) days. The Acceptance Review Period shall begin on the date that Service Provider provides written notification to DIR that the Milestone Deliverable is ready to be reviewed by DIR. Unless otherwise agreed, Service Provider shall perform comprehensive testing (e.g. unit, string, integration, stress, volume, system testing) on each such Milestone Deliverable prior to submitting such item to DIR for Acceptance. The acceptance review process for Milestone Deliverables identified as Checkpoint Deliverables (in the Transition Plan or the Transformation Plan) is defined in the Service Management Manual.
- (ii) **Acceptance Review.** During the Acceptance Review Period, DIR and DIR Customers shall review and may further test each Milestone Deliverable, individually and collectively, to determine whether such item(s) contain any type of Noncompliance. Service Provider shall cooperate with such review and testing efforts, provide a technical environment to facilitate such review, and provide all applicable documentation that may assist in such review and testing.
- (iii) **Acceptance.** If DIR does not identify any Noncompliance relating to a Milestone Deliverable during its Acceptance Review Period, DIR shall inform Service Provider in writing that the Milestone Deliverable is Accepted, subject to the other provisions of this Agreement. If DIR does not Accept a Milestone Deliverable, DIR shall provide Service Provider a notice of Noncompliance as described below. If DIR does not Accept or deliver a notice of Noncompliance to Service Provider by the end of the Acceptance Review Period, Service Provider shall so inform the DIR Contract Manager and the DIR Data Center Services Manager and provide DIR an additional Acceptance Review Period of at least fourteen (14) days. If DIR does not accept or deliver a notice of noncompliance by the end of such additional Acceptance Review Period, Service Provider may escalate such issue for expedited resolution through governance in accordance with **Exhibit 6**. Neither DIR's nor any DIR Customer's use in a live production environment shall constitute Acceptance, affect any rights and remedies that may be available to DIR or a DIR Customer, and/or constitute or result in "acceptance" under general contract Laws, the State's Uniform Commercial Code or any other Laws.

- (iv) **Noncompliance.** If a Noncompliance is detected, DIR shall so notify Service Provider and reasonably specify the nature of the failure or deficiency giving rise to such Noncompliance. Promptly after receiving such notice from DIR and at no charge to DIR, Service Provider shall correct such Noncompliance, satisfy the Acceptance Criteria, and integrate the correction (including among other milestones and deliverables and previously Accepted items). Beginning upon receipt of notice from Service Provider that a Milestone Deliverable is again ready to be Accepted, the applicable Acceptance Review Period shall begin again and the Parties shall re-perform their obligations under **Sections 4.6(b)(i)** through **(iii)**.
- (v) **Failure to Cure a Noncompliance.** If Service Provider (1) requires more than two (2) attempts to cure a particular Noncompliance, (2) does not correct a Noncompliance in a reasonable period of time (not to exceed ten (10) days, unless otherwise mutually agreed), or (3) cures a particular Noncompliance and such cure results in another Noncompliance and Service Provider is not able to collectively cure such Noncompliance(s) within two (2) attempts, then DIR may, in its sole discretion and upon written notification to Service Provider, (A) provide Service Provider an additional cure period to fix the Noncompliance; (B) conditionally Accept the Milestone Deliverable and require Service Provider to develop a remediation plan, subject to DIR's acceptance and within time frames reasonably requested by DIR whereby Service Provider shall design and implement a workaround solution that mitigates the Noncompliance; (C) correct the Noncompliance itself or hire a third party to correct the Noncompliance at Service Provider's expense (all such out-of-pocket expenses and costs of DIR and/or the DIR Customer to be subject to set-off as set forth in **Section 12.3**; (D) implement and use the Milestone Deliverable despite the Noncompliance and equitably reduce the Charges; or (E) exercise any of its other rights and remedies under this Agreement or available at law or in equity. If DIR elects options (A) or (B) above and Service Provider fails to cure the Noncompliance in accordance with the foregoing, DIR may thereafter elect any of the foregoing options (A) through (E). The remedies above are in addition to and shall not limit DIR's other remedies, whether at Law, in equity, or under this Agreement.
- (c) **Previously Accepted Items.** In the event any modification or rework of a previously Accepted Milestone Deliverable or other Deliverable is required for the Acceptance of a subsequent deliverable, then Service Provider shall perform such modification or rework at no charge as follows: (i) with respect to Milestone Deliverables, Service Provider shall perform any modification or rework of a previously Accepted Milestone Deliverable required for the Acceptance of a subsequent Milestone Deliverable at no charge, and (ii) with respect to Deliverables other than Milestone Deliverables, Service Provider shall perform modification or rework of a previously Accepted Deliverable at no charge in any case where the subsequent Deliverable was documented by the Agreement at the time that the previously Accepted Deliverable was developed, and each Party's obligations, rights, and remedies described herein shall continue to apply. Furthermore, in the event of a discovery of a latent defect in a previously Accepted Milestone Deliverable or other Deliverable, where such latent defect would have qualified as a Noncompliance at the time of Acceptance, upon notification by DIR or the applicable DIR Customer Service Provider will, at no additional charge, repair or replace or otherwise correct the Noncompliance to the level of performance specified in the Agreement.

4.7 Projects.

- (a) **Procedures and Performance.** Service Provider shall perform Projects requested and approved by DIR in accordance with **Section 19.9** of **Exhibit 4** and the Service Management Manual, as applicable. The Projects underway as of the Effective Date are specified in **Exhibit 9**. For purposes of this Agreement, "**Projects**" means discrete units of work approved by DIR, undertaken to create a unique product or result. The Service Provider Personnel assigned to perform such Projects shall possess the training, education, experience, competence and skill to perform such work. Service Provider shall justify to DIR when it has insufficient resources to

perform such work, including through reprioritization or rescheduling of Project activities of Service Provider Personnel pursuant to **Section 4.8**. The DIR Data Center Services Manager shall request, define and set the priority for Projects. Service Provider shall maintain appropriate continuity of personnel assigned to perform Projects.

- (b) **Project Proposals.** For each Project, Service Provider shall (i) gather and document the business requirements of DIR or the applicable DIR Customer, and (ii) develop and provide detailed specifications (including, as reasonably necessary for the type of deliverable, designs, performance parameters, interface requirements, networking requirements, capacity, features, functions, content), acceptance testing procedures and any additional Acceptance Criteria, designed to ensure that the Project will conform to the business requirements and will operate in accordance with its intended use in the applicable environment(s). The information and documentation described in (ii) constitutes a Deliverable and Service Provider shall submit the information and related documentation to DIR or the applicable DIR Customer for Acceptance prior to commencing work on any Project. To the extent required under this Agreement or the Service Management Manual, Service Provider shall prepare a Project proposal in accordance with **Section 11.5(a)** prior to beginning a Project. Such Project proposal shall be set forth in the form of **Exhibit 25**. The efforts expended by Service Provider in preparing proposals or plans or reporting on the status of such Projects shall not be subject to additional charge and shall be included in the Monthly Base Charge.
- (c) **Approval of Projects; DIR and DIR Customer Requests.** The DIR Data Center Services Manager may accept or reject Project proposals in his or her sole discretion. Service Provider shall not agree to provide Projects to DIR or any DIR Customers without the prior approval of the DIR Data Center Services Manager. DIR shall not be obligated to pay for any Projects not properly authorized by the DIR Data Center Services Manager. Without limiting DIR's other rights under this Agreement or applicable Law, if Service Provider fails to comply strictly with this **Section 4.7(c)**, it shall receive no compensation for any services rendered to DIR or any DIR Customer in violation of this **Section 4.7(c)**.
- (d) **Acceptance.** DIR and/or DIR Customer, as applicable, shall have the right to review and accept or reject all Materials, Equipment, Systems and other deliverables and milestones delivered in connection with a Project (each a "Project Deliverable") in accordance with the acceptance procedures set forth in the Service Management Manual.
- (e) **Ongoing Work.** Notwithstanding anything to the contrary in this Agreement, to the extent (A) such activities were being performed as of the Commencement Date by personnel who were displaced or whose functions were displaced as a result of this Agreement, or (B) arrangement therefor is provided pursuant to **Section 11.5** or **Section 4.8**, Service Provider shall perform the Projects identified in **Exhibit 9** in accordance with the applicable project plans as part of the Services and for the Charges at no additional charge to DIR.

4.8 Additional Work or Reprioritization.

The DIR Data Center Services Manager may identify new or additional work activities to be performed by Service Provider Personnel (including work activities that would otherwise be treated as New Services) or reprioritize or reset the schedule for existing Projects and other Services to be performed by such Service Provider Personnel. Unless otherwise agreed, DIR shall incur no additional charges to the extent such work activities can be performed by Service Provider Personnel then assigned to DIR, provided that in the case of Service Provider Personnel not fully-dedicated to the provision of Services, such leveraged Service Provider Personnel may be utilized but only to the extent of the percentage allocation of such Service Provider Personnel to the delivery of Services under this Agreement. Service Provider shall use commercially reasonable efforts to perform such work activities without impacting the established schedule for other tasks or the performance of the Services in accordance with the Service Levels. If it is not possible to avoid such an impact, Service Provider shall notify DIR in advance of the anticipated impact and obtain DIR's consent, in writing, prior to proceeding with such work activities. DIR, in its sole

discretion, may forego or delay such work activities or temporarily adjust the work to be performed by Service Provider, the schedules associated therewith or the Service Levels to permit the performance by Service Provider of such work activities.

5. REQUIRED CONSENTS

5.1 Service Provider Responsibility.

At no additional cost to DIR, Service Provider shall undertake all administrative activities necessary to obtain all Required Consents. At Service Provider's request, DIR shall cooperate with Service Provider in obtaining the Required Consents by executing appropriate DIR approved written communications and other documents prepared or provided by Service Provider. The Parties shall cooperate in minimizing or eliminating any costs associated with obtaining Required Consents.

5.2 Financial Responsibility.

Except to the extent expressly provided otherwise in Section 6.4(c) and **Attachment 4-B**, Service Provider shall pay all transfer, re-licensing, termination charges and other costs or expenses associated with obtaining any Required Consents or terminating any licenses or agreements as to which Service Provider is unable to obtain such Required Consents.

5.3 Contingent Arrangements.

If, despite using commercially reasonable efforts, Service Provider is unable to obtain a Required Consent, then with respect to DIR and/or DIR Customer licensed Third Party Materials, Service Provider shall implement a work-around, reasonably satisfactory to DIR, that may include (i) replace the DIR or DIR Customer license for such Third Party Materials with a Service Provider license; (ii) replace such Third Party Materials with other Materials offering equivalent features and functionality, or (iii) otherwise arrange to rightfully manage the DIR and/or DIR Customer licensed Third Party Materials on behalf of DIR and the DIR Customers.

5.4 Termination.

If Service Provider fails to obtain any Required Consent within ninety (90) days of the Commencement Date or to implement adequate contingent arrangements in accordance with **Section 5.3** and such failure has a material adverse impact on the use or enjoyment of the Services, then DIR may, upon notice to Service Provider, terminate this Agreement for cause in its entirety or in part with respect to, or any affected portions of, the Services, as of the termination date specified in the notice.

6. FACILITIES, MATERIALS, EQUIPMENT AND CONTRACTS ASSOCIATED WITH THE PROVISION OF SERVICES

6.1 Service Facilities.

(a) **Service Facilities.** The Services shall be provided at or from (i) the DIR Facilities identified on **Attachment 7-A**, (ii) the Service Provider Facilities described on **Attachment 7-B**, or (iii) any other service location requested by Service Provider and approved in advance by DIR. Notwithstanding anything to the contrary in this Agreement, except as otherwise provided in **Attachment 7-A** or **7-B** or otherwise directed or approved by DIR, the Services shall be provided at or from the State Data Center. Service Provider shall obtain DIR's prior approval for any proposed relocation of the performance of any Service from a new or different service location. Service Provider acknowledges and agrees, that unless otherwise expressly agreed by DIR in writing, that any staff and services necessary to provide the Services, (e.g. operate the

hosting facility, support center, and any other operational support) will reside within the geographical boundaries of the State of Texas. In connection with its delivery of the Services, Service Provider will not provide or otherwise utilize any support services situated outside the United States. Service Provider shall be financially responsible for all additional costs, taxes or expenses related to or resulting from any Service Provider-initiated relocation to a new or different Service Provider Facility, including any costs or expenses incurred by DIR or any DIR Customer as a result of such relocation.

- (b) **DIR Facilities.** DIR shall provide Service Provider with the use of and access to the space in the DIR Facilities identified on Attachment 7-A for the periods of time specified in Attachment 7-A. Service Provider shall identify to DIR's reasonable satisfaction the manner in which any DIR Facilities shall be used to provide the Services and how such use shall comply with applicable Laws and DIR Rules. All DIR-owned or leased assets or DIR Customer-owned or leased assets provided for the use of Service Provider under this Agreement shall remain in DIR Facilities unless DIR otherwise agrees. In addition, all improvements or modifications to DIR Facilities requested by Service Provider shall be (i) subject to review and approval in advance by DIR, (ii) in strict compliance with DIR Rules, and (iii) performed by and through DIR or the relevant DIR Customer at Service Provider's expense. Service Provider acknowledges and agrees that the facilities to be provided by DIR are sufficient for performing the Services and for satisfying Service Provider's responsibilities under this Agreement. **THE DIR FACILITIES ARE PROVIDED BY DIR TO SERVICE PROVIDER ON AN AS-IS, WHERE-IS BASIS. DIR EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE DIR FACILITIES, OR THEIR CONDITION OR SUITABILITY FOR USE BY SERVICE PROVIDER.**
- (c) **Furniture, Fixtures and Equipment.** At the DIR Facilities identified on Attachment 7-A, Service Provider may use the office furniture and fixtures located as of the Commencement Date in the portions of the DIR Facilities that Service Provider is entitled to access and use pursuant to Section 6.1(b). Responsibility for such office furniture and fixtures (and Upgrades thereto) shall be in accordance with Attachment 4-B. The office space and office furniture provided by DIR for the use of Service Provider Personnel will be generally comparable to the office space and office furniture provided to the then-standard office space and office furniture provided to similarly situated DIR employees. Subject to and in accordance with Attachment 4-B, Service Provider Personnel using the DIR Facilities shall be accorded reasonable access to the communications wiring in such facilities (including fiber, copper and wall jacks, subject to Section 6.1(d)) and the use of certain shared office equipment and services, such as photocopiers, local and long distance telephone service for Service-related calls, telephone handsets, mail service, office support service (e.g. janitorial), heat, light, and air conditioning; provided that such access and usage shall be solely for and in connection with the provision of Services by such Service Provider Personnel. Service Provider shall be responsible for providing all other office equipment, connectivity and services needed by Service Provider or Service Provider Personnel at the DIR Facilities to provide the Services, and for upgrades, improvements, replacements, and additions to such equipment, connectivity or services.
- (d) **Responsibilities Regarding DIR's Network.** To the extent any Equipment provided or used by Service Provider or Service Provider Personnel is connected directly to the network(s) of DIR or any DIR Customer, such Equipment (and all Software installed thereon) shall be (i) subject to review and approval in advance by DIR (Service Provider shall cooperate with DIR in the testing, evaluation and approval of such Equipment) and (ii) in strict compliance with DIR Rules and DIR Standards. Service Provider shall not install or permit the installation of any other software on such Equipment without DIR's prior approval. Service Provider shall promptly investigate any security breach of DIR's networks or Systems associated with Service Provider Personnel or the performance of the Services. Service Provider shall notify DIR of each such security breach and permit DIR to participate in the planning and conducting of any audit or investigation of any such security breach. Service Provider shall promptly (i) report the findings of any such audit or investigation to DIR, (ii) provide DIR with a copy of any written report prepared in connection

therewith, and (iii) to the extent in Service Provider's areas of responsibility and control, prepare and (following DIR approval) implement a remediation plan to remediate the effects of the security breach and prevent its recurrence. Service Provider acknowledges and agrees that, to the extent permitted by applicable Law, DIR has the right to monitor, record and investigate all uses of DIR's networks by Service Provider, including all email or other communications sent to, from, or through DIR's networks, regardless of the content of such communications, and Service Provider hereby consents to such monitoring, recording and investigating. Service Provider acknowledges and agrees that it does not have any expectation of privacy with respect to any personal information or communications made by or to it through DIR's networks.

- (e) **Residual Responsibility.** Except as provided in Sections 6.1(a), (b), and (c) and Section 6.4, Service Provider shall be financially and operationally responsible for providing all furniture, fixtures, equipment, connectivity, space, and other facilities required to perform the Services and all upgrades, improvements, replacements, and additions to such furniture, fixtures, equipment, connectivity, space and facilities. Without limiting the foregoing, Service Provider shall provide (i) all maintenance, site management, site administration and similar services for the Service Provider Facilities, (ii) uninterrupted power supply services for the Service Provider Facilities and for the Equipment and Systems in DIR Facilities, and (iii) telecommunications transport (voice and data) between Service Provider Facilities and DIR Facilities.
- (f) **Physical Security.** DIR and the DIR Customers, as applicable, are responsible for the physical security of the DIR Facilities; provided, that Service Provider shall be responsible for the safety and physical access and control of the areas that Service Provider is using in performing the Services and Service Provider shall not permit any person to have access to, or control of, any such area unless such access or control is permitted in accordance with control procedures approved by DIR or any higher standard agreed to by DIR and Service Provider, all in accordance with DIR Rules. Service Provider shall be solely responsible for compliance by Service Provider Personnel with such control procedures, including obtaining advance approval to the extent required.
- (g) **Standards, Requirements and Procedures at DIR Facilities.** Except as provided in Section 6.1(f), Service Provider shall adhere to and enforce, and cause Service Provider Personnel to adhere to and enforce, the operational, safety and security standards, requirements and procedures described in the applicable lease and/or otherwise then in effect at the DIR Facilities, as such standards, requirements and procedures may be modified by DIR from time to time and communicated to Service Provider in accordance with Section 6.3(a).
- (h) **Employee Services.** Subject to applicable security requirements and DIR Rules, DIR shall permit Service Provider Personnel to use certain employee facilities at the DIR Facilities that are generally made available to the employees and contractors of DIR or the DIR Customers. The employee facilities in question and the extent of Service Provider Personnel's permitted use shall be specified in writing by DIR and shall be subject to modification without advance notice in DIR's sole discretion. Service Provider Personnel shall not be permitted to use employee facilities designated by DIR for the exclusive use of certain DIR or DIR Customer employees and shall not be entitled to the provision or reimbursement of paid parking.
- (i) **Use of DIR Facilities.**
 - (i) Unless Service Provider obtains DIR's prior written agreement, which DIR may withhold in its sole discretion, Service Provider shall use the DIR Facilities, and the office furniture, equipment and fixtures provided or made available by DIR and DIR Customers therein, only to provide the Services.
 - (ii) DIR reserves the right to relocate any DIR Facility from which the Services are then-being provided pursuant to Attachment 7-A to another geographic location; provided that, in such event, DIR shall provide Service Provider with comparable space in the new

geographic location. In such event, DIR shall pay the applicable labor rate(s) for additional personnel reasonably required by Service Provider and for the incremental Out-of-Pocket Expenses reasonably incurred by Service Provider in physically relocating to such new geographic location; provided that such relocation is not expressly contemplated in this Agreement, and that Service Provider notifies DIR of such additional required personnel and incremental Out-of-Pocket Expenses, obtains DIR's approval prior to using such personnel or incurring such expenses, and uses commercially reasonable efforts to minimize such personnel and expenses.

- (iii) DIR also reserves the right to direct Service Provider to cease using all or part of the space in any DIR Facility from which the Services are then-being provided pursuant to **Attachment 7-A**. In such event, DIR shall reimburse Service Provider for any reasonable incremental Out-of-Pocket Expenses incurred by Service Provider in leasing substitute space and physically relocating to such space and/or making any facility or network upgrades or changes required to perform the Services from such space; provided that such relocation is not expressly contemplated in this Agreement and that Service Provider notifies DIR of such incremental Out-of-Pocket Expenses, obtains DIR's approval prior to incurring such expenses, and uses commercially reasonable efforts to minimize such expenses.
- (iv) In cases described in subsections (ii) and (iii) above, Service Provider shall be relieved of responsibility during the relocation for the period of time agreed to in advance by DIR if and to the extent Service Provider is unable to provide the Services in accordance with the Service Levels during the actual relocation of Service Provider's operations; provided that such relocation is not expressly contemplated in this Agreement as of the Effective Date and that Service Provider (1) notifies DIR in advance of its inability to perform during such relocation, (2) gives DIR a reasonable opportunity to address Service Provider's concerns and thereby avoid such Service Provider non-performance, (3) identifies and pursues commercially reasonable means to avoid or mitigate the impact of such relocation, and (4) uses commercially reasonable efforts to perform notwithstanding such relocation.
- (j) **Conditions for Return.** When the DIR Facilities are no longer to be used by Service Provider as contemplated by **Section 6.1** or are otherwise no longer required for performance of the Services, Service Provider shall notify DIR as soon as practicable and shall vacate and return such DIR Facilities (including any improvements to such facilities made by or at the request of Service Provider) to DIR in substantially the same condition as when such facilities were first provided to Service Provider, subject to reasonable wear and tear.
- (k) **No Violation of Laws.** Service Provider shall (i) treat, use and maintain the DIR Facilities in a reasonable manner and (ii) not commit, and use all reasonable efforts to ensure that no business visitor or invitee of Service Provider commits, any act in violation of any Laws in such Service Provider occupied DIR Facility or any act in violation of any applicable insurance policies or in breach of DIR's or a DIR Customer's obligations under the applicable real estate leases in such Service Provider occupied DIR Facilities (in each case, to the extent Service Provider has received notice of such insurance policies or real estate leases or should reasonably be expected to know of such obligations or limitations).

6.2 Use of Service Provider Facilities.

- (a) **Use by DIR Customers.** Service Provider shall provide to DIR and DIR Customers at no additional charge (i) reasonable access to and use of Service Provider Facilities and (ii) access to reasonable work/conference space at Service Provider Facilities for use in connection with DIR's performance and exercise of rights under this Agreement. At DIR's request, Service Provider shall provide reasonable access to and use of Service Provider Facilities by DIR Contractors (subject to such DIR Contractor's execution of a confidentiality agreement substantially in the form attached

hereto as **Exhibit 27** and compliance with the reasonable security requirements applicable generally to such facilities) to install and manage software and equipment to provide services to DIR or DIR Customers. Such DIR Contractors shall, to the extent performing work on Software, Equipment or Systems for which Service Provider has operational responsibility, comply with Service Provider's reasonable standards, methodologies and procedures, as appropriately communicated by Service Provider to such DIR Contractors.

- (b) **Limitation on Use of Austin Data Center.** Service Provider agrees that the Service Provider Facility identified in **Attachment 7-B** under Site Name "Austin Data Center" shall not be used for the performance of services for customers of Service Provider (or any Subcontractor) other than DIR Customers without the prior approval of DIR, which approval shall be subject to DIR's sole discretion.

6.3 DIR Rules/Employee Safety.

- (a) **DIR Rules and Compliance.** In performing the Services and using the DIR Facilities, Service Provider shall observe and comply with all DIR and DIR Customer policies, rules, and regulations applicable at or to DIR Facilities or the provision of the Services which have been communicated to Service Provider or Service Provider 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 DIR 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 Commencement Date Service Provider is fully informed as to the DIR Rules that have been communicated to it consistent with the foregoing. Service Provider shall be responsible for the promulgation and distribution of DIR Rules to Service Provider Personnel as and to the extent necessary and appropriate. Additions or modifications to the DIR Rules may be (i) disclosed to Service Provider and Service Provider 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 the DIR Customers disseminate such information to their own employees), (ii) conspicuously posted at a DIR Facility, (iii) electronically posted or (iv) communicated to Service Provider or Service Provider Personnel by means generally used by DIR and DIR Customers to disseminate such information to its employees or contractors (including oral communications in immediately applicable or emergency situations). Service Provider and Service Provider Personnel shall observe and comply with such additional or modified DIR Rules.
- (b) **Safety and Health Compliance.** Service Provider and Service Provider Personnel shall familiarize themselves with the premises and operations at each DIR Facility at, to or from which Services are rendered and the DIR Rules applicable to each such facility. Service Provider and Service Provider Personnel also shall observe and comply with all DIR Rules with respect to safety, health, security and the environment and shall take commercially reasonable precautions to avoid injury, property damage, spills or emissions of hazardous substances, materials or waste, and other dangers to persons, property or the environment. To the extent required by DIR, Service Provider Personnel shall receive prescribed training prior to entering certain DIR Facilities.

6.4 Materials, Equipment and Third Party Contracts.

- (a) **Financial Responsibility.** Each Party shall be financially responsible for any third party fees or expenses incurred on or after the Commencement Date associated with Materials, Equipment, Equipment Leases and Third Party Contracts for which such Party is financially responsible under **Attachment 4-B** (excluding Third Party Contracts administered by Service Provider on a Pass-Through basis, which are addressed in **Section 11.2**). Unless otherwise expressly provided, each Party also shall be financially responsible for any third party fees or expenses on or after the Commencement Date associated with new, substitute or replacement Materials, Equipment, Equipment Leases or Third Party Contracts (including Upgrades, enhancements, new versions or

new releases of Software or Equipment) for which such Party is financially responsible under **Attachment 4-B**. With respect to Third Party Material licenses, Equipment Leases and Third Party Contracts that are assigned to Service Provider by DIR and/or DIR Customers or for which Service Provider otherwise assumes financial responsibility under this Agreement, Service Provider shall: (i) pay all amounts becoming due under such licenses, leases or contracts, and all related expenses, for periods on or after the Commencement Date; (ii) rebate to DIR any payment of such amounts in accordance with **Section 11.9(a)**; (iii) pay all modification, termination, cancellation, late payment, renewal or other fees, penalties, charges, interest or other expenses attributable to periods on or after the Commencement Date (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the wrongful acts or omissions of DIR, prior to assignment to Service Provider); (iv) pay all costs associated with the transfer of such licenses, leases and contracts to Service Provider, including all taxes associated with such transfer; and (v) be responsible for curing any defaults in Service Provider's performance under such licenses, leases and contracts on or after the Commencement Date (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the wrongful acts or omissions of DIR, prior to assignment to Service Provider).

- (b) **Operational Responsibility.** With respect to Materials, Equipment, Equipment Leases and Third Party Contracts for which Service Provider is operationally responsible under **Attachment 4-B**, Service Provider shall be responsible for: (i) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of such Materials, Equipment, Equipment Leases and Third Party Contracts; (ii) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of new, substitute or replacement Materials, Equipment, Equipment Leases and Third Party Contracts (including Upgrades, enhancements, new versions or new releases of such Software); (iii) the performance, availability, reliability, compatibility and interoperability of such Materials, Equipment and Third Party Contracts each in accordance with this Agreement, including the Service Levels and Change Control Procedures; (iv) the compliance with and performance of all operational, administrative and contractual obligations specified in the applicable licenses, leases and contracts; (v) the observance of and compliance with all Laws applicable to such licenses, leases and contracts (without limiting the obligation of the Parties under **Section 15.11**); (vi) the administration and exercise as appropriate of all rights available under such licenses, leases and contracts; and (vii) the payment of any fees, penalties, charges, interest or other expenses due and owing under or with respect to such licenses, leases and contracts that are incurred or caused by, or result from Service Provider's failure to comply with or perform its obligations under this **Section 6.4(b)** (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the wrongful acts or omissions of DIR, prior to assumption of financial responsibility by Service Provider).
- (c) **Rights Upon Expiration or Termination.** With respect to all Third Party Materials licenses, Equipment Leases and Third Party Contracts for which Service Provider is financially responsible under **Exhibit 2** or **Attachment 4-B**, Service Provider shall: (i) obtain for DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) the license, sublicense, assignment and other rights specified in **Section 4.4(b)** and **14.6**; (ii) ensure that the granting of such license, sublicense, assignment and other rights is not subject to subsequent third party approval or the payment by DIR, the DIR Customers, Entities that qualify as DIR Customers or their designee(s) of license, assignment or transfer fees; (iii) ensure that the terms, conditions and prices applicable to DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) are no less favorable than those otherwise applicable to Service Provider, and at least sufficient for the continuation of the activities comprising the services of the nature of the Services; and (iv) ensure that neither any Assistance Event nor the assignment of the license, lease or contract shall trigger less favorable terms, conditions or pricing. If Service Provider is unable to obtain any such rights and assurances with respect to Third Party Materials licenses, Equipment leases and Third Party Contracts entered into by Service Provider and a Third Party, it shall notify DIR in advance and shall not use such Third Party Materials license, Equipment Lease or Third Party Contract without DIR's approval (and absent such approval, Service Provider's use of any

such Third Party Materials license, Equipment Lease or Third Party Contract shall obligate Service Provider to obtain or arrange upon the effective date of any Assistance Event or the completion of the relevant Termination Assistance Services, and at no additional cost to DIR, such license, sublicense, assignment and other rights for DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s)). If DIR consents to Service Provider's use of specific Third Party Materials licenses, Equipment Leases or Third Party Contracts under these circumstances, such consent shall be deemed to be conditioned on Service Provider's commitment to use commercially reasonable efforts to cause such third party to agree upon the effective date of any Assistance Event or the completion of the relevant Termination Assistance Services to permit DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) to assume prospectively the license, lease or contract in question or to enter into a new license, lease or contract with DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) on substantially the same terms and conditions, including price. If DIR consents to Service Provider's use of specific Third Party Materials licenses, Equipment Leases or Third Party Contracts entered into by Service Provider and a Third Party under these circumstances, such item shall be added to **Exhibit 18**. With respect to those Third Party Contracts assigned to Service Provider by the Incumbent Service Provider and those Third Party Contracts between DIR or a DIR Customer and a Third Party, Service Provider's obligations under this Section 6.4(c) will be to use commercially reasonable efforts to obtain the rights described above and to the extent Service Provider is unable to obtain such rights, Service Provider will promptly notify DIR.

- (d) **Evaluation of Third Party Materials, Equipment.** In addition to its obligations under **Section 6.4(a)** and **(b)** and in order to facilitate DIR's control of architecture, standards and plans pursuant to **Section 9.5**, Service Provider shall evaluate any Third Party Materials consisting of Software and Equipment selected by or for DIR or a DIR Customer to determine whether such Software and Equipment shall adversely affect DIR Customers' environment, DIR Customers' ability to interface with and use the Software, Equipment and Systems and/or Service Provider's ability to provide the Services. Service Provider shall complete and report the results of such evaluation to DIR within thirty (30) days of its receipt of DIR's request; provided, that Service Provider shall respond more quickly in the case of a pressing need or an emergency situation.
- (e) **DIR Provided Equipment.** DIR shall provide Service Provider with the use of the DIR and DIR Customer owned and leased Equipment identified to be so provided on **Exhibit 10** (collectively, the "**DIR Provided Equipment**") for the periods specified in such attachment solely for and in connection with the provision of the Services and solely to the extent allowed and for purposes authorized under Laws applicable to such DIR Provided Equipment. Upon the expiration of the period specified in **Exhibit 10** for each item of DIR Provided Equipment (or when such DIR Provided Equipment is no longer required by Service Provider for the performance of the Services), Service Provider shall promptly return such DIR Provided Equipment to DIR in substantially the same condition (as it may have been modified or improved by Service Provider with DIR's approval) as when such DIR Provided Equipment was first provided to Service Provider, subject to reasonable wear and tear. **THE DIR PROVIDED EQUIPMENT IS PROVIDED BY DIR TO SERVICE PROVIDER ON AN AS-IS, WHERE-IS BASIS. DIR EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE DIR PROVIDED EQUIPMENT, OR ITS CONDITION OR SUITABILITY FOR USE BY SERVICE PROVIDER TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.**

6.5 Assignment of Licenses, Leases and Related Agreements.

- (a) **Assignment and Assumption.** Subject to Service Provider obtaining any Required Consents, DIR may assign to Service Provider, and Service Provider shall assume and agree to perform, all obligations arising on or after the Commencement Date that are related to, the Third Party Materials licenses, Equipment Leases and Third Party Contracts for which Service Provider is financially responsible under **Section 6.4**, **Exhibit 2** or **Attachment 4-B**, including those listed on **Attachments 12-A**, **12-B** and **12-C**. Such assignment shall not include any assignment or

transfer of any intellectual property rights in Materials developed under such Third Party Materials licenses, Equipment Leases and Third Party Contracts prior to the date of such assignment and, as between the Parties, DIR hereby expressly reserves and retains such intellectual property rights. DIR and Service Provider shall execute and deliver a mutually satisfactory assignment and assumption agreement with respect to such leases, licenses and agreements, evidencing the assignment and assumption provided for herein. Service Provider shall use its best efforts to obtain for the benefit of DIR and DIR Customers a release of any obligations of DIR and any DIR Customer under the Third Party Materials licenses, Equipment Leases and Third Party Contracts that are assigned to Service Provider under this Agreement.

- (b) **Items Not Assignable.** If, after Service Provider has used commercially reasonable efforts for a reasonable period of time, any Third Party Materials licenses, Equipment Leases or Third Party Contracts cannot, as of the Commencement Date or at any time thereafter, be assigned to Service Provider without breaching their terms or otherwise adversely affecting the rights or obligations of DIR, a DIR Customer, or Service Provider thereunder, Service Provider shall, at DIR's option and with DIR's consent, replace such licenses, leases or contracts (or the subject thereof) with appropriate alternatives providing equivalent features and functionality and shall remain responsible for providing all of the Services in accordance with the terms of this Agreement.
- (c) **Modification and Substitution.** Service Provider may terminate, shorten, modify or extend the Third Party Materials licenses, Equipment Leases and Third Party Contracts for which Service Provider is financially responsible under **Section 6.4, Exhibit 2** or **Attachment 4-B** and, subject to **Section 9.11** (including DIR's right of prior approval), may substitute or change vendors relating to goods or services covered thereby; provided that, except as otherwise disclosed by Service Provider and agreed to by DIR, such change(s): (i) shall not constitute a breach of applicable Laws or any obligation of DIR or the DIR Customers under such Materials licenses, Equipment Leases or Third Party Contracts; (ii) shall not result in additional financial obligations, financial or operational risk or Losses to DIR or the DIR Customers; (iii) shall not result in any increase to DIR or the DIR Customers in the cost of receiving the Services; and (iv) if assumable by DIR or the DIR Customers, shall not provide for less favorable terms, conditions or prices for DIR, the DIR Customers and/or their designee(s) following the expiration or termination of this Agreement or any applicable Service(s) than would otherwise be applicable to Service Provider (except for terms, conditions or prices available to Service Provider because of its volume purchases). Service Provider's rights under the preceding sentence are conditioned upon Service Provider paying all applicable termination or cancellation charges, Losses and other amounts due to the applicable vendor associated with such action and indemnifying DIR and the DIR Customers against any such charges, Losses or other amounts associated therewith. Notwithstanding anything to the contrary herein, Service Provider shall not terminate, shorten or modify without DIR's prior written consent any license for Third Party Materials either created exclusively for DIR or the DIR Customers or otherwise not commercially available. Service Provider shall reimburse DIR and the DIR Customer(s) for any termination charges, cancellation charges, or other amounts paid by them at Service Provider's direction in connection with obtaining any such modification. DIR and any DIR Customer may request, and Service Provider shall provide, copies of all extensions, renewals, terminations and modifications proposed and/or entered into by Service Provider hereunder.

6.6 Managed Third Parties.

- (a) **Fully Managed Third Parties.** With respect to Managed Third Parties designated on **Exhibit 22** as "**Fully Managed Third Parties**" and any substitute or replacement therefor (each a "**Fully Managed Third Party**"), Service Provider shall manage the relevant agreements so that such Fully Managed Third Parties perform in accordance with this Agreement, including the Service Levels, and comply with all applicable duties and obligations imposed on Service Provider under this Agreement. Unless otherwise specified in **Exhibit 22** or agreed in writing by the Parties, the performance of such Fully Managed Third Parties shall be included in determining Service Provider's compliance with applicable Service Levels in **Exhibit 3** and Service Provider shall be

responsible for any Service Level Credits incurred as a result of any failure by such Fully Managed Third Parties to perform in accordance with such Service Levels. Service Provider shall manage each such Fully Managed Third Party and administer each such Third Party Contract as described in **Section 6.6(b)(i)-(viii)** below. Upon the expiration or termination for cause or convenience of a Fully Managed Third Party contract, Service Provider shall be responsible for the continued performance of the services in accordance with this Agreement and shall either provide such services itself or enter into a contract for such services with a replacement Fully Managed Third Party. As it will remain the contracting party, DIR will exercise such rights under the Managed Third Party Contracts in support of Service Provider's obligations as it is reasonably requested to do so by Service Provider.

- (b) **Generally Managed Third Parties.** With respect to Managed Third Parties identified on **Exhibit 22** as "**Generally Managed Third Parties**," and any substitute or replacement therefor (each a "**Generally Managed Third Party**"), Service Provider shall perform the following activities with respect to the management and administration of Third Party Contracts between DIR (and/or the DIR Customers) and such Generally Managed Third Parties, except as modified in **Exhibit 22**:
- (i) manage the Managed Third Parties, including monitoring operational day-to-day service delivery, monitoring performance, escalating problems for resolution, and maintaining technical support relationships;
 - (ii) work with DIR, as requested, to manage new and existing contractual relationships between DIR Customers and Managed Third Parties as needed to provide the Services;
 - (iii) oversee Managed Third Party delivery of services and compliance with the Service Levels and the performance standards contained in the DIR Customer agreement with the Managed Third Party;
 - (iv) manage the performance of the Managed Third Party to the service levels or other performance standards contained in the DIR Customer agreement with the Managed Third Party and notify DIR and the Managed Third Party of each Managed Third Party failure to perform such services in accordance the performance standards or other terms and conditions contained in such DIR Customer agreement with the Managed Third Party with or the Service Levels contained in **Exhibit 3**;
 - (v) escalate Managed Third Party performance failures to Managed Third Party management as necessary to achieve timely resolution;
 - (vi) monitor and manage the Managed Third Party's efforts to remedy a failure of performance;
 - (vii) communicate to DIR the status of the Managed Third Party's efforts to remedy a failure of performance; and
 - (viii) recommend retention, replacement, modification, or termination of a Managed Third Party based on the performance or cost benefits to the DIR Customer(s) as tracked by Service Provider.
- (c) **Other Responsibility.** Any use by Service Provider of any services provided by Managed Third Parties shall be limited to fulfilling the requirements of this Agreement to the extent allowed and for purposes authorized under applicable Laws. Unless otherwise specified in **Exhibit 22** or agreed in writing by the Parties, Service Provider is responsible for all costs and charges associated with such Managed Third Parties. Unless otherwise specified in **Exhibit 22**, Service

Provider shall be DIR's and the DIR Customers' sole point of contact regarding the services provided by such Managed Third Parties.

6.7 Notice of Defaults.

DIR and Service Provider shall promptly inform the other Party in writing of any breach of, or 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. SERVICE LEVELS

7.1 General.

- (a) **General Performance Standards.** Beginning on the Commencement Date, Service Provider shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness, and resource efficiency that are at least equal to those received by DIR and the DIR Customers prior to such date. In addition, Service Provider shall perform the Services at levels of accuracy, quality, completeness, timeliness, responsiveness, resource efficiency, and productivity that are at least equal to accepted industry standards of first tier providers of services that are the same as or similar to the Services. The foregoing provisions of this Subsection shall not be deemed to supersede the Service Levels.
- (b) **Service Level Performance Standards.** Beginning on the Commencement Date, Service Provider shall perform the Services so as to meet or exceed the Service Levels set forth in or otherwise in accordance with **Exhibit 3**. To the extent the Parties have established a Service Level for a specific Service, the obligations described in **Section 7.1(a)** shall not be construed to alter, expand or supersede such Service Level.
- (c) **Multiple Service Levels.** If more than one Service Level applies to any particular obligation of Service Provider, Service Provider shall perform in accordance with the most stringent of such Service Levels. Which Service Level is the most "stringent" shall be determined by DIR in its sole discretion.

7.2 Service Level Credits; Deliverable Credits.

- (a) **Service Level Credits.** Service Provider recognizes that DIR is paying Service Provider to deliver the Services at specified Service Levels. If Service Provider fails to meet such Service Levels, then, in addition to other remedies available to DIR, Service Provider shall pay or credit to DIR the Service Level Credits specified in **Exhibit 3** in recognition of the diminished value of the Services resulting from Service Provider's failure to meet the agreed upon level of performance, and not as a penalty. Under no circumstances shall the imposition of Service Level Credits be construed as DIR's sole or exclusive remedy for any failure to meet the Service Levels. However, if DIR recovers monetary damages from Service Provider as a result of Service Provider's failure to meet a Service Level, Service Provider shall be entitled to set-off against such damages any Service Level Credits paid for the failure giving rise to such recovery, as reduced by any applicable earnback pursuant to **Exhibit 3**. Service Level Credits are not counted toward and are not subject to the overall cap on Service Provider's liability
- (b) **Deliverable Credits.** Service Provider recognizes that DIR is paying Service Provider to provide certain Critical Deliverables by the time and in the manner agreed by the Parties. If Service Provider fails to meet its obligations with respect to such Critical Deliverables, then, in addition to other remedies available to DIR, Service Provider shall pay or credit to DIR the amounts specified in **Exhibits 3, 19** and/or **20**, as applicable, or established by DIR as part of the Project approval process on a case by case basis in recognition of the diminished value of the Services resulting

from Service Provider's failure to meet the agreed upon level of performance, and not as a penalty (the "**Deliverable Credits**"). If DIR recovers monetary damages from Service Provider as a result of Service Provider's failure to meet its obligations with respect to one (1) or more Critical Deliverables, Service Provider shall be entitled to set-off against such damages any Deliverable Credits paid for the failures giving rise to such recovery. Deliverable Credits are distinct from Service Level Credits and shall not be counted toward or subject to the overall cap on Service Provider's liability

- (c) **Service Delivery Failure.** Service Provider recognizes that DIR is paying Service Provider to deliver the Services and that the failure to deliver the Services may not be reflected in Service Levels. If Service Provider fails to implement the SD Corrective Action Plan in the specified timetable, or if after the implementation of the SD Corrective Action Plan performance has not consistently improved as more particularly described in **Exhibit 3**, then, in addition to other remedies available to DIR, Service Provider shall pay or credit to DIR the CAP Failure Credit specified in **Exhibit 3** in recognition of the diminished value of the Services resulting from Service Provider's failure to meet the agreed upon level of performance, and not as a penalty.

7.3 Problem Analysis.

If Service Provider fails to provide Services in accordance with the Service Levels, and/or this Agreement, Service Provider shall (after restoring the Service or otherwise resolving any immediate Problem related to the Services) and to the reasonable satisfaction of DIR: (i) promptly investigate and report on the causes of the Problem; (ii) provide a Root Cause Analysis of such failure as soon as practicable after such failure or at DIR's request; (iii) correct the Problem as soon as practicable or coordinate the correction of the Problem if Service Provider does not have responsibility for the cause or resolution of the Problem; (iv) advise DIR of the status of remedial efforts being undertaken with respect to such Problem; (v) demonstrate that the causes of such Problem have been or shall be corrected on a permanent basis; and (vi) take commercially reasonable actions to prevent any recurrence of such Problem. Service Provider shall complete the Root Cause Analysis within the time period provided therefor in **Exhibit 3**, where applicable, and otherwise within five (5) days of a failure; provided that, and without excusing any performance otherwise required with respect to any applicable Service Level, if it is not capable of being completed within such applicable time period using reasonable diligence, Service Provider shall complete such Root Cause Analysis as quickly as possible and shall notify DIR prior to the end of such applicable period as to the status of the Root Cause Analysis and the estimated completion date.

7.4 Continuous Improvement Reviews.

- (a) **Improvement of Services Quality.** Service Provider acknowledges that the quality of Service Provider's performance of the Services can and will be improved during the Term and agrees that Service Provider will periodically (but not less than annually) report to DIR the efforts that Service Provider has undertaken in the preceding to generally improve the quality of Service Provider's performance. The preceding obligation is expressly in addition to Service Provider's efforts to improve Service Provider's performance as measured by the Service Levels in accordance with **Exhibit 3**. Service Provider shall improve the quality of the Services as provided above at no additional charge to DIR.
- (b) **Increase of Service Levels.** The Service Levels shall be increased periodically in accordance with the continuous improvement methodology set forth in **Exhibit 3** at no additional cost to DIR or the DIR Customers. In addition, subject to **Section 11.5** and **Exhibit 3**, the Parties shall agree, to the extent reasonable and appropriate, to (a) increase the Service Levels to reflect improved performance capabilities associated with advances in the proven processes, technologies and methods available to perform the Services, (b) add new Service Levels to permit further measurement or monitoring of the accuracy, quality, completeness, timeliness, responsiveness, cost-effectiveness, or productivity of the Services, (c) modify or increase the Service Levels to reflect changes in the processes, architecture, standards, strategies, needs or objectives defined by

DIR, and (d) modify or increase the Service Levels to reflect agreed upon changes in the manner in which the Services are performed by Service Provider.

7.5 Measurement and Monitoring.

On or before the relevant dates that Service Provider is obligated to perform the Services in accordance with any Service Levels, Service Provider shall implement measurement and monitoring tools and metrics as well as standard reporting procedures, all approved by DIR after notice thereof to DIR, to measure and report Service Provider's performance of the Services at a level of detail sufficient, as determined by DIR, to verify Service Provider's compliance with the applicable Service Levels. Certain measurement and monitoring tools approved as of the Effective Date are set forth in **Attachment 3-B**. DIR or its designee shall have the right to access and audit all such measurement, monitoring and reporting tools, performance metrics and reporting procedures. Service Provider shall provide DIR Customers with on-line access to up-to-date problem management data and other data regarding the status of service problems, service requests and user inquiries. Service Provider also shall provide DIR Customers with access to the data used by Service Provider to calculate its performance against the Service Levels and the measurement and monitoring tools and procedures utilized by Service Provider to generate such data. DIR shall not be required to pay any amount in addition to the Charges for such measurement and monitoring tools or the resource utilization associated with their use.

7.6 Satisfaction Surveys.

- (a) **General.** No later than sixty (60) days after the Effective Date, Service Provider shall identify and submit to DIR for its approval the identity of an independent third party that Service Provider shall engage to conduct a baseline customer satisfaction index survey(s) of the Services to be provided under this Agreement in accordance with the scope, survey protocols and procedures specified in **Exhibit 14**. On or before the date five (5) months from the Commencement Date, such independent third party shall conduct the baseline customer satisfaction index survey(s) and shall submit the results within thirty (30) days to DIR for its approval. Such baseline customer satisfaction index survey(s) shall thereafter become the baseline for measuring performance improvements and conducting other satisfaction surveys hereunder. Thereafter, at the intervals specified in **Exhibit 14**, Service Provider shall through an independent third party approved by DIR, complete satisfaction surveys in accordance with the survey protocols and procedures specified in **Exhibit 14**. Service Provider shall be responsible for the expenses of all such surveys conducted pursuant to this **Section 7.6(a)**. In addition to the satisfaction survey(s) conducted through such independent third parties, Service Provider shall conduct itself such satisfaction surveys as described in **Exhibit 14**.
- (b) **DIR Conducted Surveys.** In addition to the satisfaction surveys to be conducted pursuant to **Section 7.6(a)**, DIR may survey satisfaction with Service Provider's performance in connection with and as part of broader satisfaction surveys periodically conducted by DIR. At DIR's request, Service Provider shall cooperate and assist DIR with the formulation of the survey questions, protocols and procedures and the execution and review of such surveys.
- (c) **Survey Follow-up.** If the results of any satisfaction survey conducted pursuant to **Section 7.6(a)** or **(b)** indicate that the level of satisfaction with Service Provider's performance is less than the applicable Service Level(s) specified in **Exhibit 3**, Service Provider shall promptly: (i) conduct a Root Cause Analysis as to the cause of such dissatisfaction; (ii) develop an action plan to address and improve the level of satisfaction; (iii) present such plan to DIR for its review, comment and approval; and (iv) take action in accordance with the approved plan and as necessary to improve the level of satisfaction or coordinate actions to improve the level of satisfaction if Service Provider does not have responsibility for the cause of the dissatisfaction. DIR and Service Provider shall establish a schedule for completion of a Root Cause Analysis and the preparation and approval of the action plan which shall be reasonable and consistent with the severity and materiality of the problem; provided, that the time for completion of such tasks shall not exceed thirty (30) days from the date such survey results are finalized and reported. Service Provider's

action plan developed hereunder shall specify the specific measures to be taken by Service Provider and the dates by which each such action shall be completed. Within forty-five (45) days after completion of the measures described in such action plan, Service Provider shall conduct follow-up surveys with the affected DIR users and management to confirm that the cause of any dissatisfaction has been addressed and that the level of satisfaction has improved. The Parties recognize that Service Provider's failure to take the actions set forth in such action plan by the agreed upon dates may have an adverse impact on the operations and activities of DIR. Accordingly, if Service Provider fails to attain the levels of satisfaction prescribed in **Exhibit 3** or fails to take the actions set forth in the action plan by the agreed upon dates, then, in addition to any other remedies available to DIR under this Agreement at Law or in equity, Service Provider shall pay to DIR the applicable Deliverable Credits specified in the applicable action plan for such failure.

7.7 Notice of Adverse Impact.

If Service Provider becomes aware of any failure by Service Provider 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 DIR Customer's financial integrity or internal controls, the accuracy of DIR's or any DIR Customer's financial, accounting or other records and reports, or compliance with DIR Rules, DIR Standards 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 DIR Customers, then, Service Provider shall immediately inform DIR in writing of such situation and the impact or expected impact and Service Provider and DIR shall meet to formulate an action plan to minimize or eliminate the impact of such situation.

8. SERVICE PROVIDER PERSONNEL

8.1 Key Service Provider Personnel.

- (a) **Approval of Key Service Provider Personnel.** The positions designated by DIR to be filled by the Key Service Provider Personnel and the Key Service Provider Personnel that have been selected and approved by DIR as of the Effective Date are identified in **Attachment 5-A**. At least thirty (30) days prior to assigning an individual to act as one of the Key Service Provider Personnel, whether as an initial assignment or a subsequent assignment, Service Provider shall notify DIR of the proposed assignment, shall introduce the individual to appropriate DIR representatives, shall provide reasonable opportunity for DIR representatives to interview the individual and shall provide DIR with a resume and such other information about the individual as may be reasonably requested by DIR. If DIR in good faith objects to the proposed assignment, the Parties shall attempt to resolve DIR's concerns on a mutually agreeable basis. If the Parties have not been able to resolve DIR's concerns within five (5) Business Days of DIR communicating its concerns, Service Provider shall not assign the individual to that position and shall propose to DIR the assignment of another individual of suitable ability and qualifications. DIR may add, delete or otherwise change the positions to be filled by Key Service Provider Personnel under this Agreement with Service Provider's reasonable approval.
- (b) **Continuity of Key Service Provider Personnel.** Service Provider shall cause each of the Key Service Provider Personnel to devote full time and effort to the provision of Services under this Agreement for, at a minimum, the applicable period specified in **Attachment 5-A** from the date he or she assumes the position in question (provided that, in the case of Key Service Provider Personnel assigned prior to the Commencement Date, the minimum period shall be measured from the Commencement Date). Service Provider shall not transfer, reassign or remove any of the Key Service Provider Personnel (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, or death) or announce its intention to do so during the minimum period without DIR's prior approval, which DIR may withhold in its reasonable discretion based on its own self interest. In the event of the voluntary resignation, involuntary termination for cause, illness, disability or death of one of its Key Service Provider Personnel during or after the

specified period, Service Provider shall (i) give DIR as much notice as reasonably possible of such development and (ii) expeditiously identify and obtain DIR's approval of a suitable replacement. In addition, even after the period specified in **Attachment 5-A**, Service Provider shall transfer, reassign or remove one of its Key Service Provider Personnel only after (1) giving DIR at least thirty (30) days prior notice of such action (except to the extent such removal involves termination due to "**cause**" or "**performance**" as defined below), (2) identifying and obtaining DIR's approval of a suitable replacement at least thirty (30) days prior to such transfer, reassignment or removal, (3) providing DIR with a plan describing the steps and training (including knowledge transfer) that Service Provider shall perform to transition responsibility to the replacement, and (4) demonstrating to DIR's reasonable satisfaction that such action shall not have an adverse impact on Service Provider's performance of its obligations under this Agreement. Unless otherwise agreed, Service Provider shall not transfer, reassign or remove more than one (1) of the Key Service Provider Personnel in any six (6) month period; provided, however, the foregoing shall not prevent Service Provider from terminating a Key Service Provider Personnel for "**cause**" or "**performance**" as defined below. For purposes of this Section "**cause**" means disregard of Service Provider's rules, insubordination or misconduct (as defined in Service Provider's human resource policies), or criminal conduct, and "**performance**" means that the individual's job performance is at a level that would justify dismissal under Service Provider's human resources policies.

- (c) **Retention and Succession.** Service Provider shall implement and maintain a retention strategy designed to retain Key Service Provider Personnel on DIR's and the DIR Customers' accounts for the prescribed period, such as retention bonuses. Service Provider shall also maintain active succession plans for each of the Key Service Provider Personnel positions.

8.2 Service Provider Account Manager.

Service Provider shall designate a "**Service Provider Account Manager**" who, unless otherwise agreed by DIR, shall maintain his or her office in Austin, Texas. The Service Provider Account Manager shall (a) be one of the Key Service Provider Personnel, (b) be a full time employee of Service Provider, (c) devote his or her full time and effort to managing the Services, (d) remain in this position for a minimum period of two (2) years from the initial assignment (except as a result of voluntary resignation, involuntary termination for cause, illness, disability, or death), (e) serve as the single point of accountability for the Services, (f) be the single point of contact to whom all DIR communications concerning this Agreement may be addressed, (g) have authority to act on behalf of Service Provider in all day-to-day matters pertaining to this Agreement, (h) have day-to-day responsibility for service delivery, billing and relationship management, and (i) have day-to-day responsibility for ensuring customer satisfaction and attainment of all Service Levels.

8.3 Compensation of Service Provider Account Manager and Key Service Provider Personnel.

- (a) **Service Provider Account Manager.** At a minimum, twenty-five percent (25%) of the Service Provider Account Manager's annual incentive and variable compensation (and not less than a material portion of the Service Provider Account Manager's total annual compensation) shall be based upon (i) the level of customer satisfaction reflected in the periodic customer satisfaction surveys, (ii) the extent to which Service Provider has met or exceeded the Service Levels and Service Provider's other responsibilities and obligations under this Agreement, and (iii) DIR's determination as to whether Service Provider has met the technical and operational objectives set by DIR.
- (b) **Key Service Provider Personnel.** At a minimum, twenty-five percent (25%) of the annual incentive and variable compensation (and not less than a material portion of the total annual compensation) of the Key Service Provider Personnel listed on **Attachment 5-A** shall be based upon the factors set forth in **Section 8.3(a)**.

- (c) **Evaluation Input.** DIR shall have a meaningful opportunity to provide information to Service Provider with respect to DIR's evaluation of the performance of the Service Provider Account Manager and the other Key Service Provider Personnel and such evaluation shall be reasonably considered by Service Provider in establishing the bonus and other compensation of such individuals.

8.4 Service Provider Personnel Are Not State, DIR or DIR Customer Employees.

The Parties intend to create an independent contractor relationship and nothing in this Agreement shall operate or be construed as making the State, DIR, any DIR Customer and Service Provider partners, joint venturers, principals, joint employers, agents or employees of or with the other. No officer, director, employee, agent, affiliate, contractor or subcontractor retained by Service Provider to perform work hereunder shall be deemed to be an officer, director, employee, agent, affiliate, contractor or subcontractor of the State, DIR or any DIR Customer for any purpose. Service Provider, not the State, DIR or the DIR Customers, has the right, power, authority and duty to supervise and direct the activities of the Service Provider Personnel and to compensate such Service Provider Personnel for any work performed by them hereunder. Service Provider, and not the State, DIR or the DIR Customers, shall be responsible and therefore solely liable for all acts and omissions of Service Provider Personnel associated or related in any manner with this Agreement, the Services, DIR Facilities, Service Provider Facilities, DIR Confidential Information, or Equipment, including acts and omissions constituting negligence, gross negligence, willful misconduct and/or fraud.

8.5 Responsibility for Service Provider Personnel.

- (a) Under no circumstances will Service Provider's employees, agents and Subcontractors be considered employees of DIR or the State, but will be considered Service Provider's employees, agents or Subcontractors for all purposes.
- (b) Except as expressly provided in this Agreement, neither Service Provider nor any of Service Provider's employees, agents or Subcontractors may act in any sense as agents or representatives of DIR or the State of Texas.
- (c) Service Provider's employees, agents or Subcontractors shall be paid exclusively by Service Provider for all Services performed. Service Provider is responsible for and must comply with all requirements and obligations related to such employees, agents or Subcontractors under local, State or Federal law, including minimum wage, social security, unemployment insurance, State and Federal income tax and workers' compensation obligations.
- (d) Service Provider assumes sole and full responsibility for its acts and the acts of its employees, agents and Subcontractors relating to the performance of this Agreement.
- (e) Service Provider agrees that any claim on behalf of any person arising out of employment, alleged employment, agency or subcontracts (including, but not limited to, claims of discrimination against Service Provider, its officers, or its agents or its Subcontractors) are the sole responsibility of Service Provider and are not the responsibility of DIR or any DIR Customer, and that Service Provider will indemnify and hold harmless the State from any and all such claims asserted against the State, DIR or any DIR Customer. Service Provider understands that any person who alleges a claim arising out of employment, alleged employment, agency, or subcontract by Service Provider (including, but not limited to, claims of discrimination against Service Provider, 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).

8.6 Replacement, Qualifications, and Retention of Service Provider Personnel.

- (a) **Sufficiency and Suitability of Personnel.** As a material obligation hereunder, Service Provider shall assign (or cause to be assigned) sufficient numbers of Service Provider Personnel to perform the Services in accordance with this Agreement (including applicable Service Levels, and such Service Provider Personnel shall possess suitable competence, ability and qualifications and shall be properly educated and trained for the Services they are to perform. Service Provider will maintain the organizational and administrative capacity and capabilities to carry out all Service Provider duties and responsibilities, including providing and supporting the Services, under this Agreement. Notwithstanding transfer or turnover of its personnel, or of its agents' or Subcontractors' personnel, Service Provider remains obligated to perform all duties and responsibilities, including providing and supporting the Services, without degradation and in accordance with the terms of this Agreement.
- (b) **Responsibility for Service Provider Personnel.** Service Provider agrees that anyone used by Service Provider to fulfill the terms of this Agreement is an employee, agent or Subcontractor of Service Provider and remains under Service Provider's sole direction and control. In addition, Service Provider hereby agrees to be responsible for the following with respect to its employees, agents or Subcontractors: (i) damages incurred by Service Provider Personnel or Subcontractors within the scope of their duties under this Agreement; and (ii) determination of the hours to be worked and the duties to be performed by Service Provider Personnel or Subcontractors. Service Provider agrees and will inform its employees, agents, and Subcontractors that there is no right of action against DIR or any DIR Customer for any duty owed by Service Provider pursuant to this Agreement. Service Provider expressly agrees that neither DIR nor any DIR Customer assumes any liability for the actions of, or judgments rendered against, the Service Provider, its employees, agents, or Subcontractors. DIR's liability to the Service Provider's employees, agents, and Subcontractors, if any, will be governed by Chapter 101, Texas Civil Practice & Remedies Code.
- (c) **Requested Replacement.** In the event that DIR determines lawfully and in good faith that the continued assignment of any individual Service Provider Personnel (including Key Service Provider Personnel) to the performance of the Services is not in the best interests of any DIR Customer, then DIR may give Service Provider notice to that effect requesting that such Service Provider Personnel be replaced. Service Provider shall have ten (10) Business Days following DIR's request for removal of such Service Provider Personnel in which to investigate the matters forming the basis of such request, correct any deficient performance and provide DIR with assurances that such deficient performance shall not recur (provided that, if requested to do so by DIR, Service Provider shall immediately remove (or cause to be removed) the individual in question from all DIR Facilities pending completion of Service Provider's investigation and discussions with DIR). If, following such ten (10) Business Day period, DIR is not reasonably satisfied with the results of Service Provider's efforts to correct the deficient performance and/or to prevent its recurrence, Service Provider shall, as soon as possible, remove and replace such Service Provider Personnel with an individual of suitable ability and qualifications, at no additional cost to DIR. Nothing in this provision shall operate or be construed to limit Service Provider's responsibility for the acts or omissions of Service Provider Personnel, or be construed as joint employment of the Service Provider Personnel.
- (d) **Personnel Projection Matrix.** Set forth in **Attachment 5-B** is a staffing plan showing the planned deployment of Service Provider Personnel (the "**Personnel Projection Matrix**"). Service Provider shall comply with the Personnel Projection Matrix, and shall not make material changes to such plan without DIR's prior approval, which shall be based on DIR's reasonable satisfaction that such changes shall not have an adverse impact on Service Provider's ability to timely perform its obligations under the Agreement. For purposes of this provision, in any event a material change shall be deemed to have occurred in the case of the following:
- (i) prior to the end of Contract Year one, the number of Service Provider Personnel is five percent (5%) or more below the annual totals reflected for such period in any of the

"Grand Totals" in the Personnel Projection Matrix for (A) the combined "Current DCS Employees," and "Current DCS Contractors " categories, (B) the "Service Provider FTPs – Service Delivery" category, and (C) the "Service Provider FTPs – Transition/Transformation" category;

- (ii) during Contract Years two or three, the number of Service Provider Personnel is ten percent (10%) or more below the annual totals reflected for such period in any of such Grand Totals described in clause (i); or
- (iii) after Contract Year three, the number of Service Provider Personnel is twenty-five percent (25%) or more below the annual totals reflected for such period in any of such Grand Totals described in clause (i).

In calculating any percentage decrease for purposes of the foregoing, the numbers in the Personnel Projection Matrix shall be adjusted appropriately to account for any material and sustained increase or decrease in the required level of Services above or below the Resource Baselines as of the Effective Date (including New Services). The Parties agree that the review and approval of the Personnel Projection Matrix and changes in the Personnel Projection Matrix by DIR shall not be construed as joint employment of the Service Provider Personnel. During the first twelve (12) months following the Commencement Date, any changes, material or otherwise, to the deployment of Service Provider Personnel shall be reported by Service Provider to DIR within five (5) days following the end of each month in which such changes occurred, and after such twelve (12) month period, Service Provider shall report all material changes in the number of Service Provider Personnel within the tenth (10th) Business Day following the end of each month in which such changes occurred. In addition, for a period of twenty-four (24) months following the Commencement Date, Service Provider shall provide DIR with a report by the tenth (10th) Business Day following the end of each month identifying the Transitioned Employees who were terminated for cause or performance during that month or who otherwise left Service Provider's employment during that month.

- (e) **Turnover Rate and Data.** Service Provider shall use commercially reasonable efforts to keep the turnover rate of Service Provider Personnel (i) to a level comparable to or better than the industry average for large, well-managed service providers performing services similar to the Services, and (ii) to no more than fifteen percent (15%) in any rolling twelve (12) month period. If DIR believes that the turnover rate of Service Provider Personnel is excessive and so notifies Service Provider, Service Provider shall within ten (10) Business Days (i) provide DIR with data concerning Service Provider's turnover rate, (ii) meet with DIR to discuss the reasons for the turnover rate, (iii) submit a proposal for reducing the turnover rate for DIR's review and approval and (iv) agree to a program for reducing the turnover rate, all at no additional cost to DIR. Notwithstanding any transfer or turnover of Service Provider Personnel, Service Provider shall remain obligated to perform the Services without degradation and in accordance with the terms of this Agreement.
- (f) **Service Provider Personnel.** Service Provider shall be responsible for verifying (i) that Service Provider Personnel are authorized to work in any location in which they are assigned to perform Services and (ii) that Service Provider Personnel have not been convicted of or accepted responsibility for a felony or a misdemeanor involving a dishonest act, do not use illegal drugs and are not otherwise disqualified from performing their assigned work under applicable Laws.
- (g) **Background and/or Criminal History Investigations.** Prior to the date any Service Provider Personnel are assigned to DIR's or any DIR Customer's account, and at DIR's request from time to time thereafter, background checks (including national fingerprint record checks and drug testing) and/or criminal history investigations of such Service Provider Personnel specified in the Service Management Manual or the applicable Statement of Work may be performed by DIR and/or DIR Customers having the authority to require such investigations under applicable Laws. Should any Service Provider Personnel not be acceptable to DIR and/or any DIR Customer as a result of a

background check and/or criminal history investigation, then Service Provider shall promptly replace the individual(s) in question. Service Provider Personnel who do not meet criteria acceptable to DIR shall not be assigned to work hereunder.

8.7 Conduct of Service Provider Personnel.

- (a) **Conduct and Compliance.** Service Provider Personnel shall (i) comply with applicable DIR Rules and other rules and regulations as further described in **Section 6.3**, (ii) comply with reasonable requests of DIR or the DIR Customers personnel pertaining to personal and professional conduct, (iii) attend workplace training offered by DIR and/or the DIR Customers at DIR's request, and (iv) otherwise conduct themselves in a businesslike manner.
- (b) **Identification of Service Provider Personnel.** Except as specifically authorized by DIR, all Service Provider Personnel shall clearly identify themselves as Service Provider Personnel and not as employees or representatives of the State, DIR or any DIR Customer. This shall include any and all communications, whether oral, written or electronic, unless and to the extent authorized by DIR in connection with the performance of specific Services. Each Service Provider Personnel shall wear a badge issued by DIR or the relevant DIR Customer indicating that he or she is a "contractor" when at a DIR Facility.
- (c) **Restriction on Marketing Activity.** Except for marketing representatives designated in writing by Service Provider to DIR, none of the Service Provider Personnel shall conduct any marketing activities to the State, DIR or any DIR Customer at DIR Facilities (including marketing of any New Services), other than, subject to **Section 13.1**, reporting potential marketing opportunities to Service Provider's designated marketing representatives.

8.8 Substance Abuse.

- (a) **Employee Removal.** To the extent permitted by applicable Laws, Service Provider shall immediately remove (or cause to be removed) any Service Provider Personnel known to be or reasonably suspected of engaging in substance abuse while at any DIR Facility, in a DIR Customer vehicle or while performing Services. In the case of reasonable suspicion, such removal shall be pending completion of the applicable investigation. Substance abuse includes the sale, attempted sale, possession or use of illegal drugs, drug paraphernalia or alcohol, or the misuse of prescription or non-prescription drugs.
- (b) **Substance Abuse Policy.** Service Provider represents, warrants and covenants that it has and shall maintain substance abuse policies, in each case in conformance with DIR Rules and applicable Laws, and Service Provider Personnel shall be subject to such policies.

8.9 Union Agreements.

Service Provider shall provide DIR not less than ninety (90) days notice of the expiration of any collective bargaining agreement with unionized Service Provider Personnel if the expiration of such agreement or any resulting labor dispute could potentially interfere with or disrupt the activities or operations of DIR or a DIR Customer or impact Service Provider's ability to timely perform its duties and obligations under this Agreement.

8.10 Knowledge Transfer.

During the period following the Effective Date and prior to the Commencement Date, Service Provider will use its best efforts to acquire the practical skill, knowledge and expertise from the personnel who are providing the Services prior to the Effective Date in relation to the delivery of the Services, including the knowledge necessary for the Service Provider to perform the Services. Service Provider will accomplish such knowledge transfer, as appropriate, by interviewing personnel currently performing the Services as

well as reviewing information, records and documents related to the provision of the Services. The information to be reviewed to affect the obligations of such knowledge transfer include, (i) copies of procedures and operations manuals, (ii) relevant system, software and/or hardware information, (iii) a list of third party suppliers of goods and services which are to be transferred to DIR or Service Provider, (iv) key support contact details for third party supplier employees, (v) information regarding work in progress and associated unresolved faults in progress. Service Provider shall promptly (within one Business Day) notify DIR of any lack of cooperation or assistance on the part of any DIR Customer, DIR Contractor or any third party that impedes or hinders Service Provider's efforts to comply with this obligation.

9. SERVICE PROVIDER RESPONSIBILITIES

9.1 Service Management Manual.

- (a) **Delivery and Contents.** Service Provider shall deliver to DIR portions and versions of the Service Management Manual for DIR's review and comment on the dates provided in **Attachment 6-B**. DIR shall review the Service Management Manual and provide Service Provider with comments and revisions. Service Provider shall incorporate DIR's comments and revisions into the Service Management Manual and shall deliver subsequent versions thereof on or before the dates set forth in **Attachment 3-C** for DIR's review and comment in accordance with this Section. Service Provider shall work with each DIR Customer to document appropriate policies, processes and procedures for inclusion in the Service Management Manual to provide effective Service interfaces between Service Provider and the DIR Customers. Service Provider shall deliver a final version of the Service Management Manual to DIR on or before the date set forth in **Attachment 3-C** for DIR's final approval, which DIR may withhold in its sole discretion. Service Provider shall submit to DIR a revised Service Management Manual within thirty (30) days of DIR's rejection addressing each of the points raised by DIR in its rejection until DIR has approved the Service Management Manual. At a minimum, the Service Management Manual shall address the subjects specified in **Attachment 6-B** (to the extent applicable) and shall include the following:
- (i) a detailed description of the manner in which each of the Services shall be performed by Service Provider, including (A) documentation (including operations manuals, user guides, specifications, policies/procedures and disaster recovery/business continuity plans) to be created and/or maintained by Service Provider in the course of performing the Service, (B) the specific activities to be undertaken by Service Provider in connection with each Service, including, where appropriate, the direction, supervision, monitoring, staffing, reporting, planning and oversight activities to be performed by Service Provider under this Agreement, (C) the checkpoint reviews, testing, acceptance, controls and other procedures to be implemented and used to assure service quality, (D) the DIR-approved processes, methodologies and controls to be implemented and used by Service Provider to comply and confirm compliance with DIR Rules and DIR Standards, (E) the processes, methodologies and controls to be implemented and used by DIR, DIR Customers and Service Provider to identify DIR Data that DIR Customers are legally prohibited from disclosing, including any confidentiality requirements specific to any DIR Customer, (F) subject to **Section 15.11**, the processes, methodologies and controls to be implemented and used by Service Provider to comply and confirm compliance with applicable Laws (including applicable Privacy Laws relating to the privacy and security of DIR Data), and (G) the processes, methodologies and controls to be implemented and used by Service Provider to implement DIR-approved billing structure changes;
 - (ii) the procedures for DIR, DIR Customer, and Service Provider interaction and communication, including (A) call lists, (B) procedures for and limits on direct communication by Service Provider with DIR and DIR Customer personnel, (C) Problem Management and escalation procedures, (D) Change Control Procedures, (E) Acceptance testing and procedures (subject to **Section 4.6**), (F) Quality Assurance procedures and checkpoint reviews, (G) the Project-formation process and implementation methodology

(subject to **Section 4.7**), and (H) the interfaces between and among DIR, DIR Customers and Service Provider; and

- (iii) practices and procedures addressing such other issues and matters as DIR reasonably requires.

Service Provider shall incorporate DIR's and the DIR Customers' then-current policies and procedures in the Service Management Manual to the extent it is directed to do so by DIR.

- (b) **Compliance.** Service Provider shall perform the Services in accordance with the terms of this Agreement and DIR's and the DIR Customers' then-current policies and procedures until the Service Management Manual is finalized and agreed upon by the Parties. Thereafter, Service Provider shall perform the Services in accordance with the terms of this Agreement including the Service Management Manual. In the event of a conflict between the provisions of this Agreement and the Service Management Manual, the provisions of this Agreement shall control unless the Parties expressly agree otherwise and such agreement is set forth in the relevant portion of the Service Management Manual.
- (c) **Maintenance, Modification and Updating.** Service Provider shall maintain the Service Management Manual so as to be accessible electronically to DIR, the DIR Customers and Authorized Users via the Portal or such other electronic means as approved by DIR, and in any case in a manner consistent with DIR's security policies. Service Provider shall communicate to all DIR Customers the availability of and methodology for accessing the Service Management Manual. DIR shall have the right, but not the obligation, to distribute hard copies of the Service Management Manual to Authorized Users. Service Provider shall promptly and timely modify and update the Service Management Manual to reflect changes in the operations or procedures described therein and to comply with DIR Standards, DIR Rules, the Technology Plan and Strategic Plans. Service Provider shall provide the proposed changes in the Service Management Manual to DIR for DIR's prior review, comment and approval, which DIR may withhold in its sole discretion. Service Provider will retain previous versions of the Service Management Manual and will provide DIR access to such previous versions along with a method to track all changes made to prior versions (version tracking).
- (d) **Training.** Service Provider shall provide training to DIR Customer personnel in accordance with the terms of **Exhibit 2** and as otherwise required by DIR to provide effective Service interfaces between Service Provider and the DIR Customers.
- (e) **Annual Review.** The Parties shall meet to perform a formal annual review of the Service Management Manual on a mutually agreed date but not later than thirty (30) days from each anniversary of the Commencement Date.

9.2 Reports, Data Correction, Re-Performance.

- (a) **Reports.** Service Provider shall provide DIR with (i) reports pertaining to the performance of the Services and Service Provider's other obligations under this Agreement sufficient to permit DIR to monitor and manage Service Provider's performance, (ii) those reports described in **Exhibit 13** in the form and format and at the frequencies provided therein, (iii) those reports required elsewhere under the terms of this Agreement, (iv) and those generated by DIR and the DIR Customers prior to the Commencement Date, and (v) such additional reports as DIR may reasonably identify from time to time to be generated and delivered by Service Provider on an ad hoc or periodic basis (all such reports, the "**Reports**").

- (b) **Back-Up Documentation.** As part of the Services, Service Provider shall provide DIR with such documentation and other information available to Service Provider (including original source documentation and data in its native format or in an alternative industry-standard format as requested by DIR) as may be requested by DIR from time to time in order to verify the accuracy of the Reports provided by Service Provider. In addition, Service Provider shall provide DIR with all documentation and other information reasonably requested by DIR from time to time to verify that Service Provider's performance of the Services is in compliance with the Service Levels and this Agreement.
- (c) **Correction of Errors.** Service Provider shall promptly correct any errors or inaccuracies in or with respect to the Reports as part of the Services and at no additional cost.

9.3 Governance: Meetings.

- (a) **Governance.** The parties shall comply with the governance and account management provisions set forth in **Exhibit 6**.
- (b) **Meetings.** During the Term of this Agreement, representatives of the Parties shall meet periodically or as requested by DIR to discuss matters arising under this Agreement, including any such meetings provided for in the Transition Plan and the Service Management Manual. During the Transition Period, this may include meetings with DIR, DIR's then current or prior outsourcing service provider, and other DCS Service Providers. Each Party shall bear its own costs in connection with the attendance and participation of such Party's representatives in such meetings.

9.4 DIR Customer Quality Assurance and Internal Controls.

- (a) **General.** Service Provider shall develop and implement Quality Assurance and to the extent applicable any customized Service-specific internal control (e.g. financial and accounting controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls and access controls) processes and procedures, including implementing tools and methodologies, to perform the Services in an accurate and timely manner (and confirm that they are so performed and accounted for) in accordance with (1) the Service Levels and other requirements of this Agreement, (2) generally accepted accounting principles (applied in accordance with SAS-69 and generally accepted auditing standards) to the extent necessary for Service Provider's ultimate parent to make its public filings with the Securities and Exchange Commission, (3) accepted industry standards of first tier providers of services that are the same as or similar to the Services, (4) the Laws applicable to DIR and the DIR Customers (without limiting the obligations of the Parties under **Section 15.11**), and (5) industry standards (e.g., QS 9000, ISO 9001/2000, ISO 14000, ISO 17799/2005, ISO 27001/2005, ISO 27002/2005) applicable to DIR and the performance of the Services to the extent described in **Section 9.4(c)**. Such processes, procedures and controls shall include verification, checkpoint reviews, testing, acceptance and other procedures for DIR and the DIR Customers to assure the quality and timeliness of Service Provider's performance. Without limiting the generality of the foregoing, Service Provider shall:
 - (i) Maintain a strong control environment in day-to-day operations to assure that the following fundamental control objectives are met: (1) financial, billing and operational information is valid, timely, complete and accurate; (2) operations are performed efficiently and achieve effective results, consistent with the requirements of this Agreement; (3) assets and data are safeguarded in accordance with Service Provider's own internal (and in all events reasonable) practices (but without expanding Service Provider's obligations under **Section 13.2(b)**); and (4) actions and decisions of the organization are in compliance with Laws (without limiting the obligation of the Parties under **Section 15.11**) and the terms of this Agreement;

- (ii) Build the following basic control activities into work processes: (1) accountability clearly defined and understood; (2) access properly controlled; (3) adequate supervision; (4) transactions properly authorized; (5) transactions properly recorded; (6) transactions recorded in proper accounting period; (7) policies, procedures and responsibilities documented; (8) adequate training and education; and (9) adequate separation of duties;
 - (iii) Develop and execute a process to perform (and confirm performance of) periodic control self-assessments with respect to all Services (such self-assessments to be performed at least annually unless and until DIR approves less frequent self-assessments);
 - (iv) Maintain an internal audit function to sufficiently monitor the processes, internal controls and Systems used to provide the Services (i.e. perform audits, track control measures, communicate status to management, drive corrective action, etc.) and provide complete and accurate summaries of any internal audit reports related to the Services to DIR; and
 - (v) Conduct investigations of suspected fraudulent activities within Service Provider's organization that impact or reasonably could be expected to impact DIR or the DIR Customers. Service Provider shall promptly notify DIR of any such suspected fraudulent activity and a reasonable summary of the results of any such investigation as they relate to DIR or the DIR Customers and such supplemental materials as DIR may reasonably request. At Service Provider's request, DIR shall provide reasonable assistance to Service Provider in connection with any such investigation.
- (b) **Approval by DIR.** Service Provider shall submit such processes, procedures and controls used in the provision of the Services to DIR for its review, comment and approval at least forty-five (45) days prior to the Commencement Date and shall use commercially reasonable efforts to finalize such processes, procedures and controls and obtain DIR's final approval on or before the Commencement Date. Upon DIR's approval, such processes and procedures shall be included in the Service Management Manual. Prior to the approval of such processes and procedures by DIR, Service Provider shall adhere strictly to DIR's and the DIR Customers' then-current policies, procedures and controls. No failure or inability of the quality assurance procedures to disclose any errors or problems with the Services shall excuse Service Provider's failure to comply with the Service Levels and other terms of this Agreement.
- (c) **Industry Standards, Certifications and Compliance.** Service Provider shall comply with ISO 9000, ISO 9001:2000, ISO 14001, ISO 27001/2005, and ISO 27002/2005 and shall apply ITIL standards and Six Sigma processes.

9.5 Processes, Procedures, Architecture, Standards and Planning.

- (a) **Service Provider Support.** As requested by DIR, Service Provider and without limiting the obligation of the Parties under Section 15.11 shall assist DIR and the appropriate governance committee (as specified in Exhibit 6), on an on-going basis in defining (A) the standards, policies, practices, processes, procedures and controls to be adhered to and enforced by Service Provider in the performance of the Services, including those identified on Exhibits 8 and 17 and (B) the associated IT technologies architectures, standards, products and systems to be provided, operated, managed, supported and/or used by Service Provider in connection therewith (collectively, the "**DIR Standards**"). The Parties acknowledge and agree that, as of the Commencement Date, Service Provider is fully informed as to the DIR Standards that have been communicated to it in a manner consistent with Section 6.3(a). Service Provider also shall assist DIR on an annual basis in preparing Strategic Plans and short-term implementation plans. The assistance to be provided by Service Provider shall include: (i) active participation with DIR and the appropriate governance committee (as specified in Exhibit 6), addressing such issues; (ii) assessments of the then-current DIR Standards at a level of detail sufficient to permit DIR to make informed business decisions; (iii) analyses of the appropriate direction for such DIR Standards; (iv) the provision of information to DIR regarding Service Provider's technology strategies for its own business; (v)

recommendations regarding standards, processes, procedures and controls and associated technology architectures, standards, products and systems; and (vi) the provision of current, historical, and forecasted system capacity, performance and utilization metrics at reasonable requested levels of detail. With respect to each recommendation, Service Provider shall provide the following at a level of detail sufficient to permit DIR to make an informed business decision: (1) the projected cost to DIR and the DIR Customers and cost/benefit analyses; (2) the changes, if any, in the personnel and other resources Service Provider, DIR and/or the DIR Customers shall require to operate and support the changed environment; (3) the resulting impact on the total costs of DIR and the DIR Customers; (4) the expected performance, quality, responsiveness, efficiency, reliability, security risks and other service levels; and (5) general plans and projected time schedules for development and implementation. Any assistance provided by Service Provider under Sections 9.5 shall be at no additional fee or charge beyond the Charges specified in Exhibit 4 for the Services, unless an additional Charge has been approved by DIR.

- (b) **DIR Authority and Service Provider Compliance.** DIR shall have final authority to promulgate DIR Standards and Strategic Plans and to modify or grant waivers from such DIR Standards and Strategic Plans. Service Provider shall (i) comply with and implement the DIR Standards and Strategic Plans in providing the Services, (ii) work with DIR to enforce the DIR Standards and Strategic Plans, (iii) modify the Services as and to the extent necessary and on a schedule to conform to such DIR Standards and Strategic Plans, and (iv) obtain DIR's prior written approval for any deviations from such DIR Standards and Strategic Plans.
- (c) **Financial, Forecasting and Budgeting Support.** To support DIR's forecasting and budgeting processes, Service Provider shall provide the following information regarding the costs to be incurred by DIR and/or the DIR Customers in connection with the Services and the cost/benefit to DIR and/or the DIR Customers associated therewith: (i) actual and forecasted utilization and costs of Resource Units; (ii) actual and forecasted changes in the total cost or resource utilization associated with changes to the environment; and (iii) opportunities to modify or improve the Services and to reduce the Charges, Pass-Through Expenses or retained expenses incurred by DIR and/or the DIR Customers. Such information shall be provided at DIR's request and in accordance with the schedule established by DIR.
- (d) **Technology Plan.** Service Provider shall develop and implement a technology plan that is consistent with the DIR Standards and Strategic Plan and that shows how Service Provider shall provide the Services to enable DIR and DIR Customers to achieve the Strategic Plan objectives and to implement and support DIR and DIR Customers objectives and strategies ("**Technology Plan**"). The development of the Technology Plan shall be an iterative process that Service Provider shall carry out in consultation with DIR. The Technology Plan shall be finalized and delivered to DIR in accordance with the timeframe specified in Attachment 3-C. The Technology Plan shall be the basis for generating technology roadmaps which detail schedules, dependencies and requirements for introducing new technology changes as well as acquiring, supporting, and retiring N/N-1 software and hardware.
- (i) **Process.** The process for developing and approving the Technology Plan shall be as follows. Service Provider shall provide a draft Technology Plan each year that includes multi-year implementation plans to achieve multi-year objectives. DIR and the appropriate governance committee (as specified in Exhibit 6), shall review the draft Technology Plan and provide requested amendments. Service Provider shall incorporate any such amendments, unless it reasonably believes that any requested amendment would not assist DIR to achieve its objectives and strategies. DIR and Service Provider shall escalate any disagreements about requested amendments to the draft Technology Plan in accordance with the dispute resolution procedure in Article 19. Following approval by DIR, the new Technology Plan shall replace the previous plan. Approval of the Technology Plan by DIR shall not relieve Service Provider of any obligation under this Agreement in relation to its provision of the Services.

- (ii) **Contents.** In the Technology Plan, Service Provider shall, among other things, include plans for: (A) Refreshing Equipment and maintaining the currency of Software (consistent with the terms of this Agreement); (B) adopting new technologies and processes as part of the Technology Evolution of the Services, as defined in this Agreement; and (C) maintaining flexibility as described in **Section 9.12**. In the Technology Plan, Service Provider shall also present implementation plans for the achievement of the Strategic Plan and the DIR Standards.
- (iii) **Compliance and Reporting.** Service Provider shall comply with the Technology Plan at all times, unless DIR agrees to depart from the Technology Plan. Any such agreement to depart from the Technology Plan from the date on which it is signed by DIR shall not relieve Service Provider of its responsibilities under the previous plan prior to the date of such agreement.
- (e) **Technology Solution.** **Attachment 8-A** shall include a description of the Equipment, Materials and Systems used in the delivery of the Services, including representations as to the purpose, features and functionality of such Equipment, Materials and Systems. Service Provider is required to implement the Equipment, Materials and Systems as set forth in **Attachment 8-A**. Service Provider may propose a change to such Equipment, Materials and Systems set forth in **Attachment 8-A**, provided that the replaced or substituted Equipment, Materials and Systems satisfies the initial representations as to the purpose, features and functionality of such Equipment, Materials and Systems and which change will be subject to DIR review and approval.

9.6 Change Control.

- (a) **Compliance with Change Control Procedures.** In making any change in the standards, processes, procedures and controls or associated technologies, architectures, standards, products, Materials, Equipment, Systems or services provided, operated, managed, supported or used in connection with the Services, the Parties shall comply with the change control procedures specified in the Service Management Manual ("**Change Control Procedures**"). The Service Management Manual shall contain a procedure that allows DIR to exercise the approval rights in this Section and complies with the following requirements:
 - (i) **Impact Assessment.** If Service Provider desires to make any change, upgrade, replacement or addition that may have an adverse impact or require changes as described in **Section 9.6(c)** or increase the risk of Service Provider not being able to provide the Services in accordance with this Agreement or violate or be inconsistent with DIR Standards or Strategic Plans, then Service Provider shall prepare a written risk assessment and mitigation plan (1) describing in detail the nature and extent of such adverse impact or risk, (2) describing any benefits, savings or risks to DIR or the DIR Customers associated with such change, and (3) proposing strategies to mitigate any adverse risks or impacts associated with such change and, after consultation and agreement with DIR, implement the plan.
 - (ii) **Comparison Analysis.** Each time that Service Provider makes a material change to the Materials, Equipment, Systems or Services, Service Provider shall perform a comparison analysis at a reasonable and mutually agreed level of detail to confirm the change shall not have an adverse impact on the costs, operations or environment of DIR or a DIR Customer or on the functionality, interoperability, performance, accuracy, speed, legality, responsiveness, quality or resource efficiency of the Services. In addition, at DIR's request, Service Provider shall perform a comparison at a reasonable and mutually agreed level of detail, between the amount of chargeable resources required to perform a representative sample of the Services being performed for DIR immediately prior to the change and immediately after the change. DIR shall not be required to pay for increased

chargeable resources usage due to a change except to the extent that such change is requested or approved by DIR after notice from Service Provider of such increased chargeable resources usage.

- (iii) **Testing.** Prior to making any change or using any new (e.g. not tested in or for the DIR environment) Software, Equipment or System to provide the Services, Service Provider shall verify by appropriate testing that the change or item is properly installed, operating in accordance with its specifications, performing its intended functions in a reliable manner and compatible with and capable of operating as part of the DIR environment. This obligation shall be in addition to Service Provider's other obligations in this Agreement, including Service Provider's obligation to perform any testing as part of the routine deployment or installation of Software or Equipment.

- (b) **Financial Responsibility For Changes.** Without limiting DIR's right of approval under Section 9.6(c), unless otherwise set forth in this Agreement or otherwise expressly approved by DIR, Service Provider shall bear all charges, fees and costs associated with any change desired by Service Provider, including all charges, fees and costs associated with (i) the design, installation, implementation, testing and rollout of such change, (ii) any modification or enhancement to, or substitution for, any impacted process or associated Materials, Equipment, System or Services, (iii) any increase in the cost to DIR or the DIR Customers of operating, maintaining or supporting any impacted process or associated Materials, Equipment, System or Services and (iv) subject to Section 9.6(h), any increase in Resource Unit usage resulting from such change.

- (c) **DIR Approval – Cost, Adverse Impact.** Other than as expressly set forth in the Transition Plan and Transformation Plan as approved by DIR, Service Provider shall make no change which may (i) increase DIR's total cost of receiving the Services; (ii) require material changes to, or have an adverse impact on, DIR's or any DIR Customer's operations, facilities, processes, systems, software, utilities, tools or equipment (including those provided, managed, operated, supported and/or used on their behalf by DIR Contractors); (iii) require DIR or any DIR Customer to install, at their cost or expense, a new version, release, Upgrade of or replacement for any Software or Equipment or to modify any Software or Equipment; (iv) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality or resource efficiency of the Services; (v) have an adverse impact on the cost, either actual or planned, to DIR of terminating this Agreement, in whole or in part, or on DIR's rights to insource or use third parties; (vi) have an adverse impact on DIR's or any DIR Customer's environment (including its flexibility to deal with future changes, interoperability and its stability), (vii) introduce new technology to (A) DIR's or any DIR Customer's environment or operations or (B) Service Provider's environment, to the extent that such introduction has or may have an adverse impact on DIR's or any DIR Customer's environment; (viii) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of DIR's Retained Systems and Processes, or (ix) violate or be inconsistent with DIR Standards, DIR Rules, the Technology Plan or any Strategic Plan in all cases (i) through (ix) without first obtaining DIR's approval, which approval DIR may withhold in its sole discretion. If Service Provider desires to make such a change, it shall provide to DIR a written proposal describing in detail the extent to which the desired change may affect the functionality, performance, price or resource efficiency of the Services and any benefits, savings or risks to DIR or the DIR Customers associated with such change.

- (d) **DIR Legal Approval – IVR/VRU Solution.** Service Provider shall not implement or use in performing the Services an IVR or VRU solution having one or more of the following characteristics without first obtaining the approval of DIR: (i) the entry by callers of distinct customer verification data that is compared to information stored in a database to determine if the caller is qualified to continue using the system; (ii) the IVR system provides the caller with computer generated confirmation numbers; (iii) the use by callers of temporary PINs with the

ability to change the PIN; or (iv) the generation of automatic screen pops at the operator terminal based on caller-specific information entered by the caller.

- (e) **Information for Exercise of Strategic Authority.** In order to facilitate DIR's strategic control pursuant to Section 9.5, Service Provider shall provide DIR with such information as DIR shall reasonably require prior to making any proposed change. Such information shall include, at a minimum, a description of the proposed rights of DIR and the DIR Customers with respect to ownership and licensing (including any related restrictions) relating to such Materials, Equipment or other technology. Such description shall include the license fees, maintenance fees and/or purchase or lease terms (if any) for use of such Materials, Equipment or other technology by DIR, the DIR Customers and their designee(s) upon termination or expiration of this Agreement or the completion of Termination Assistance Services and any limitations or conditions on such use.
- (f) **Temporary Emergency Changes.** Notwithstanding the foregoing, Service Provider may make temporary changes required by an emergency if it has been unable to contact the DIR Data Center Services Manager to obtain approval after making reasonable efforts. Service Provider shall document and report such emergency changes to DIR not later than the next Business Day after the change is made. Such changes shall not be implemented on a permanent basis unless and until approved by DIR.
- (g) **Implementation of Changes.** Service Provider shall schedule and implement all changes so as not to (i) disrupt or adversely impact the operations of DIR or the DIR Customers, (ii) degrade the Services then being received by them, or (iii) interfere with their ability to obtain the full benefit of the Services.
- (h) **Planning and Tracking.** On a monthly basis, Service Provider shall prepare, with DIR's participation and approval, a rolling quarterly "look ahead" schedule for ongoing and planned changes for the next three (3) months. The status of changes shall be monitored and tracked by Service Provider against the applicable schedule.

9.7 Software Currency.

- (a) **Currency of Software.** Subject to and in accordance with Sections 6.4, 9.5, 9.6, 9.14, Exhibit 2 and Exhibit 4, Service Provider shall maintain reasonable currency for Software for which it is financially responsible under this Agreement and provide maintenance and support for Software (including new Upgrades, Major Releases and Minor Releases) for which it is operationally responsible under this Agreement. At DIR's direction, Service Provider shall operate, maintain and support multiple releases or versions of the same Software and, subject to Sections 9.7(e) and 9.7(f), without any increase in the Monthly Base Charge. In addition, unless otherwise directed by DIR, Service Provider shall keep Software within release levels supported by the appropriate third party vendor to maintain compatibility with other Software or Equipment components of the Systems and of DIR's Retained Systems and Processes. To the extent Third Party Software for which Service Provider is operationally responsible under this Agreement is no longer supported by the applicable licensor or manufacturer, Service Provider shall use commercially reasonable efforts to perform maintenance for such Software as required. For purposes of this Section, "reasonable currency" means that, unless otherwise directed by DIR, (i) Service Provider shall maintain Software within one Major Release of the then-current Major Release, unless otherwise specified pursuant to the Software Currency guidelines set out in Attachment 4-B and (ii) Service Provider shall install Minor Releases promptly or, if earlier, as requested by DIR.
- (b) **Evaluation and Testing.** Prior to installing a new Upgrade, Major Release or Minor Release, Service Provider shall evaluate and test such Software to verify that it shall perform in accordance with this Agreement and the DIR Standards and Strategic Plans and that it shall not (i) increase DIR's or the DIR Customers' total cost of receiving the Services, (ii) have an adverse impact on performance or require changes as described in Section 9.6(c), or (iii) violate or be inconsistent

with DIR Standards, Strategic Plans, the Technology Plan or applicable Laws. The evaluation and testing performed by Service Provider shall be at least consistent with the reasonable and accepted industry norms applicable to the performance of such Services and shall be at least as rigorous and comprehensive as the evaluation and testing usually performed by highly qualified service providers under such circumstances.

- (c) **Approval by DIR.** Notwithstanding Section 9.7(a), Service Provider shall confer with DIR prior to installing any new Upgrade, Major Release or Minor Release, shall provide DIR with the results of its testing and evaluation of such Software and a detailed implementation plan and shall not install such Software if directed not to do so by DIR. Where specified by DIR, Service Provider shall not install new Upgrades, Major Releases or Minor Releases or make other Software changes until DIR has completed and provided formal signoff on successful user acceptance testing. Service Provider shall not install new Upgrades, Major Releases or Minor Releases or make other Software changes if doing so would require DIR or the DIR Customers to install new releases of, replace or make any other changes to any Software for which DIR is financially responsible under this Agreement unless DIR consents to such change in advance.
- (d) **Updates by DIR.** DIR and the DIR Customers have the right, but not the obligation, to install new Upgrades, Major Releases or Minor Releases, replace or otherwise make any other changes to Software for which DIR is financially responsible under this Agreement.
- (e) If DIR rejects Service Provider's proposed Upgrade or replacement of a Software version that is back-leveled such that it is no longer supported by the applicable Software manufacturer, Service Provider may be relieved from applicable Service Levels in accordance with Section 10.2
- (f) Notwithstanding the other provisions of Section 9.7, and subject to Section 15.2(b), if DIR rejects Service Provider's proposed Upgrade or replacement of a Software version that is back-leveled such that it is no longer supported by the applicable Software manufacturer and Service Provider is thereafter required to incur additional fees and expenses to obtain necessary maintenance for such Software version from such Software manufacturer in order to meet its obligations under this Agreement, DIR shall reimburse Service Provider for the reasonable fees and expenses thus incurred, but only if (i) Service Provider is unable, using commercially reasonable efforts, to perform such maintenance using Service Provider Personnel, including maintenance of knowledge among Service Provider Personnel about Software versions retained or desired to be retained by end users, (ii) DIR has rejected Service Provider's proposed Upgrade or replacement of such Software version after being notified by Service Provider that it will not be able to provide certain required maintenance for such Software version using Service Provider Personnel, (iii) Service Provider notifies DIR of its intent to use such Software manufacturer to perform maintenance and the anticipated fees and expenses associated therewith and obtains DIR's approval prior to incurring such fees and expenses, and (iv) Service Provider uses commercially reasonable efforts to minimize the fees and expenses to be reimbursed by DIR.

9.8 Access to Specialized Service Provider Skills and Resources.

Upon DIR's request, Service Provider shall provide DIR and the DIR Customers with prompt access to Service Provider's specialized services, personnel and resources pertaining to standards, processes and procedures and associated software, equipment and systems on an expedited basis taking into account the relevant circumstances (the "**Specialized Services**"). The Parties acknowledge that the provision of such Specialized Services may, in some cases, constitute New Services for which Service Provider is entitled to additional compensation, but in no event shall Service Provider be entitled to any additional compensation for New Services under this Section unless the DIR Data Center Services Manager and Service Provider Account Manager, or their authorized designees, expressly agree upon such additional compensation or Service Provider's entitlement to additional compensation is established through the dispute resolution process. If DIR authorizes Service Provider to proceed but the Parties disagree as to whether the authorized work constitutes New Services and DIR reasonably believes that such work is material and is required on an urgent basis, Service Provider shall proceed with such work if directed to do so by DIR.

The Parties will seek to resolve any such dispute within sixty (60) days through prompt submission to governance in accordance with **Exhibit 6**.

9.9 Audit Rights.

- (a) **Contract Records.** Service Provider shall maintain complete and accurate records of, and supporting documentation for, all Charges, all DIR Data and all transactions, authorizations, changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed or stored by Service Provider in the performance of its obligations under this Agreement ("**Contract Records**"). Service Provider shall maintain such Contract Records in accordance with applicable Laws and the terms of this Agreement. Service Provider shall retain Contract Records in accordance with the applicable DIR Customer's record retention policy (as such policies may be modified from time to time and provided to Service Provider in writing) during the Term and thereafter through the end of the fourth (4th) full year after the year in which Service Provider stopped performing any Services (the "**Audit Period**").
- (b) **Operational Audits.** During the Audit Period, Service Provider shall provide to DIR and DIR Customers (and internal and external auditors, inspectors, regulators and other representatives that DIR or DIR Customers may designate from time to time, including customers, vendors, licensees and other third parties to the extent DIR or the DIR Customers are legally or contractually obligated to submit to audits by such Entities), and the State Auditor's Office and any successor governmental authorities (collectively, "**DIR Auditors**"), provided any such external customers, vendors, licensees and other third parties agree to protect Service Provider's Confidential Information subject to applicable public information laws, access at reasonable hours and upon reasonable notice to Service Provider Personnel, to the facilities at or from which Services are then being provided and to Service Provider records and other pertinent information, all to the extent relevant to the Services and Service Provider's obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (i) verify the integrity of DIR Data, (ii) examine the systems that process, store, support and transmit that data (including system capacity, performance and utilization), (iii) examine the internal controls (e.g. financial controls, human resources controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls and access controls) and the security, disaster recovery and back-up practices and procedures, (iv) examine Service Provider's performance of the Services, (v) verify Service Provider's reported performance against the applicable Service Levels, (vi) examine Service Provider's measurement, monitoring and management tools, and (vii) enable DIR and the DIR Customers to meet applicable legal, regulatory and contractual requirements. Service Provider shall (1) provide any assistance reasonably requested by DIR Auditors in conducting any such audit, including installing and operating audit software on systems dedicated to the provision of the Services, (2) make requested Service Provider Personnel, records and information available to DIR Auditors, and (3) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If an audit reveals a non-trivial breach of this Agreement, Service Provider shall, upon DIR's request, promptly reimburse DIR for reasonable auditors' fees including any reasonable auditors' fees to perform a follow-up audit to verify that such breach has been corrected.
- (c) **Financial Audits.** During the Audit Period, Service Provider shall provide to DIR Auditors access at reasonable hours to Service Provider Personnel and to Contract Records and other pertinent information to conduct financial audits necessary to verify the Charges or validate other Service Provider obligations under this Agreement (but not including Service Provider's internal costs or actual salary amounts of individual Service Provider Personnel unless such costs form the basis of a Pass Through Expense), including the audit work papers of Service Provider's auditor to the extent applicable to the Services and obtainable by Service Provider, all to the extent relevant to the performance of Service Provider's obligations under this Agreement). Such access shall be provided for the purpose of performing audits and inspections to (i) verify the accuracy and

completeness of Contract Records, (ii) verify the accuracy and completeness of Charges and any Pass-Through Expenses and Out-of-Pocket Expenses, (iii) examine the financial controls, processes and procedures utilized by Service Provider in connection with the Services, (iv) examine Service Provider's performance of its other financial and accounting obligations to DIR under this Agreement, and (v) enable DIR and DIR Customers to meet applicable legal, regulatory and contractual requirements, in each case to the extent applicable to the Services and/or the Charges for such Services. Service Provider shall (1) provide any assistance reasonably requested by DIR Auditors in conducting any such audit, (2) make requested Service Provider Personnel, records and information available to DIR Auditors, and (3) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If any such audit reveals an overcharge by Service Provider, and Service Provider does not successfully dispute the amount questioned by such audit in accordance with **Article 19**, Service Provider shall promptly pay to DIR the amount of such overcharge, together with interest at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, from the date of receipt by Service Provider of the overcharged amount until the date of payment to DIR. In addition, if any such audit reveals an overcharge of more than five percent (5%) of the audited Charges in any Charges category, Service Provider shall, upon DIR's request, promptly reimburse DIR for reasonable auditors' fees provided that such reimbursement shall not exceed the amount of the overcharge uncovered during the audit.

- (d) **Audits by Governmental Authorities.** Acceptance of funds under this Agreement by Service Provider acts as acceptance of the authority of the State Auditor's Office, the State Comptroller Claims Division and any successor governmental authorities to conduct audits and investigations in connection with those funds. The State Auditor's Office and the State Comptroller 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 Service Provider relating to this Agreement, notwithstanding any other provision of this Agreement. Service Provider shall fully cooperate with and provide all assistance requested by the State Auditor's Office or the State Comptroller Claims Division 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 Agreement, pursuant to Section 2262.003, Tex. Government Code, the State Auditor may conduct an audit or investigation of Service Provider or any other entity or person receiving funds from the State directly through this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Service Provider or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. This Agreement may be unilaterally amended by DIR upon notice to Service Provider to bring this Agreement into compliance with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Section 2262.003.
- (e) **General Procedures.**
- (i) Service Provider shall obtain audit rights equivalent to those specified in this **Section 9.9** from all Subcontractors (and in all events shall obtain such audit rights from all Subcontractors as required under the Texas Government Code, including Texas Government Code 2262.003, or other applicable Law), and shall cause such rights to extend to DIR Auditors.
- (ii) In performing audits, DIR Auditors shall endeavor to avoid unnecessary disruption of Service Provider's operations and unnecessary interference with Service Provider's ability to perform the Services in accordance with the Service Levels.

- (iii) DIR Auditors shall be given adequate private workspace in which to perform an audit, plus access to photocopiers, telephones, facsimile machines, computer hook-ups and any other facilities or equipment needed for the performance of the audit.
- (iv) Service Provider recognizes that DIR must comply with applicable Laws respecting procurement of services in connection with any engagement of an audit firm or other consultant for conducting the audits contemplated in this **Section 9.9**. To the extent permissible under such Laws and the reasonable practice of DIR, DIR shall consult with Service Provider respecting the audit firm or other consultant and appropriate criteria related thereto (including general terms of engagement) in making its selection; provided, however, DIR reserves the right to determine, in its sole discretion, the appropriate audit firm or consultant to be engaged and the arrangement for such engagement.
- (v) DIR shall provide Service Provider with notice at least three (3) Business Days prior to any operational or financial audit by a DIR Auditor; provided that no such notice shall be required with respect to audits conducted pursuant to **Section 9.9(d)** or to the extent limited due to extenuating circumstances. To the extent DIR has advance notice of an audit to be conducted pursuant to **Section 9.9(d)**, it shall provide reasonable notice to Service Provider.
- (f) **Service Provider Internal Audit.** If Service Provider determines as a result of its own internal audit that it has overcharged DIR, then Service Provider shall promptly pay to DIR the amount of such overcharge, together with interest at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, from the date of receipt by Service Provider of the overcharged amount until the date of payment to DIR. In the event such an audit results in a determination that Service Provider has undercharged DIR, then subject to **Section 12.1(d)** and DIR's right to dispute the amount of such undercharge, Service Provider shall promptly report such undercharge to DIR and may invoice DIR for such undercharged amounts.
- (g) **Service Provider Response.** Service Provider and DIR shall meet promptly upon the completion of an audit conducted pursuant to this **Section 9.9** (i.e. an exit interview) and/or issuance of an interim or final report to Service Provider and DIR following such an audit. Service Provider shall respond to each exit interview and/or audit report in writing within thirty (30) days, unless a shorter response time is specified in such report. Service Provider and DIR shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations identified in such exit interview and/or audit report and Service Provider, at its own expense, shall undertake remedial action in accordance with such action plan and the dates specified therein to the extent necessary to comply with Service Provider's obligations under this Agreement.
- (h) **Service Provider Response to External Audits.** If an audit by a governmental body, standards organization or regulatory authority having jurisdiction over DIR, a DIR Customer or Service Provider results in a finding that Service Provider 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 Agreement, Service Provider shall, if and to the extent such audit deficiency or finding of non-compliance results from Service Provider's failure to comply with its obligations under this Agreement, 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 Service Provider's obligations under this Agreement.
- (i) **SSAE 16 Audits.**
 - (i) In addition to its other obligations under this **Section 9.9**, Service Provider shall cause a Type II Statement on Standards for Attestation Engagements No. 16 Audit ("**SSAE 16**")

Audit") to be conducted by an independent, nationally recognized public accounting firm qualified to perform such audits at least annually, with the first SSAE 16 Audit commencing in calendar year 2012, for the DIR Consolidated Data Centers and each shared services facility at or from which the Services are provided. The Service Provider acknowledges that each such SSAE 16 Audit shall cover Service Provider's policies, procedures, controls and systems for the twelve (12) months of Service Provider's performance of the Services immediately after the Commencement Date (and each successive twelve (12) month period thereafter), and in particular those policies, procedures, controls and systems applicable to an audit of Service Provider's customers. Prior to initiating any such SSAE 16 Audit, Service Provider shall confer with DIR as to the scope and timing of each SSAE 16 Audit and shall accommodate DIR's requested modifications (if any) for each such SSAE 16 Audit to the extent reasonably practicable.

- (ii) Service Provider shall cause its Subcontractors performing the Services to conduct SSAE 16 Audits on their policies, procedures, controls and systems that complement the SSAE 16 Audit performed pursuant to clause (i) above. If Service Provider is unable to cause its Subcontractors to conduct such SSAE 16 Audits, then Service Provider shall engage an independent, nationally recognized public accounting firm to perform such audits of its Subcontractors to ensure that the policies, procedures, controls and systems of the Subcontractor complement those of Service Provider. For purposes of this clause (ii), the term "**complement**" shall mean that the policies, procedures, controls and systems of the Subcontractors, when taken as a whole in combination with the policies, procedures, controls and systems of Service Provider, represent the entire control environment under this Agreement.
- (iii) Unless otherwise agreed by the Parties, such audit shall be conducted so as to result in a final audit report dated as of each December 31st during the Term with a copy of such final audit report provided by Service Provider to DIR and DIR Auditors on the earlier of (a) ten (10) days from the date Service Provider receives the final audit report from the external firm or (b) February 15th. In all events, each report delivered by such date shall be unqualified and Service Provider shall respond to such report in accordance with **Section 9.9(g)**. In addition, within ten (10) business days of DIR's written request to Service Provider, Service Provider shall provide a letter to DIR signed by an officer of Service Provider certifying that there has been no change in the policies, procedures, controls and systems of Service Provider since the date of the most recent SSAE 16 Audit report.
- (iv) To the extent DIR provides reasonable notice and requests that, in addition to the SSAE 16 Audits described in clauses (i) and (ii) above, Service Provider conduct DIR-specific SSAE 16 Audits, Service Provider shall, at DIR's expense, cause such DIR-specific SSAE 16 Audit to be performed by a nationally recognized public accounting firm qualified to perform such audits; provided, however, that Service Provider timely notifies DIR of such expense, obtains DIR's prior written approval and uses commercially reasonable efforts to minimize such expense. A copy of the final audit report of each such DIR-specific SSAE 16 Audit shall be delivered to DIR by Service Provider, on the earlier of (a) ten (10) days from the date Service Provider receives the final audit report from the external firm or (b) February 15th. If Service Provider undertakes additional or different SSAE 16 Audits (other than customer-specific audits requested and paid for by other Service Provider customers), Service Provider shall accord DIR the rights described in clause (i) above with respect to such audits. To the extent DIR provides reasonable notice and requests that, in addition to the SSAE 16 Audits described in clauses (i) and (ii) above, DIR may, in coordination with the DIR Auditors, conduct DIR-specific SSAE 16 Audits on the Consolidated Data Center and each shared services facility at or from which the Services are provided.

- (v) During the period when SSAE 16 Audits are performed under this **Section 9.9(i)**, Service Provider shall provide DIR with periodic updates on the status of such audits and any issues that are specific to DIR or that are reasonably anticipated to impact in any material respect the control environment under this Agreement. Upon completion of any such SSAE 16 Audit that identifies any significant deficiency or material weakness, Service Provider shall prepare and implement a corrective action plan to correct any such deficiency or resolve any problem identified from such SSAE 16 Audit specific to DIR or that impact in any material respect the control environment under this Agreement. A copy of the corrective action plan shall be provided to DIR within thirty (30) days following the discovery of such deficiency or problem. If the SSAE 16 Audit report shows a control issue that is specific to DIR or that impacts in any material respect the control environment under this Agreement (a "**Control Deficiency**") that has not theretofore been corrected or properly mitigated and such failure to mitigate the Control Deficiency leads to a qualified opinion being issued by Service Provider's auditor, then Service Provider's failure to promptly remedy the Control Deficiency will be deemed a material breach of this Agreement triggering a termination rights for DIR under **Section 20.1**.
- (vi) If Service Provider is unable to timely deliver to DIR any audit report described in this **Section 9.9(i)** that does not identify any significant deficiency or material weakness, Service Provider shall (A) provide a certificate from an officer of Service Provider to DIR certifying, on the date such report is delivered, or is otherwise due to be delivered, the circumstances giving rise to any delay in delivering such report, (B) promptly take such actions as deemed necessary by DIR to resolve such circumstances and deliver such report as promptly as practicable thereafter, and (C) permit DIR and the DIR Auditors (or their agents), at Service Providers' expense, to perform such procedures and testing of the operating effectiveness of Service Provider's policies, procedures, controls and systems for the period otherwise covered by such report.

9.10 Authorization and Disbursements.

- (a) **Disbursements.** Beginning on the Commencement Date, Service Provider shall make payments to certain lessors, licensors and vendors on behalf of DIR or the DIR Customers, or shall reimburse DIR and the DIR Customers, when approved by DIR, for payments made by DIR or the DIR Customers to such lessors, licensors and vendors, if and to the extent such payments relate or to Third Party Contracts, Equipment Leases or Third Party Materials licenses as to which Service Provider is financially responsible under **Attachment 4-B**, but which have not been formally transferred to Service Provider.
- (b) **Limited Authority.** Except for expenses and amounts associated with assets leased through the State Master Lease Program (which assets cannot be used by Service Provider), DIR hereby authorizes Service Provider to administer and pay Pass-Through Expenses, amounts under Managed Third Party agreements and amounts under Third Party Contracts, Equipment Leases and Third Party Materials licenses for which Service Provider is financially responsible under **Attachment 4-B** but which have not been formally transferred to Service Provider. DIR shall provide, on a timely basis, such affirmation of Service Provider's authority to such lessors, licensors, suppliers and other third parties as Service Provider may reasonably request.
- (c) **Reimbursement for Substitute Payment.** If either Party in error pays to a third party an amount for which the other Party is responsible under this Agreement, the Party that is responsible for such payment shall promptly reimburse the paying Party for such amount upon presentation of sufficient documentation to support such payment.
- (d) **Notice of Decommissioning.** Service Provider shall notify DIR promptly if and to the extent any DIR- or DIR Customer-owned Equipment or DIR- or DIR Customer-leased Equipment shall no longer be used to provide the Services. The notification shall include the identification of the

Equipment, and the date it shall no longer be needed by Service Provider, along with the reason for decommissioning. Upon receipt of any such notice, DIR may (or may cause the applicable DIR Customer to), in its sole discretion, terminate the lease for such leased Equipment as of the date specified in such notice and sell or otherwise dispose of or redeploy such DIR- or DIR Customer-owned Equipment that is the subject of such a notice as of the date specified in such notice. Upon Service Provider ceasing to use any Equipment (or, in the case of leased Equipment, upon the last day DIR or DIR Customer is obligated to make such leased Equipment available to Service Provider, if earlier), Service Provider shall return the same to DIR, the DIR Customers and/or their designee(s) in condition at least as good as the condition thereof on the Commencement Date, ordinary wear and tear excepted. Service Provider shall, at Service Provider's expense, deliver such Equipment to the location designated by DIR, the DIR Customers and/or their designee(s). The foregoing shall not limit Service Provider's obligations with respect to the redeployment and disposal of Equipment pursuant to **Exhibit 2**.

9.11 Subcontractors.

- (a) **Use of Subcontractors.** Service Provider shall not subcontract any of its responsibilities under this Agreement without DIR's prior written approval, which may be withheld in DIR's sole discretion. Prior to entering into a subcontract with a third party for the Services, Service Provider shall (i) deliver to DIR a copy of the proposed subcontract (other than charges thereunder, except to the extent such charges are the basis on which Charges are based), or (in DIR's reasonable discretion) a detailed description of the scope and material terms (other than pricing terms) of the proposed subcontract, (ii) obtain for DIR the licenses described in **Sections 6.4(c)** and **14.3** and **14.6**, (iii) give DIR reasonable prior notice of the components of the Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor and the reasons for subcontracting the work in question, the location of the Subcontractor facilities from which the Services shall be provided, the extent to which the subcontract shall be dedicated and the Subcontractor's willingness to grant the rights described in **Sections 4.4(b)(ii)** and **6.4(c)**, and (iv) obtain DIR's prior written approval of such Subcontractor. A list of Subcontractors that DIR has approved as of the Effective Date is attached to this Agreement as **Exhibit 21**, and the Parties acknowledge that such Subcontractors are approved to perform the Services to the extent described in **Exhibit 21** pursuant to the subcontracts previously provided to DIR.
- (b) **Right to Revoke Approval.** DIR may revoke its prior approval of a Subcontractor and direct Service Provider to replace any Subcontractor as soon as possible at no additional cost to DIR, if the Subcontractor's performance is materially deficient or if there are other reasonable grounds for removal (which reasonable grounds would include Service Provider's failure to obtain the rights set forth in Section 9.11(d)). Service Provider shall have a reasonable opportunity to investigate DIR's concerns, correct the Subcontractor's deficient performance and provide DIR with a written action plan to assure that such deficient performance shall not recur. If DIR is not reasonably satisfied with Service Provider's efforts to correct the Subcontractor's deficient performance and/or to prevent its recurrence, Service Provider shall, as soon as possible, remove and replace such Subcontractor. Service Provider shall continue to perform its obligations under this Agreement, notwithstanding the removal of the Subcontractor. DIR shall have no responsibility for any termination charges or cancellation fees that Service Provider may be obligated to pay to a Subcontractor as a result of the removal of such Subcontractor at DIR's request or the withdrawal or cancellation of the Services then performed by such Subcontractor as permitted under this Agreement.
- (c) **Performance by Service Provider Affiliates.** Service Provider may subcontract certain Service Provider obligations under this Agreement to Service Provider's Affiliates and, without limiting the provisions of **Sections 20.3** and **21.1**, DIR hereby approves such subcontracts, provided that Service Provider shall (i) provide DIR with prior notice of any such performance, (ii) obtain for DIR, the DIR Customers and their designee(s) the rights described in **Section 4.4**, and (iii) obtain for DIR, the DIR Customers and their designee(s) the licenses described in **Sections 6.4(c)** and **14.3** and **14.6**.

- (d) **Service Provider Responsibility.** Unless otherwise approved by DIR, with respect to any subcontractor engaged after the Effective Date, the terms of any such subcontract must be sufficient to enable Service Provider to perform all of its responsibilities and comply with all of its obligations under this Agreement, including , from its subcontractors: (i) confidentiality and intellectual property obligations; (ii) obtaining for DIR, the DIR Customers and their designee(s) the rights described in **Section 4.4**, (iii) obtaining for DIR, the DIR Customers and their designee(s) the licenses described in **Sections 6.4(c)** and **14.3** and **14.6**, (iv) DIR's approval rights (which must apply directly to the Subcontractor); (v) compliance with DIR Rules, DIR Standards, the Technology Plan, Strategic Plans and applicable Laws; (vi) audit rights as described in **Section 9.9**; (vii) Key Service Provider Personnel; (viii) insurance coverage as described in **Exhibit 24**, with coverage limits consistent with the scope of the work to be performed by such Subcontractors, and (ix) obtaining for DIR and DIR Customers the rights specified in **Section 9.11(a)**. For any subcontractor Service Provider has engaged prior to the Effective Date, Service Provider will use commercially reasonable efforts to obtain the rights set forth above and to the extent Service Provider is unable to obtain such rights, Service Provider must obtain DIR's approval prior to using any such subcontractor. On or before sixty (60) days from the Effective Date, Service Provider will review with DIR each subcontract entered into by Service Provider to determine, as of such date, whether each such subcontract complies with DIR's requirements. For purposes of this Agreement, services, functions and responsibilities performed by Subcontractors (including their personnel) shall be deemed Services performed by Service Provider, the obligations of Service Provider hereunder related to such performance shall be deemed applicable to Subcontractors as if expressly so provided herein and references to Service Provider in this Agreement (including references to a "**Party**" constituting references to Service Provider) shall include Subcontractors. Service Provider shall be DIR's sole point of contact regarding the Services, including with respect to payment. Notwithstanding the terms of the applicable subcontract, the approval of any Subcontractor by DIR or the availability or unavailability of Subcontractor insurance, Service Provider shall be and remain responsible and liable for any failure by any Subcontractor or Subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Service Provider under this Agreement to the same extent as if such failure to perform or comply was committed by Service Provider or Service Provider employees. Without limiting the foregoing, Service Provider warrants and covenants that in no event shall any provision of this Agreement, or any right or benefit of DIR or the DIR Customers provided for under this Agreement, be reduced, limited or otherwise adversely affected (including through any increase in cost, Charge or expense, including taxes) as a consequence of the performance of any Services by or through Subcontractors.
- (e) **DIR's ability to contract with Subcontractors.** Service Provider is permitted to secure from its Subcontractors covenants not to compete with Service Provider with respect to the award of the particular Services for which Subcontractor was engaged to perform under the Subcontract, provided that any such covenant not to compete must be coterminous with the Agreement.
- (f) **Historically Underutilized Businesses.** Service Provider shall use commercially reasonable efforts to select subcontractors for the performance of the Services in accordance with DIR's then-current "Policy on Utilization of Historically Underutilized Businesses."

9.12 Technology Evolution.

- (a) **Obligation to Evolve.** Service Provider acknowledges and agrees that its current technologies and processes shall continue to evolve and change over time, and at a minimum, shall remain consistent with the best practices of first tier providers of services that are the same as or substantially similar to the Services, with such evolutionary changes to be implemented in a manner consistent with the objectives and needs of DIR and the DIR Customers. Subject to **Sections 9.5** and **9.6**, Service Provider shall provide the Services using current technologies and processes that shall enable DIR and the DIR Customers to take advantage of advances in the industry.

- (b) **Annual Technology Assessment.** DIR may elect to conduct an annual technology assessment to confirm that Service Provider's then-current technologies and processes are consistent with the best practices of first tier providers of services that are the same as or substantially similar to the Services. If any such assessment reveals that the technologies and process then utilized by Service Provider are not consistent with such practices, then DIR and Service Provider shall review the results of the assessment and promptly establish and implement a plan to achieve such consistency.
- (c) **Obligation to Propose Technology Evolutions.** Service Provider shall identify and propose the implementation of Technology Evolutions that are likely to: (i) improve the efficiency and effectiveness of the Services (including cost savings); (ii) improve the efficiency and effectiveness of the processes, services and related functions performed by or for DIR and the DIR Customers; (iii) result in cost savings or revenue increases to DIR and the DIR Customers in areas of their operations outside the Services; and (iv) enhance the ability of DIR and the DIR Customers to conduct their operations and serve their constituencies and customers faster and/or more efficiently than the then-current strategies. Subject to its non-disclosure obligation under other customer contracts, Service Provider shall obtain information regarding Technology Evolution from other customer engagements and shall communicate such information to DIR on an ongoing basis.
- (d) **Service Provider Briefings and Technology Assessment.** Service Provider shall routinely and regularly monitor and analyze Technology Evolutions of possible interest or applicability to DIR and the DIR Customers, as well as potentially applicable future technology developments beyond current Technology Evolutions. At least semi-annually, Service Provider shall meet with DIR to brief DIR regarding such Technology Evolutions. Such briefing shall include Service Provider's assessment of the operations impact, performance improvements and cost-savings associated with such Technology Evolutions. Where requested by DIR, Service Provider shall develop and present to DIR proposals for (i) implementing Technology Evolutions or (ii) changing the direction of DIR's then-current strategy.
- (e) **Service Provider Developed Advances.** If Service Provider develops or implements technological advances in or changes to the processes and services and associated technologies used to provide the same or substantially similar services to other Service Provider customers or Service Provider develops or implements new or enhanced processes, services, software, tools, products or methodologies to be offered to such customers (collectively, "New Advances"), Service Provider shall, on a quarterly basis, present DIR with a description of New Advances applicable to the DIR environment or the Services specifying any technical benefits and cost savings that may be achieved by DIR or DIR Customer and where available and subject to **Section 11.5**, (i) offer DIR the opportunity to serve as a pilot customer in connection with the implementation of such New Advances, and (ii) if DIR declines such opportunity, offer DIR preferred access to such New Advances and the opportunity to be among the first of Service Provider's customer base to implement and receive the benefits of any New Advances.
- (f) **Flexibility.** The technologies and process strategies Service Provider employs to provide the Services shall meet industry standards and shall be flexible enough to allow integration with new technologies or processes, or significant changes in DIR's or a DIR Customer's objectives and strategies. For example, Equipment must have sufficient scalability and be sufficiently modular to allow integration of new technologies without the need to replace whole, or significant parts of, systems or processes (e.g. made to be a one-to-many model) to enable DIR's and/or the DIR Customers' operations to become more scalable and flexible.
- (g) **Equipment Implementation and Refresh.** Service Provider shall be fully responsible for the implementation of new Equipment in the ordinary course of Technology Evolution and Service Provider shall Refresh all Equipment in accordance with **Section 9.6** and DIR's Refresh strategies, as set out in the Technology Plan, and as necessary to provide the Services in accordance with the Service Levels and satisfy its other obligations under this Agreement, which in all events shall be

not less frequent than the Refresh guidelines set out in **Attachment 4-B**. If Service Provider is aware that these strategies differ from generally accepted practice (or there are any other areas of concern in relation to such strategies) it shall provide DIR with notice of that fact and, upon request, provide DIR with further information as to how to more closely align the strategies with generally accepted practice.

- (h) **Included in Monthly Base Charge.** Except as otherwise expressly provided in this **Section 9.12**, Technology Evolution shall be included in the Monthly Base Charge and Service Provider shall deploy, implement and support Technology Evolution throughout the Term. Except as otherwise expressly provided in this **Section 9.12**, the Monthly Base Charge shall fully compensate Service Provider for the capital cost of implementing Technology Evolution to the extent such implementation involves categories of Equipment, Materials and other assets as to which financial responsibility is allocated to Service Provider in **Attachment 4-B**. Except as otherwise expressly provided in this **Section 9.12**, the performance of projects required to implement Technology Evolution also shall be included within the Monthly Base Charge. DIR shall pay additional sums to implement Technology Evolution only if and to the extent (i) the Technology Evolution exceeds that necessary to comply with Service Provider's obligations under **Sections 9.12(a), (f), and (g)** and DIR authorizes implementation above such requirements (in which case it shall be considered a New Service and implemented pursuant to **Section 11.5**) or (ii) DIR requests accelerated implementation of the Technology Evolution (i.e., more rapidly than previously contemplated in the Technology Evolution Plan or as otherwise required under this Agreement), and in the latter case, only if and to the extent additional Service Provider Personnel and assets or other resources are required to implement the Technology Evolution in the desired timeframe. The activities described in this Section 9.12 are intended to facilitate incremental enhancements to the Services that become possible due to the advancement of prevailing industry practices, techniques, methodologies and systems and are intended to be accomplished using Service Provider Personnel or are otherwise periodically implemented by Service Provider in connection with shared Service Provider systems.

9.13 Retained Systems and Processes.

- (a) **No Adverse Effect.** Except as otherwise expressly agreed upon by the Parties in the Transition Plan, the Transformation Plan, any Work Order or in connection with any New Services or Contract Change, Service Provider shall not, by any act or omission, (i) adversely affect or alter the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost or resource efficiency of DIR's Retained Systems and Processes without the prior consent of DIR or (ii) require changes to DIR's Retained Systems and Processes, including associated processes, applications, systems, software, utilities, tools or equipment, without the prior consent of DIR.
- (b) **Interface.** Service Provider shall provide that the processes, Systems, Software and Equipment used by Service Provider to provide the Services interface and integrate with the Retained Systems and Processes.
- (c) **Assistance.** As part of the Services, Service Provider shall provide DIR (upon DIR's written request) with Services in relation to the Retained Systems and Processes, including: liaising with DIR or third parties regarding the impact of any alterations to the Retained Systems and Processes and vice versa.

9.14 Annual Reviews.

The Parties shall conduct an annual detailed review of the Services then being performed by Service Provider. As part of this review, the Parties shall review the actual service volumes against the forecasted monthly volumes for the previous year, and forecast the service volumes for the next year. In addition, the Parties shall examine: (i) whether the Charges are consistent with DIR's forecasts, industry norms and Service Provider's representations, warranties and covenants; (ii) the quality of the performance and delivery of the Services; (iii) whether Service Provider has delivered cost saving or efficiency enhancing

proposals; (iv) the level and currency of the technologies and processes employed; (v) the operations and technology strategy and direction; and (vi) such other things as DIR may reasonably require.

9.15 Multi-Supplier Integration and Cooperation

Service Provider acknowledges and agrees that it will deliver the Services to DIR and DIR Customers in an environment in which there are various other DCS Service Providers providing related services to DIR and DIR Customers ("**Multi-Supplier Environment**"). Service Provider acknowledges that its provision of the Services in a Multi-Supplier Environment requires significant integration, cooperation and coordination of processes and procedures with other DCS Service Providers. **Attachment 6-C** specifies certain Service Provider obligations to DIR and DIR Customers related to the OLAs. In addition, Service Provider agrees to enter into OLAs with each other DCS Service Provider that address joint operation, issue resolution, and joint governance of the delivery of the Services. Each OLA will be substantially in the form of **Exhibit 29** and include terms that at a minimum address (i) document control and version information, (ii) authorizations, dates and signatures, (iii) objectives of the OLA, (iv) obligations of each party by Service Component, (v) governance, including an approach to managing the OLA that includes managing and coordinating issues, communications and oversight responsibility, (vi) issue escalation and resolution procedures, (vii) procedures for oversight reporting and quality review, (viii) description of solution-based dependencies related to shared use of facilities, equipment, licenses, tools, systems, and other resources, and (ix) interdependency commitments. Within thirty (30) days of the later of (i) the Effective Date, or (ii) the Effective Date of the Master Services Agreement entered into between DIR and the DCS Service Provider who is a counter-party to the OLA, Service Provider will submit a draft OLA to DIR for its review and comment. If after 15 days from DIR's receipt of such draft DIR has not provided comments to the OLA or otherwise requested an extension of the period for review, Service Provider may proceed with the proposed OLA. If DIR provides comments to the OLA, the Service Provider will address and resolve any questions or concerns DIR may have and resubmit the OLA to DIR. DIR will have an additional fifteen (15) days to review each resubmission following the same review process described above. Notwithstanding the terms of the applicable OLA or the approval of any OLA by DIR, Service Provider shall be and remain responsible and liable for any failure to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Service Provider under this Agreement. Without limiting the foregoing, Service Provider warrants and covenants that in no event shall any provision of this Agreement, or any right or benefit of DIR or the DIR Customers provided for under this Agreement, be reduced, limited or otherwise adversely affected (including through any increase in cost, Charge or expense, including taxes) as a consequence of the terms of an OLA.

9.16 Monitoring Tools

As requested by DIR, Service Provider will provide DIR and its designee access for audit or operational reporting, on-line view and notification components of any measurement and monitoring tools used by Service Provider in connection with its delivery of the Services. Each such tool must be approved by DIR prior to implementation.

10. DIR RESPONSIBILITIES

10.1 Responsibilities.

In addition to DIR's responsibilities as expressly set forth elsewhere in this Agreement, DIR shall be responsible for the following:

- (a) **DIR Data Center Services Manager.** DIR shall designate one (1) individual to whom all Service Provider communications concerning this Agreement may be addressed (the "**DIR Data Center Services Manager**"), who shall have the authority to act on behalf of DIR and the DIR Customers in all day-to-day matters pertaining to this Agreement. DIR may change the designated DIR Data

Center Services Manager upon notice to Service Provider. Additionally, the DIR Data Center Services Manager may, upon notice to Service Provider, delegate such of his or her responsibilities to other DIR employees as the DIR Data Center Services Manager deems appropriate.

- (b) **Cooperation.** DIR shall cooperate with Service Provider by, among other things, making available, as reasonably requested by Service Provider, management decisions, information, approvals and acceptances so that Service Provider may accomplish its obligations and responsibilities hereunder.
- (c) **Requirement of Writing.** To the extent Service Provider is required under this Agreement to obtain DIR's approval, consent or agreement, such approval, consent or agreement must be in writing and must be signed by, or directly transmitted by electronic mail from, the DIR Data Center Services Manager or an authorized DIR representative. Notwithstanding the preceding sentence, the DIR Data Center Services Manager may agree in advance in writing that as to certain specific matters oral approval, consent or agreement shall be sufficient.

10.2 Savings Clause.

Service Provider's failure to timely or otherwise perform its responsibilities under this Agreement (including failure to meet the Service Levels or Critical Milestones) shall be excused if and to the extent such Service Provider non-performance is caused by (i) the wrongful or tortious actions or omissions of DIR or a DIR Customer or (ii) the failure of DIR or a DIR Customer to perform DIR's obligations under this Agreement, but only if and to the extent (A) Service Provider, upon becoming aware of such an occurrence, immediately and expeditiously notifies DIR of such wrongful or tortious action or failure to perform and its inability to perform under such circumstances, (B) Service Provider provides DIR with reasonable opportunity to correct such wrongful or tortious action or failure to perform and thereby avoid such Service Provider non-performance, (C) Service Provider identifies and pursues commercially reasonable means to avoid or mitigate the impact of such wrongful or tortious action or failure to perform, (D) Service Provider uses commercially reasonable efforts to perform notwithstanding such wrongful or tortious action or failure to perform (with DIR reimbursing Service Provider for its additional reasonable Out-of-Pocket Expenses incurred in connection with such effort provided, however, that DIR has provided prior written approval of any such additional Out-of-Pocket Expenses), and (E) Service Provider conducts a Root Cause Analysis and thereby demonstrates that such wrongful or tortious action or failure to perform is the cause of Service Provider's non-performance. Service Provider acknowledges and agrees that the circumstances described in this **Section 10.2**, together with **Section 18.2** are the only circumstances in which its failure to perform its responsibilities under this Agreement or to meet the Service Levels will be excused and that Service Provider will not assert that any other act or omission of DIR or a DIR Customer excuses any such failure on Service Provider's part, provided, however, that upon the occurrence of a Service Level Escalation Event as specified in **Exhibit 3** or a Governance Escalation Event, Service Provider may escalate such issue for resolution through governance in accordance with **Exhibit 6**, which resolution may include excusing Service Provider's performance. Solely for the purposes of excusing Service Provider's performance under this **Section 10.2** DIR will consider the wrongful or tortious actions or omissions of a DIR Contractor engaged by a DIR Customer provided that such DIR Contractor is not a DCS Service Provider.

10.3 Governance Escalation Event.

A Governance Escalation Event occurs, if (a) the Service Provider asserts that it has been unable to perform all or a portion of the Services solely as a result of the failure by another DCS Service Provider to perform certain obligations reasonably specified in the Service Management Manual or in the applicable OLA, (b) the Service Provider has performed its own obligations as set forth in the Agreement, including the SOWs, Service Management Manual and the applicable OLA, and (c) the Service Provider, upon becoming aware of such an occurrence or failure, (i) immediately notifies such other DCS Service Provider of such failure and that such failure will result in a failure by the Service Provider to perform its obligations to DIR under such circumstances, (ii) provides such other DCS Service Provider with reasonable opportunity to correct

such failure to perform and thereby avoid the Service Provider's non-performance, (iii) uses commercially reasonable efforts to perform its obligations under the Agreement notwithstanding such failure to perform, (iv) has notified DIR that corrective action has commenced, and (v) has otherwise exhausted all other rights and remedies to cause such other DCS Service Provider to perform. Upon the occurrence of a Governance Escalation Event, the Service Provider may escalate such other DCS Service Provider's failure through the appropriate governance structure for resolution in accordance with **Exhibit 6**. If the applicable governance committee has determined that Service Provider has satisfied each of the requirements and obligations set forth above, such resolution shall include excusing Service Provider's performance related to such failure and may include other actions as reasonably determined by DIR including appropriate changes to the Service Management Manual and/or the applicable OLA.

11. FEES

11.1 General.

- (a) **Payment of Charges.** In consideration of Service Provider's performance of the Services and in accordance with Chapter 2251, Texas Government Code, DIR shall pay to Service Provider the Charges.
- (b) **DIR Cost Recovery Component.** Included in **Exhibit 4** are "DIR Rates" that shall be charged each DIR Customer for the Services, which include the Charges plus a DIR cost recovery component as authorized in Chapter 2054.380, Texas Government Code. Such cost recovery components may change over time and DIR will provide Service Provider with thirty (30) days advance notice of a change in the cost recovery components. DIR shall bill for such cost recovery components and collect same from the DIR Customers. Service Provider consents to DIR retaining its cost recovery component from amounts collected from DIR Customers and consents to receiving the net proceeds as payment in full for its non-direct sales transaction Services sold hereunder. Service Provider acknowledges that DIR is its billing agent for all Services.
- (c) **No Additional Charges.** Unless expressly set forth in this Agreement or in **Exhibit 4** as a responsibility of DIR, there shall be no charges, fees, expenses or other amounts payable to Service Provider for the provision of Services. Any costs incurred by Service Provider prior to the Commencement Date are included in the Charges and are not to be separately paid or reimbursed by DIR.
- (d) **Incidental Expenses.** Service Provider acknowledges that, except as expressly provided otherwise in this Agreement, expenses that Service Provider incurs in performing the Services (including management, travel and lodging, document reproduction and shipping, equipment and software required by Service Provider Personnel, and long-distance telephone) are included in the Charges set forth in **Exhibit 4**. Accordingly, such Service Provider expenses shall not be separately paid or reimbursed by DIR unless DIR has agreed in advance and in writing to reimburse Service Provider for the expenses, and in all events any such expenses shall not exceed the amounts authorized by the current State Travel Regulations or other applicable Laws.
- (e) **No Charge for Reperformance.** At no additional cost or expense to DIR and the DIR Customers, Service Provider shall reperform (including, subject to **Section 13.5**, any required backup or restoration of data from scheduled backups or, if not available on such backups, restoration by other means with DIR's reasonable cooperation) any Services that result in incorrect outputs or that are not correctly performed due to an error or breach of this Agreement by Service Provider, and the resources required for such performance shall not be counted in calculating the Charges payable or resources utilized by DIR and the DIR Customers hereunder and Service Provider shall be solely responsible for any additional Pass-Through Expenses and other costs and expenses incurred by DIR and the DIR Customers in connection with such performance.
- (f) **Charges for Contract Changes.** Unless otherwise agreed, changes in the Services (including changes in DIR Rules, DIR Standards, Strategic Plans, Technology Plans, processes, Materials,

Equipment and Systems) and changes in the rights or obligations of the Parties under this Agreement (collectively, "**Contract Changes**") shall result in changes in the applicable Charges only if and to the extent: (i) this Agreement expressly provides for a change in the Service Provider Charges in such circumstances; (ii) the agreed upon Charges or pricing methodology expressly provides for a price change in such circumstances (if, for example, **Exhibit 4** defines a Resource Baseline for the Resource Unit in question with ARCs and RRCs for increased or decreased usage); or (iii) the Contract Change meets the definition of New Services and additional Charges are applicable in accordance therewith.

- (g) **Efforts to Minimize.** Service Provider shall continually seek to identify methods of reducing and minimizing DIR's and the DIR Customers' total cost of receiving the Services (including the amount of Pass-Through Expenses and Retained Expenses) and shall notify DIR of such methods and the estimated potential savings associated with each such method.
- (h) **DIR Customer Services.**
 - (i) **DIR Customers.** To the extent a DIR Customer shall receive less than all of the Services, DIR shall identify the categories of Services to be provided by Service Provider to such DIR Customer. DIR Customers are neither authorized to direct or instruct Service Provider nor to act for or on behalf of DIR (including by providing notices, approvals, consents, waivers or the like), in each case unless otherwise expressly provided in the Service Management Manual or to the extent DIR has otherwise notified Service Provider that a DIR Customer is so authorized. Except as otherwise expressly provided in the Service Management Manual or to the extent DIR has otherwise notified Service Provider, in all circumstances under this Agreement, DIR shall be Service Provider's sole point of contact regarding the Services.
 - (ii) **New DIR Customers.** From time to time DIR may request that Service Provider provide Services to Entities that qualify as DIR Customers and that were not previously receiving such Services. Except as provided in **Section 11.5** (to the extent constituting New Services) or otherwise agreed by the Parties, all such Services shall be performed in accordance with the terms and conditions (including the Charges) set forth in this Agreement (excluding any non-recurring transition or start-up activities specific to such DIR Customers) then-applicable to Service Provider's provision of the same Services to existing DIR Customers.

11.2 Pass-Through Expenses.

- (a) **Paid by DIR Directly.** If the Parties agree that any Pass-Through Expenses are to be paid by DIR directly, Service Provider shall arrange that the Pass-Through Expenses are invoiced by the third party directly to DIR, and timely provided to DIR together with any documentation required by DIR to support such invoiced charges. Before any such third party invoices are submitted to DIR for payment, Service Provider shall review the invoiced charges and communicate with the applicable third party to correct any errors in such invoices in a timely manner and otherwise in accordance with the applicable provisions of the Service Management Manual. DIR shall pay such invoices in accordance with Chapter 2251, Texas Government Code.
- (b) **Paid by Service Provider.** If the Parties agree that any Pass-Through Expenses are to be paid by Service Provider directly, Service Provider shall pay the third party invoices containing such Pass-Through Expenses on behalf of DIR. Prior to making any such payment, however, Service Provider shall review the invoiced charges and communicate with the applicable third party to correct any errors in such invoices in a timely manner and shall provide DIR with a reasonable opportunity to review such invoices to confirm that the third party charges are proper and valid. Following such review by Service Provider and DIR, Service Provider shall pay the amounts due and shall invoice DIR for such charges.

- (c) **Generally.** No new Pass-Through Expenses may be added without DIR's prior consent, which DIR may withhold in its sole discretion. For all products or services paid for on a Pass-Through Expenses basis, DIR reserves the right to (i) obtain such products or services directly from a third party, (ii) designate the third party source for such products or services, (iii) designate the particular products or services that Service Provider shall obtain (provided that if Service Provider demonstrates to DIR that such designation shall have an adverse impact on Service Provider's ability to meet the Service Levels, such designation shall be subject to Service Provider's approval), (iv) require Service Provider to identify and consider multiple sources for such products or services or to conduct a competitive procurement, and (v) review and approve the Pass-Through Expense for such products or services before entering into a contract for such products or services. In addition, for all products and services paid for on a Pass-Through Expense basis, Service Provider shall use commercially available efforts to pass through, or otherwise provide, to DIR and/or the applicable DIR Customer(s) all benefits offered by the manufacturers and/or vendors of such products and services (including all warranties, refunds, credits, rebates, discounts, training, technical support and other consideration offered by such manufacturers and vendors) except to the extent otherwise agreed by DIR. If Service Provider is unable to pass through any such benefit to DIR and/or the applicable DIR Customer(s), it shall notify DIR in advance and shall not purchase such product or service without DIR's prior approval.

11.3 Procurement.

- (a) **Purchases under DIR Master Contracts.** Service Provider shall use master agreements between DIR and third party vendors to procure products and services that impact the Charges unless Service Provider can procure such products or services at lower cost than such products or services can be procured through such master agreements. Service Provider shall provide reasonable documentation respecting the foregoing as may be requested by DIR.
- (b) **Requested Purchases for DIR.** Upon DIR's request, Service Provider shall procure products and services on DIR's or a DIR Customer's behalf by (1) purchasing the products and services on behalf of DIR, (2) leasing, or arranging for a third party to lease, such products to DIR, or (3) licensing, or arrange for a third party to license, such products to DIR. In connection with the foregoing, the following shall apply:
- (i) **Pass-Through Expenses; Rights in Products.** DIR shall pay directly to Service Provider, the supplier, third party lessor or third party licensor, as agreed by the Parties, the purchase, lease or license fees, as applicable, in respect of products and services procured on behalf of DIR or any DIR Customer on a Pass-Through Expense basis in accordance with **Exhibit 4**. Unless otherwise expressly set forth in **Exhibit 4**, Service Provider will not add any mark-up or margin to the costs of such items procured on DIR's behalf. Except as otherwise agreed by the Parties or as otherwise provided in this Agreement, (i) all rights in and title to any products purchased by Service Provider on behalf of DIR or a DIR Customer shall belong to DIR or the relevant DIR Customer, as applicable, and (ii) all products shall be new.
- (ii) **General.** Service Provider shall adhere to the applicable product and services standards specified by DIR or set forth in the Service Management Manual and shall not deviate from such standards without DIR's prior approval. To the extent an authorized DIR representative specifies the third party vendor, pricing and/or other terms and conditions for procuring products or services on behalf of DIR or any DIR Customer, Service Provider shall not deviate from such instructions without DIR's prior approval.
- (iii) **DIR Master Agreements.** Service Provider shall use master agreements between DIR and third party vendors to procure products and services under this **Section 11.3(b)**.
- (iv) **Service Provider Agreements.** Service Provider may use, with DIR's prior approval, agreements between Service Provider and third party vendors if permitted by such

agreements to procure products and services on DIR's or a DIR Customer's behalf. Service Provider's use of such agreements shall be conditioned on and subject to the following: (A) DIR approving in advance the terms, conditions and pricing of such agreements and any financial or other commitments made therein by or on behalf of DIR or the DIR Customers; (B) Service Provider complying with the terms and conditions of such agreements and accepting responsibility for meeting any minimum volumes; (C) where permitted by such agreements and consistent with DIR's approval, Service Provider passing through to DIR any refunds, credits, discounts or other rebates to the extent such amounts are directly allocable to DIR; (D) Service Provider retaining responsibility for curing any breaches of such agreements and indemnifying, under and in accordance with **Section 17.3**, DIR and the DIR Customers for any Losses in connection with such breaches; (E) such agreements offering more favorable pricing and equivalent or better terms and conditions for the requested product or service than the master agreements between DIR and third party vendors; (F) giving DIR and the DIR Customers price quotations and other benefits consistent with Service Provider's favorable third party vendor arrangements where permitted by such vendors; and (G) to the extent reasonably practicable, using the aggregate volume of Service Provider's procurements on behalf of itself, DIR, the DIR Customers and other customers to obtain more favorable pricing and equivalent or better terms and conditions for the requested product or service.

11.4 Taxes.

Pursuant to Section 151.309, Texas Tax Code, DIR and the DIR Customers that constitute State agencies pursuant to Section 2054.003, Texas Government Code, are exempt from the assessment of State taxes. The DIR Customers that do not constitute State agencies pursuant to Section 2054.003, Texas Government Code, may also be exempt from the assessment of State taxes. In addition, DIR and the DIR Customers are exempt from federal taxes pursuant to 26 United States Code, Sections 4253(i) and (j). Service Provider shall not include any taxes in the Charges except as expressly provided in this Section and **Exhibit 4**. Without limiting the generality of the foregoing, Service Provider's responsibilities in connection with taxes arising under or in connection with this Agreement include the following obligations:

- (a) **Income Taxes.** Service Provider shall be responsible for its own Income Taxes.
- (b) **Sales, Use and Property Taxes.** Service Provider shall be responsible for any sales, lease, use, personal property, stamp, duty or other such taxes on Equipment, Materials or property it owns or leases or licenses from a third party, including any lease or license assigned pursuant to this Agreement.
- (c) **Taxes on Goods or Services Used by Service Provider.** Service Provider shall be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties payable by Service Provider on any goods or services used or consumed by Service Provider in providing the Services where the tax is imposed on Service Provider's acquisition or use of such goods or services and the amount of tax is measured by Service Provider's costs in acquiring or procuring such goods or services and not by DIR's or any DIR Customer's cost of acquiring such goods or services from Service Provider.
- (d) **Service Taxes.**
 - (i) Subject to **Sections 11.4(d)(ii)** and **(iii)**, Service Provider shall be financially responsible for all Service Taxes; provided that DIR shall be responsible for any such tax imposed on the Services after the Effective Date.

- (ii) Notwithstanding **Section 11.4(d)(i)**, if Service Taxes imposed on the Services after the Effective Date (whether new or higher) are the result of Service Provider moving all or part of its operations to a different jurisdiction (e.g., relocating the performance of the Services to a new service location or Service Provider using an Affiliate or Subcontractor to perform all or part of the Services), Service Provider shall be financially responsible for such new or higher Service Taxes.
- (iii) Notwithstanding **Section 11.4(d)(i)** and **(ii)**, if DIR shall become responsible for Service Taxes after the Effective Date (whether new or higher), the Parties shall identify and diligently seek to agree upon legally permissible means of minimizing such new or higher Service Taxes. If the financial impact of all such new or higher Service Taxes exceeds one percent (1%) of the then-current Annual Base Charges, DIR may elect to terminate this Agreement in its entirety or to terminate any portions impacted by such new or higher Service Taxes (unless Service Provider agrees to assume financial responsibility for such new or higher Service Taxes exceeding the one percent (1%) threshold).
- (iv) To the extent required under applicable Laws, Service Provider shall invoice DIR for any such Service Taxes and then credit DIR on such invoice (to the extent permitted by law) or reimburse or otherwise credit DIR, for that portion of such Service Taxes for which Service Provider is financially responsible under this provision.
- (e) **Withholding.** Any withholding tax or other tax of any kind that DIR or any DIR Customer is required by applicable Law to withhold and pay on behalf of Service Provider with respect to amounts payable to Service Provider under this Agreement shall be deducted from said amount prior to remittance to Service Provider. DIR shall provide to Service Provider reasonable assistance, which shall include the provision of documentation as required by revenue authorities, to enable Service Provider to claim exemption from or obtain a repayment of such withheld taxes and shall, upon request, provide Service Provider with a copy of the withholding tax certificate.
- (f) **Tax Filings.** Service Provider represents, warrants and covenants that it shall file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in all applicable jurisdictions. At DIR's request, Service Provider shall provide DIR with (i) written confirmation that Service Provider has filed all required tax forms and returns and has collected and remitted all applicable amounts, and (ii) such other information pertaining to applicable Taxes as DIR may reasonably request.

11.5 New Services.

- (a) **Procedures.** If DIR requests that Service Provider perform any New Services reasonably related to the Services or other services generally provided by Service Provider, Service Provider shall promptly prepare a New Services proposal for DIR's consideration. Unless otherwise agreed by the Parties, Service Provider shall prepare such New Services proposal at no additional charge to DIR and shall deliver such proposal to DIR within ten (10) days of its receipt of DIR's request; provided, that Service Provider shall respond more quickly in the case of a pressing need or an emergency situation. DIR shall provide such information as Service Provider reasonably requests in order to prepare such New Service proposal. Such New Services proposal shall include, among other things, the following at a level of detail sufficient to permit DIR to make an informed business decision: (i) a project plan and fixed price or price estimate for the New Service; (ii) a breakdown of such price or estimate; (iii) a description of the service levels to be associated with such New Service; (iv) a schedule for commencing and completing the New Service; (v) a description of the new hardware or software to be provided by Service Provider in connection with the New Service; (vi) a description of the software, hardware and other resources, including Resource Unit utilization, necessary to provide the New Service; (vii) any additional facilities or labor resources to be provided by DIR or the DIR Customers in connection with the proposed New Service; (viii) any risks associated with the New Service and/or the integration of the New

Service into the existing environment; and (ix) in the case of any Developed Materials to be created through the provision of the proposed New Services, any ownership rights therein that differ from the provisions of **Section 14.2**. The DIR Data Center Services Manager may accept or reject proposals for New Services in his or her sole discretion. Unless the Parties otherwise agree, if the DIR Data Center Services Manager accepts Service Provider's proposal, Service Provider shall perform the New Services and be paid in accordance with the proposal submitted by Service Provider and the provisions of this Agreement. Upon the DIR Data Center Services Manager's acceptance of a Service Provider proposal for New Services, the scope of the Services shall be expanded and this Agreement shall be modified to include such New Services without the need for further action by the Parties. If Service Provider is unable to provide such New Services using its own resources (including resources it procures through a supplier or Subcontractor), DIR may require Service Provider to engage (as Service Provider's subcontractor) a third party approved or selected by DIR to provide such services. Notwithstanding any provision to the contrary, (A) Service Provider shall act reasonably and in good faith in formulating such pricing proposal, (B) Service Provider shall use commercially reasonable efforts to identify potential means of reducing the cost to DIR, including utilizing subcontractors as and to the extent appropriate, (C) such pricing proposal shall be no less favorable to DIR than the pricing and labor rates set forth herein for comparable Services, and (D) such pricing proposal shall take into account the existing and future volume of business between DIR and Service Provider.

- (b) **Use of Third Parties.** 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) Service Provider shall cooperate with such third parties as provided in **Section 4.5**.
- (c) **Services Evolution and Modification.** The Parties anticipate that, as referenced in **Section 4.1(a)**, the Services shall evolve and be supplemented, modified, enhanced or replaced over time to keep pace with technological advancements and improvements in the methods of delivering Services and changes in the operations of DIR and the DIR Customers. The Parties acknowledge and agree that these changes shall modify the Services and shall not be deemed to result in New Services unless the changed services meet the definition of New Services.
- (d) **Authorized User and DIR Customer Requests.** Service Provider shall promptly inform the DIR Data Center Services Manager of requests for New Services from Authorized Users or DIR Customers, and shall submit any proposals for New Services to the DIR Data Center Services Manager. Service Provider shall not agree to provide New Services to DIR, any Authorized Users or any DIR Customers without the prior approval of the DIR Data Center Services Manager. Without limiting DIR's other rights under this Agreement or applicable Law, if Service Provider fails to comply strictly with this **Section 11.5(d)**, it shall receive no compensation for any services rendered to any person or Entity in violation of this **Section 11.5(d)**.

11.6 Extraordinary Events.

- (a) **Definition.** As used in this Agreement, an "Extraordinary Event" means a circumstance in which an event or discrete set of events has occurred or is planned with respect to the operations of DIR or the DIR Customers that results or shall result in a change in the scope, nature or volume of the Services that DIR or the DIR Customers shall require from Service Provider. Examples of the kinds of events that might cause such substantial increases or decreases include the following:
 - (i) changes in locations where the DIR Customers operate;
 - (ii) changes in constituencies served by, or activities or operations of, the DIR Customers;
 - (iii) privatizations, dispositions or reorganizations of the DIR Customers;

- (iv) changes in the method of service delivery;
 - (v) changes in the applicable regulatory environment or applicable Laws;
 - (vi) changes in DIR's or a DIR Customer's policy, technology or processes.
- (b) **Consequence.** If an Extraordinary Event occurs, DIR may, at its option, request more favorable pricing with respect to applicable Charges for any Functional Service Area specified in **Exhibit 4** in accordance with the following:
- (i) Service Provider and DIR shall mutually determine on a reasonable basis the efficiencies, economies, savings and resource utilization reductions, if any, resulting from such Extraordinary Event and, upon DIR's approval, Service Provider shall then proceed to implement such efficiencies, economies, savings and resource utilization reductions as quickly as practicable and in accordance with the agreed upon schedule. As the efficiencies, economies, savings or resource utilization reductions are realized, the Charges specified on **Exhibit 4** and any affected Resource Baselines shall be promptly and equitably adjusted to pass through to DIR the net benefit of such efficiencies, economies, savings and resource utilization reductions; provided, that DIR shall reimburse Service Provider for any net costs or expenses incurred to realize such efficiencies, economies, savings or resource utilization reductions if and to the extent Service Provider (i) notifies DIR of such additional costs and obtains DIR's approval prior to incurring such costs, (ii) uses commercially reasonable efforts to identify and consider practical alternatives, and reasonably determines that there is no other more practical or cost effective way to obtain such savings without incurring such expenses, and (iii) uses commercially reasonable efforts to minimize the additional costs to be reimbursed by DIR.
 - (ii) An Extraordinary Event shall not result in Charges to DIR being higher than such Charges would have been if the ARCs, RRCs and other rates and charges then specified in **Exhibit 4** had been applied. DIR may, at its sole option, elect, for each Extraordinary Event, at any time to forego its rights under this **Section 11.6** and instead, apply ARCs, RRCs and other rates and charges specified in **Exhibit 4** to adjust the Charges. For the avoidance of doubt, upon the occurrence of an Extraordinary Event, DIR is entitled to request more favorable pricing with respect to the applicable Charges even if the change in consumption related to the Extraordinary Event is within the bands associated with the applicable Resource Baseline volumes set forth in **Attachment 4-A**.

11.7 Unanticipated Change.

If an Unanticipated Change occurs, and if DIR requests any modifications to the Services to incorporate such Unanticipated Change, the Parties shall use the procedures in **Section 11.6(b)** to equitably adjust the Charges and other relevant provisions of this Agreement to take such Unanticipated Change into account. An "**Unanticipated Change**" shall consist of a material change in the technologies and/or processes available to provide all or any portion of the Services which is outside the normal evolution of technology experienced by the Services, that was not generally available as of the Effective Date and that would materially reduce Service Provider's cost of providing the Services.

11.8 Proration.

Service Provider shall compute periodic Charges under this Agreement on a monthly basis, and shall prorate such Charges for any partial month on a daily basis.

11.9 Refundable Items.

- (a) **Paid Amounts.** Where DIR and/or the DIR Customers have paid for a service, function or item for which Service Provider is assuming financial responsibility under this Agreement, Service Provider shall promptly refund to DIR or such DIR Customer, upon either Party identifying the payment, that portion of such paid expense which is attributable to periods after Service Provider's assumption of financial responsibility.
- (b) **Refunds and Credits.** If Service Provider should receive a refund, credit, discount or other rebate for goods or services paid for by DIR and/or the DIR Customers on a Pass-Through Expense, retained expense, cost-plus or cost-reimbursement basis, then Service Provider shall (i) notify DIR of such refund, credit, discount or rebate and (ii) pay the full amount of such refund, credit, discount or rebate to DIR or such DIR Customer.

11.10 DIR Benchmarking Reviews.

- (a) **Benchmarking Review.** From time to time beginning two years after the Effective Date but no more than (i) once each Contract Year, and (ii) three (3) times during the Term, DIR may, at its expense and subject to this **Section 11.10**, engage the services of an independent third party (a "**Benchmarker**") to compare the quality and price of all or any Service Component of the Services against the quality and price of well-managed suppliers performing similar services to determine whether DIR is receiving from Service Provider pricing and levels of service that are competitive with market rates and prices, given the nature, volume and type of Services and Service Levels provided by Service Provider hereunder ("**Benchmarking**"). In making this comparison, the Benchmarker shall consider a minimum of six (6) comparable transactions (at least three of which shall involve public sector clients), and shall further consider the following factors and normalize the pricing data as and to the extent appropriate: (i) whether supplier transition, transformation, and other charges are paid by the customer as incurred or over a period of time; (ii) the extent to which supplier pricing includes the purchase of the customer's existing assets or assumption of any agreements; (iii) the extent to which supplier pricing includes the cost of acquiring future assets; (iv) the extent to which this Agreement calls for Service Provider to provide and comply with unique DIR requirements, (v) whether taxes are included in such pricing or stated separately in supplier invoices, (vi) the restrictions related to location of the delivery of the Services, (vii) differences in the volumes of the services being compared, (viii) applicability of service levels, and (ix) material differences in terms and conditions.
- (b) **General.** Any Benchmarker engaged by DIR shall (i) be independent, (ii) have, in DIR's reasonable judgment, experience in benchmarking data center services, and (iii) execute a non-disclosure agreement substantially in the form attached hereto as **Exhibit 27**; provided, however, Service Provider agrees and acknowledges that such non-disclosure agreement shall be amended to permit the Benchmarker to anonymously reuse all Benchmarking data or other benchmarking studies it performs. Service Provider recognizes that DIR must comply with applicable Laws respecting procurement of services in connection with any engagement of a Benchmarker. To the extent permissible under such Laws and the reasonable practice of DIR, DIR shall consult with Service Provider respecting the Benchmarker and appropriate criteria related thereto (including general terms of engagement) in making its selection; provided, however, DIR reserves the right to determine, in its sole discretion, the appropriate Benchmarker to be engaged and the arrangement for such engagement. Service Provider shall cooperate fully with DIR and the Benchmarker and shall provide reasonable access to any premises, equipment, personnel or documents and provide any assistance required by the Benchmarker to conduct the Benchmarking, all at Service Provider's cost and expense provided, however, that Service Provider will not be obligated to provide the Benchmarker with Service Provider's internal costs or information concerning other Service Provider customers.
- (c) **Result of Benchmarking.** If the Benchmarker finds that the aggregate Charges that are the subject of the Benchmarking are greater than the lowest fifty percent (50%) of the prices charged

by well-managed suppliers for work of a similar nature, type or volume, then Service Provider shall reimburse DIR for its costs associated with such Benchmarking and the Parties will work together to eliminate any such unfavorable variance to the Charges. Service Provider will eliminate the unfavorable variance within 180 days, provided, however, if Service Provider does not decrease the Charges as described above within such 180 days, DIR may, at its option, terminate this Agreement in whole or in relevant part (determined in DIR's judgment provided further, however, that any termination exercised by DIR hereunder will not be subject to or otherwise require payment of any Termination Charges). Termination by DIR under this Section 11.10(c) shall not be deemed a termination for cause under Section 20.1(a). Under no circumstances shall Benchmarking result in any increase to the Charges. The Benchmarker shall reasonably explain its methodology, including its use of relevant comparative data in the Benchmarker's report. DIR will instruct the Benchmarker to conduct the Benchmark so as not to unreasonably disrupt Service Provider's operations under this Agreement.

- (d) **Service Provider Review and Dispute.** DIR shall provide Service Provider with a copy of the Benchmarker's report and Service Provider shall have thirty (30) days to review such report. If the Parties are unable to agree upon the validity of such findings, the matter shall be resolved pursuant to the dispute resolution procedures set forth in **Article 19**. Reductions in Service Provider's Charges shall be implemented effective as of the date the Benchmarker's report was provided to Service Provider.

11.11 Pricing Commitment.

- (a) Service Provider's Charges to DIR for Services to be provided under this Agreement shall be at least as low as Service Provider's lowest fees, under agreements entered into directly between Service Provider and other state or local governmental or educational entities that would qualify as DIR Customers if included under this Agreement, for the same or substantially similar services provided at similar volumes.
- (b) At DIR's request, not more frequently than once in any rolling eighteen (18) month period (with the first assessment to be conducted no sooner than eighteen (18) months from the Commencement Date), Service Provider will conduct a competitive price assessment. The assessment will first identify whether there are any agreements between Service Provider and other entities meeting the criteria in subsection (a) and then, assuming there are such agreements, will proceed to assess the price competitiveness of this Agreement with up to three (3) such agreements selected by DIR from a list of candidates presented by Service Provider, taking into account the type of normalization factors referenced in **Section 11.10(b)** to ensure a like-for-like comparison. At the conclusion of the assessment, either (i) the Service Provider's Vice President, State and Local Government, shall verify that the assessment has been completed and no adjustment is required for the Charges to be brought in line with lower fees or (ii) Service Provider shall identify any relevant variance, offer a plan to enable Service Provider to reduce the Charges so that they are brought in line with the lower fees, and reduce such Charges prospectively from the date of verification of the relevant variance. DIR shall be allowed to review and approve such plan, which in all events shall implement the relevant Charges reductions no later than ninety (90) days from the date of DIR's approval of such plan. The provisions of **Section 9.9** shall not apply to the assessment conducted in accordance with **Section 11.11**.
- (c) In no event will Service Provider be required to adjust the Charges to an amount below the fully burdened costs to Service Provider's outsourcing services line of business in accordance with that line of business' standard approach for measuring the profit and loss associated with individual outsourcing contracts; provided that, in the event Service Provider seeks to use this provision as the basis upon which it maintains that no price adjustment is necessary, DIR may engage a third party auditor to confirm the accuracy of Service Provider's contention, and Service Provider shall provide such information as may be required for such auditor to substantiate Service Provider's contention, and absent such provision by Service Provider and substantiation by such auditor, Service Provider shall adjust the Charges as contemplated in this **Section 11.11**. Service Provider

shall not unreasonably object to the selection of the third party auditor and shall fully cooperate with such third party's efforts hereunder. The third party auditor shall execute a reasonable non-disclosure agreement as may be requested by Service Provider to allow such auditor to access materials reasonably required to conduct its verification function. Service Provider shall reimburse DIR its reasonable costs associated with such third party audit.

- (d) If DIR becomes aware of any agreement that it believes would appropriately be subject to the assessment described in this **Section 11.11(b)**, DIR may call such agreement to Service Provider's attention, and the Parties will discuss in good faith whether any adjustments are appropriate in the circumstances.

12. INVOICING AND PAYMENT

12.1 Invoicing.

- (a) **Invoice.** After the Commencement Date, and within five (5) Business Days after the end of each month in which Services are provided thereafter, Service Provider shall present DIR with a draft invoice (the "**Draft Invoice**") for any Charges and any Reduced Resource Credits that Service Provider expects to include on the Monthly Invoice. Within ten (10) Business Days after the end of each month, Service Provider shall present DIR with an invoice (the "**Monthly Invoice**") for any Charges and any Reduced Resource Credits due and owing for the preceding month. In addition, Service Provider shall provide separate Monthly Invoices for each DIR Customer then receiving Services, with the Charges allocated among such DIR Customers based on the chargeback data generated by Service Provider and/or the allocation formula provided by DIR. Service Provider shall not invoice DIR for taxes, any advance or concurrent charges or other amounts. With respect to Service Provider's invoices for Services provided in November 2012 and November 2013, Service Provider and DIR will mutually agree on a process that will enable Service Provider to provide expedited invoices to DIR so that DIR will have sufficient time to process and remit payment on such invoices before the end of the calendar year.
- (b) **Form and Data.** Each invoice provided by Service Provider to DIR under this Agreement shall be presented in hard copy and electronically in the form specified in **Attachment 4-F** and shall (i) comply with all applicable legal, regulatory and accounting requirements, including Chapter 2251, Texas Government Code, (ii) allow DIR and the DIR Customer to validate volumes and Charges, and (iii) comply with DIR's and each DIR Customer's accounting and billing requirements, including providing sufficient detail for each DIR Customer to allocate costs to all federal and State programs in accordance with the relative benefits received and to make federal claims according to the federal cost plan of such DIR Customer and further including electronic billing information for amounts DIR will invoice to the DIR Customers, including cost recovery fees, via electronic feed to DIR's billing system (e.g. NetPlus). Each invoice shall include the pricing calculations and related data utilized to establish the Charges and sufficient information to validate the service volumes and associated Charges. Each invoice and the data underlying each invoice shall be delivered to DIR and each DIR Customer electronically in a form and format compatible with DIR's and the DIR Customer's accounting systems.
- (c) **Credits.** To the extent a Service Level Credit, Deliverable Credit or other credit may be due to DIR pursuant to this Agreement, Service Provider shall provide DIR with an appropriate credit against amounts then due and owing. If no further payments are due to Service Provider, Service Provider shall pay such amounts to DIR within thirty (30) days of the date such amounts becomes due and owing.
- (d) **Time Limitation.** Unless otherwise requested by Service Provider in advance and agreed by DIR in its sole discretion, if Service Provider fails to provide an invoice to DIR for any amount within four (4) invoice cycles (i.e. issuance of invoices) of the month in which the Services in question are rendered or the expense incurred, or such other period designated by DIR, Service Provider shall waive any right it may otherwise have to invoice for and collect such amount. The foregoing

limitation is not applicable to proposed charges that are the subject of a dispute related to whether a service is billable.

12.2 Payment Due.

Subject to the other provisions of this **Article 12**, each Monthly Invoice provided for under **Section 12.1** and other amounts due under this Agreement shall be due and payable by DIR under and in accordance with Chapter 2251, Texas Government Code.

12.3 Set Off.

Subject to **Section 12.4**, DIR may set off against any and all amounts to be paid or reimbursed by DIR any amount that Service Provider is obligated to pay DIR hereunder, provided that DIR notifies Service Provider in writing of the amounts of, and the basis for, such set off.

12.4 Disputed Charges.

- (a) **Disputed Amounts.** 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.
- (b) For invoice amounts that have been paid by DIR that become the subject of a dispute, in addition to any amounts that Service Provider may subsequently credit to DIR arising from resolution of such dispute, Service Provider shall include interest on the reimbursed amounts accrued monthly at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, calculated from the ninetieth (90th) day following the date of DIR's dispute.
- (c) **No Waiver.** Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right DIR may otherwise have to dispute any Charge or amount or recover any amount previously paid.
- (d) **Prompt Resolution.** In the event DIR initiates a dispute in accordance with the Service Management Manual related to a Monthly Invoice (a "DIR-Initiated Financial Dispute"), Service Provider will promptly respond to the issue raised in such dispute, which response will include a written explanation of the charges that are the subject of the DIR-Initiated Financial Dispute, as well as any supporting documentation necessary to support Service Provider's position. If within one hundred eighty (180) days of the date on which DIR notifies Service Provider of the DIR-Initiated Financial Dispute Service Provider has either (i) failed to respond to DIR, or (ii) failed to substantiate that the disputed charges are valid, then such dispute will be deemed resolved in favor of DIR and the appropriate credits will be processed and the matter will be closed.

13. DIR DATA AND OTHER CONFIDENTIAL INFORMATION

13.1 Confidentiality.

Nothing in this **Section 13.1** is intended to limit the obligations of Service Provider under **Sections 13.2** and **13.3** of this Agreement with respect to the DIR Data addressed in such sections and, to the extent the provisions of **Sections 13.2** or **13.3** conflict with the provisions of this **Section 13.1** as they pertain to DIR Data, the provisions of **Sections 13.2** or **13.3** shall control over the provisions of this **Section 13.1**, as applicable.

- (a) **Confidential Information.** Service Provider 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 Public Information Act 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. In the case of DIR and the DIR Customers, Confidential Information also shall include Developed Materials, DIR Data, DIR Personal Data, Work Product, Authorized User 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 Service Provider under this Agreement. In the case of Service Provider, Confidential Information shall include internal audit reports and internal control policies and procedures. Service Provider's Confidential Information shall not include Confidential Information of DIR or other DIR Customers, and provided further, however characterization of information as Confidential Information of Service Provider shall not limit or restrict the rights of DIR or DIR Customers to exercise their rights (including rights related to auditing and benchmarking) provided for under this Agreement.

(b) **Disclosure of Confidential Information.**

- (i) The Disclosing Party represents and warrants that it has the right to disclose its Confidential Information to the Receiving Party, subject to the confidentiality obligations contained in this **Section 13.1**.
- (ii) During the Term of this Agreement and at all times thereafter as specified in **Section 13.6**, each Receiving Party (A) shall hold Confidential Information received from a Disclosing Party in confidence and shall use such Confidential Information only for the purposes of fulfilling its obligations or exercising its rights under this Agreement and for no other purposes, (B) shall follow all applicable security requirements, protocols, and procedures for accessing and handling such Confidential Information, and (C) shall not disclose, provide, disseminate or otherwise make available any Confidential Information of the Disclosing Party to any third party without the express written permission of the Disclosing Party, unless expressly permitted by **Sections 13.1(b)(iii)** and **13.1(b)(iv)** below or elsewhere in this Agreement. Subject to the requirements of **Sections 13.2(b)** and **13.3**, as applicable, each Receiving Party shall use at least the same degree of care to prevent disclosure, dissemination, and misuse of the Disclosing Party's Confidential Information to third parties as the Receiving Party employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care.
- (iii) The Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, directors, attorneys, financial advisors, contractors and agents (including DIR Auditors in the case of DIR) provided that (A) such person or Entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such person's scope of responsibility, (B) such disclosure is made pursuant to an obligation of confidentiality upon such person or Entity that is no less stringent than that set forth in this **Section 13.1** and (C) such disclosure is not in violation of Law, the Service Management Manual or applicable DIR Standards. The Receiving Party assumes full responsibility for the acts or omissions of any person or Entity to whom it discloses Confidential Information of the Disclosing Party regarding their use of such Confidential Information and must take commercially reasonable measures to protect the Confidential Information from disclosure or use in contravention of this Agreement.
- (iv) The Receiving Party may disclose Confidential Information of the Disclosing Party as required to satisfy any legal requirement of a competent government body, provided that,

promptly upon receiving any such request, the Receiving Party, to the extent it may legally do so, gives notice to the Disclosing Party of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to the making such disclosure in order that the Disclosing Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information. The Receiving Party shall use reasonable efforts to cooperate with the Disclosing Party in its efforts to seek a protective order or other appropriate remedy or, in the event such protective order or other remedy is not obtained, to obtain assurance that confidential treatment shall be accorded such Confidential Information.

- (v) Unless expressly permitted by this Agreement, neither Party shall (A) make any use or copies of the Confidential Information of the other Party except as expressly contemplated by this Agreement, (B) possess or acquire any right in or assert any lien against the Confidential Information of the other Party, (C) sell, assign, transfer, lease, encumber or otherwise dispose of or disclose the Confidential Information of the other Party to third parties or commercially exploit, or permit a third party to commercially exploit, such information, including through Derivative Works, or (D) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Confidential Information (including any copies thereof) to the other Party if requested to do so.
 - (vi) Notwithstanding the provisions of this **Section 13.1(b)**, DIR may disclose Confidential Information relating to the financial or operational terms of this Agreement and/or Service Provider's performance hereunder (e.g. applicable Service Levels and measurements of Service Provider's performance with respect to such Service Levels) in connection with a benchmarking under **Section 11.10** or the solicitation of proposals for or the procurement of the same or similar services from prospective DIR Contractors.
 - (vii) Notwithstanding the provisions of this **Section 13.1(b)**, the Parties acknowledge and agree that each Party may be required to disclose Confidential Information pursuant to Chapter 552, Texas Government Code (the "**Public Information Act**"), that DIR and DIR Customers shall be required to and may disclose this Agreement and the terms hereof pursuant to the Public Information Act and that the Parties shall comply with the Public Information Act and with all applicable opinions of the Office of the Texas Attorney General concerning the Public Information Act.
 - (viii) Each Party shall take all necessary steps to cause its employees, contractors and subcontractors to comply with the provisions of **Article 13**.
- (c) **Exclusions.** Notwithstanding the above, **Section 13.1(b)** shall not apply to any particular information which the receiving Party can demonstrate: (i) is, at the time of disclosure to it, generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations; (ii) after disclosure to it, 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; (iii) was lawfully in the possession of the Receiving Party immediately prior to the time of disclosure to it; (iv) is received from a third party having a lawful right to disclose such information; or (v) is independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information. The exclusions in this **Section 13.1(c)** shall not apply to DIR Personal Data.
- (d) **Loss of Confidential Information.** Each Party shall (i) immediately notify the other Party of any possession, use, knowledge, disclosure, or loss of such other Party's Confidential Information in contravention of this Agreement, (ii) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss, (iii) cooperate with the other Party in any investigation or litigation

deemed necessary by such other Party to protect its rights and (iv) promptly use appropriate efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this Agreement. Each Party shall bear any costs it incurs in complying with this **Section 13.1(d)**.

- (e) **No Implied Rights.** Nothing contained in this **Section 13.1** shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to any Confidential Information of the other Party.
- (f) **Return or Destruction of Confidential Information.** Each Party shall securely store the other Party's Confidential Information until such Confidential Information is returned or destroyed as described in this Section. Except as provided below with respect to Contract Records, each Party shall destroy all documentation in any medium that contains, refers to or relates to the other Party's Confidential Information (or the portion of such Confidential Information specified by the other Party) or shall return such documentation to the other Party or its designee, in the format and on the media reasonably prescribed by the other Party, as follows: (i) within thirty (30) days of the expiration or termination of this Agreement and completion of each Party's obligations hereunder, including, with respect to Service Provider, all periods of Termination Assistance Services requested by DIR; and (ii) with respect to DIR Confidential Information, at any time DIR requests such Confidential Information or, with respect to particular Confidential Information, within thirty (30) days of the date that such Confidential Information is no longer required by Service Provider to perform its obligations under this Agreement as identified by DIR or pursuant to the Service Management Manual. Such documentation shall include all copies of a Party's Confidential Information in the other Party's possession or under the other Party's control. The Party returning or destroying the other Party's Confidential Information shall deliver to the other Party written certification of its compliance with this paragraph signed by an authorized representative of such Party. Notwithstanding the foregoing, either Party may retain one copy of the other Party's Confidential Information in its legal department as and to the extent required to comply with applicable Laws or enforce its rights under this Agreement; provided that such Confidential Information shall be returned or destroyed in accordance with this provision upon the expiration of the period specified in the applicable Law, the expiration of the applicable statute of limitations and the final resolution of any pending dispute. Contract Records shall be retained by Service Provider for the duration of the Audit Period unless and to the extent Service Provider is directed by DIR to deliver such Contract Records to DIR prior to the expiration of the Audit Period. In no event shall a party withhold any Confidential Information of the other party as a means of resolving any dispute.
- (g) **Transfer of DIR Confidential Information.** Service Provider shall not transfer DIR Confidential Information to any other locations, nor change the locations for storage and processing of such DIR Confidential Information, except with the express written consent of DIR, which DIR may withhold in its sole discretion.

13.2 DIR Data.

Nothing in this **Section 13.2** is intended to limit the obligations of Service Provider under **Sections 13.1** and **13.3** of this Agreement with respect to the Confidential Information addressed in such Sections.

- (a) **Ownership of DIR Data.** DIR Data shall be and shall remain, as between the Parties, the property of DIR and/or the applicable DIR Customers. Service Provider shall not sell, assign, lease or encumber DIR Data. Service Provider shall not disclose to or allow access by third parties to DIR Data, unless expressly provided for in this Agreement. Service Provider shall not commercially exploit, or permit a third party to commercially exploit, DIR Data on behalf of

Service Provider or any other person or Entity. DIR Data shall be made available to DIR, upon its request, in the form and format as reasonably requested by DIR.

(b) **Safeguarding of DIR Data.**

- (i) Service Provider shall maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unauthorized access or alteration of DIR Data in the possession of Service Provider, and which shall be (A) no less rigorous than those maintained (or required to be maintained) by DIR or the relevant DIR Customer as of the Commencement Date (or required or implemented by DIR or the relevant DIR Customer in the future to the extent deemed necessary by DIR or such DIR Customer and communicated to Service Provider in accordance with **Section 6.3(a)**), (B) no less rigorous than those maintained by Service Provider for its own information of a similar nature (subject, however, to **Section 11.5** and implementation through Change Control upon approval by DIR, as applicable, but without limiting Service Provider's obligations respecting Technology Evolution), (C) no less rigorous than accepted security standards in the industry (subject, however, to **Section 11.5** and implementation through Change Control upon approval by DIR, as applicable, but without limiting Service Provider's obligations respecting Technology Evolution), and (D) (without limiting the Parties' obligations under **Section 15.11**) compliant with all applicable DIR Rules and DIR Standards, including the requirements of DIR's and the relevant DIR Customer's then-current privacy, security and records retention policies (such as Internal Revenue Service guidelines contained within IRS Publication 1075 (found at <http://www.irs.gov/pub/irs-pdf/p1075.pdf>) and the rules pertaining to information technology security standards found at 1 Texas Administrative Code, Chapter 202). Service Provider acknowledges and agrees that certain DIR Customers are legally prohibited from disclosing or allowing access to certain DIR Data, including disclosures to and access by DIR, other DIR Customers and Service Provider. The content and implementation of such data security program and associated technical, organizational and security measures shall be fully documented by Service Provider in the Service Management Manual, including the process DIR Customers shall follow to identify DIR Data they are legally prohibited from disclosing and the confidentiality requirements of DIR Customers. Service Provider shall permit DIR Auditors to review such documentation and/or to inspect Service Provider's compliance with these provisions in accordance with **Section 9.9**. DIR acknowledges that elements of Service Provider's data security program involve customized services offerings regarding the specific means and levels of security protection selected by a customer (regarding, for example, desired levels of host and network intrusion detection services, methods for monitoring and limiting access to data, extent of desired encryption, etc.), and DIR agrees that the specific services selected by DIR pursuant to this Agreement establish the contract requirements with respect to those activities, subject to Technology Evolution and other applicable provisions of this Agreement. From time to time, but not less frequently than twice per Contract Year, Service Provider shall proactively provide technical information regarding security best practices in the industry, and upon DIR's approval Service Provider shall, subject to **Section 11.5** (but without limiting Service Provider's obligations respecting Technology Evolution) implement any changes to the above security requirements through Change Control.
- (ii) Under no circumstances shall Service Provider make any changes that materially weaken any technical, organizational or security measures in place to safeguard DIR Data, or result in Service Provider's failure to meet any of the minimum standards set forth above without DIR's prior approval. Under no circumstances shall Service Provider or Service Provider Personnel attempt to access or allow access to DIR Data that is not required for the performance of Service Provider's obligations or otherwise permitted under this Agreement.

- (iii) Subject to any restriction in contracts with Service Provider's other customers, Service Provider shall regularly advise DIR of data security practices, procedures and safeguards in effect for other Service Provider customers that, in Service Provider's reasonable judgment, are (A) relevant to the Services being provided under this Agreement and (B) define or exceed relevant industry standards relevant to the Services. If requested by DIR, Service Provider shall, to the extent reasonably practicable and subject to the Change Control Procedures, implement such enhanced practices, procedures and safeguards with respect to its provision of Services to DIR hereunder.
- (iv) DIR shall have the right to establish backup security for any DIR Data and to keep backup and files for such Data in its possession if it chooses. Service Provider shall provide DIR with downloads of DIR Data, as requested and directed by DIR, to enable DIR to maintain such backup copies.
- (v) In the event Service Provider discovers or is notified of a breach or potential breach of security relating to DIR Data, Service Provider shall, in addition to its obligations pursuant to **Sections 6.1(d)**, expeditiously (A) notify DIR of such breach or potential breach, (B) investigate (with DIR's participation if so desired by DIR) such breach or potential breach and perform a risk assessment, Root Cause Analysis and corrective action plan thereon, (C) provide a written report to DIR of such risk assessment, Root Cause Analysis and action plan, (D) remediate the effects of such breach or potential breach of security as soon as practicable or coordinate such remediation if Service Provider does not have responsibility for the matters which are the source of the breach or potential breach, and (E) provide DIR with reasonable assurances that such breach or potential breach shall not recur.
- (vi) To the extent Service Provider removes DIR Data from any media that is taken out of service that is under Service Provider's control, Service Provider shall destroy or securely erase such media in accordance with the Service Management Manual. Under no circumstances shall Service Provider use or re-use media on which DIR Data has been stored to store data of any other customer of Service Provider or to deliver data to a third party, including another Service Provider customer, unless such DIR Data has been securely erased in accordance with the Service Management Manual.

13.3 DIR Personal Data.

In addition to the provisions of **Sections 13.1** and **13.2**, the following privacy and data protection provisions shall apply to DIR Personal Data.

- (a) Service Provider shall hold any DIR Personal Data that it receives in confidence and in compliance with (i) Service Provider's obligations under this Agreement, the Exhibits and Attachments hereto and the Service Management Manual and (ii) subject to **Section 15.11**, all Laws regarding its use of and access to such DIR Personal Data.
- (b) Service Provider agrees that Service Provider and Service Provider Personnel shall not use any DIR Personal Data for any purpose other than the fulfillment of the terms and conditions of this Agreement. Service Provider shall not process or disseminate DIR Personal Data to any third party or transfer DIR Personal Data without the approval of DIR unless expressly provided for in this Agreement. Service Provider shall take appropriate action to cause:
 - (i) Any Service Provider Personnel who have access to DIR Personal Data pursuant to this Agreement to be advised of, and comply with, the terms and conditions of this **Section 13.3**; and

- (ii) Any Service Provider Personnel who have access to DIR Personal Data to be trained regarding their handling of such DIR Personal Data.

Service Provider shall be responsible for any failure of Service Provider Personnel to comply with the terms and conditions regarding DIR Personal Data set forth in this **Section 13.3**.

- (c) When interfacing with DIR or the applicable DIR Customer regarding DIR Personal Data, Service Provider shall only disclose or transmit DIR Personal Data to those DIR or DIR Customer employees and DIR Contractors authorized by the DIR Data Center Services Manager or identified in the Service Management Manual.
- (d) With respect to Personal Medical Data, Service Provider shall not need to obtain authorizations from the persons to whom such Personal Medical Data pertains unless DIR determines that such authorizations are necessary and advises Service Provider to obtain such authorization. In such case, Service Provider agrees to reasonably assist DIR or the applicable DIR Customer in obtaining an authorization, or in confirming that such authorization has been obtained, from each person before viewing any Personal Medical Data of such person contained in DIR's files or systems. The authorization form to be used for this purpose shall be provided by DIR.
- (e) With respect to Personal Medical Data, a person may request to inspect, copy, amend and restrict disclosure of his or her Personal Medical Data when and as permitted by Law. Any such requests that are received by Service Provider shall be directed to, and any actions required shall be determined by, DIR.
- (f) DIR shall notify Service Provider of any:
 - (i) Limitation in any privacy notice used by DIR to the extent that such limitation may affect Service Provider's use or disclosure of DIR Personal Data; and
 - (ii) Restriction on the use or disclosure of DIR Personal Data to which DIR agreed to the extent that such restriction may affect Service Provider's use or disclosure of such DIR Personal Data.

Service Provider agrees to promptly implement any such limitation or restriction as directed by DIR.

- (g) If Service Provider has knowledge of any unauthorized disclosure of or access to DIR Personal Data, Service Provider shall:
 - (i) Expeditiously report such unauthorized disclosure or access to DIR,
 - (ii) Mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Service Provider or its agents, and
 - (iii) Cooperate with DIR in providing any notices regarding impermissible disclosures caused by such disclosure or access which DIR deems appropriate.

To the extent such unauthorized disclosure or access is attributable to a breach by Service Provider or Service Provider Personnel of Service Provider's obligations under this Agreement with respect to DIR Personal Data, Service Provider shall bear (A) the costs incurred by Service Provider in complying with its legal obligations relating to such breach and (B) in addition to any other damages for which Service Provider may be liable for under this Agreement (except to the extent such disclosure is due to DIR's failing to provide (including through authorization to provide as part of the Services) the level of encryption required under applicable Law to protect such Data), the following costs incurred by DIR or the DIR Customer in complying with their legal

obligations relating to such breach, to the extent applicable, (1) the cost of providing notice to affected individuals, (2) where such breach results in the potential for exposure of personal credit (e.g. social security number) or financial account information the cost of providing such affected individuals with credit monitoring services for twelve (12) months, (3) the cost of providing such affected individuals with \$50,000 of identity theft insurance, and (4) call center support for such affected individuals for thirty (30) days and (5) any other Losses for which Service Provider would be liable under **Sections 17.1(d)** and **18.3(c)(v)**.

- (h) As reasonably requested by DIR, Service Provider shall deliver to DIR all or any specified Personal Medical Data in the format and on the media reasonably prescribed by DIR and promptly deliver such Data to DIR or a designated DIR Contractor.
- (i) With respect to Personal Medical Data constituting "protected health information" ("**PHI**"), as such term is defined by the HIPAA Privacy Rule, Service Provider shall:
 - (i) Subject to **Section 15.11**, implement the technical, organizational and security measures, including administrative, physical and technical safeguards, to protect the confidentiality, integrity and availability of Personal Medical Data constituting electronic PHI ("**ePHI**") created, received, maintained or transmitted by Service Provider or Service Provider Personnel in compliance with the HIPAA Security Rule. Service Provider shall cause any Service Provider Personnel who have access to ePHI to agree in writing to protect the confidentiality, integrity and availability of ePHI as required by the HIPAA Security Rule. Service Provider shall expeditiously report to DIR any successful unauthorized access, use, disclosure, modification or destruction of ePHI or interference with system operations in an information system containing PHI of which Service Provider becomes aware:
 - (A) such reports shall be provided only as frequently as the Parties mutually agree, but no more than once per calendar quarter, and
 - (B) if the HIPAA Security Rule is amended to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy ePHI from the definition of "Security Incident," this paragraph shall no longer apply as of the effective date of such amendment. For purposes of this provision, "Security Incident" shall have the meaning given in HIPAA Security Regulations, 45 CFR Part 164, as such regulations may be amended from time to time.
 - (ii) Subject to **Section 15.11**, at DIR's request, Service Provider shall provide access to Personal Medical Data contained in a "designated record set" (as such terms are defined by the HIPAA Privacy Rule) of a person currently or formerly covered by a DIR benefit plan subject to HIPAA (the "**Plan**") to DIR or the person currently or formerly covered by the Plan who is requesting such Data. Service Provider also shall amend Personal Medical Data in its possession as directed by DIR. Subject to **Section 15.11**, such access and amendment shall be provided at a time and in a format permitted by the HIPAA Privacy Rule.
 - (iii) Subject to **Section 15.11**, Service Provider shall document all disclosures of Personal Medical Data to provide a person currently or formerly covered by the Plan with an accounting of disclosures as required by the HIPAA Privacy Rule. Service Provider shall, upon DIR's request, provide such an accounting to DIR or the person currently or formerly covered by the Plan who requested such Data at a time and in a format permitted by the HIPAA Privacy Rule.
 - (iv) Without limiting DIR's obligations under **Section 15.11**, DIR shall notify Service Provider of any (A) limitations in the Plan's privacy notice to the extent that such limitation may affect Service Provider's use or disclosure of Personal Medical Data; (B)

changes in, or revocation of, permission by a person currently or formerly covered by the Plan to use or disclose Personal Medical Data to the extent that such change may affect Service Provider's use or disclosure of the Data; and (C) restrictions on the use or disclosure of Personal Medical Data to which the Plan agreed to the extent that such restriction may affect Service Provider's use or disclosure of the Data. Service Provider agrees to implement such limitation, change or restriction as required by HIPAA and in accordance with **Section 15.11**.

- (v) In addition to permitting audits by DIR as described above, Service Provider shall permit the Secretary of the United States Department of Health and Human Services to conduct audits of Personal Medical Data to determine compliance with the HIPAA Privacy Rule and/or the HIPAA Security Rule. If the Secretary contacts the Service Provider directly regarding such an audit, Service Provider shall provide DIR with written notice of the audit as soon as possible after Service Provider received its audit notice from the Secretary.

13.4 File Access.

DIR shall have secure access to, and the right to review and retain the entirety of, all DIR Confidential Information in the possession or control of Service Provider. Such access shall be provided to DIR in near-real time and by the means and in the format reasonably requested by DIR. At no time shall any of such files or other materials or information be stored or held in a form or manner not readily accessible to DIR in this manner. Service Provider shall provide to the DIR Data Center Services Manager or his or her designee all passwords, codes, comments, keys, documentation and the locations of any such files and other materials promptly upon his or her request, including Equipment and Software keys and such information as to format, encryption (if any) and any other specification or information necessary for DIR to retrieve, read, revise and/or maintain such files and information. Upon the request of the DIR Data Center Services Manager or his or her designee, Service Provider shall confirm that, to the best of its knowledge, all files and other information provided to DIR are complete and that no material element, amount, or other fraction of such files or other information to which DIR may request access or review has been deleted, withheld, disguised or encoded in a manner inconsistent with the purposes and intent of providing full and complete access to DIR as contemplated by this Agreement.

13.5 DIR Data – Correction and Restoration.

- (a) **Corrections.** The correction of any errors or inaccuracies in or with respect to DIR Data shall be performed by the Party that (i) has operational responsibility for inputting such DIR Data into the applicable System and (ii) actually inputted such erroneous or inaccurate DIR Data into the System. To the extent Service Provider is operationally responsible for inputting such data and such errors or inaccuracies are either: (i) attributable to an entry error or inaccuracy of Service Provider or Service Provider Personnel, or (ii) result from Service Provider's failure to comply with its obligations under this Agreement, Service Provider shall bear the cost of correcting such errors or inaccuracies.
- (b) **Re-running of Corrected Data.** If the correction of errors or inaccuracies as described above necessitates the re-running of corrected DIR Data and thereby results in the usage of additional Resource Units, DIR shall pay the applicable Charge as set forth in **Exhibit 4**, unless the underlying errors or inaccuracies are attributable to the failure of Service Provider or Service Provider Personnel to comply with Service Provider's obligations under this Agreement (including the failure of Service Provider or Service Provider Personnel to adhere to applicable processes and controls that, if adhered to, would have enabled Service Provider or Service Provider Personnel to identify and timely correct such errors or inaccuracies, even if caused by DIR), in which case Service Provider shall be financially responsible for any additional Resource Units usage resulting from the re-running of corrected data.

- (c) **Restoration of Data.** The restoration of any destroyed, lost or altered DIR Data shall be performed through generally accepted data restoration techniques by the Party that has operational responsibility under **Attachment 4-B** for maintaining the System on which such DIR Data resides and for creating and maintaining backup copies of such DIR Data. To the extent (i) Service Provider is operationally responsible for performing such restoration or (ii) such destruction, loss or alteration is attributable to the failure of Service Provider or Service Provider Personnel to comply with Service Provider's obligations under this Agreement, Service Provider shall bear the cost of restoring such data to the most recent required back-up.

- (d) **Cardholder Data.** Service Provider shall comply with the Payment Card Industry Data Security Standard ("**PCI DSS**") with respect to Cardholder Data as defined therein. With respect to Services provided from a Consolidated Data Center or that support a Consolidated Data Center, Service Provider shall have access to Cardholder Data only for the limited purpose of performing the Services or as specifically agreed to by Visa, MasterCard, American Express, and/or Discover (collectively, the "**Issuers**"), DIR, or as required by applicable law. In the event of a breach or intrusion of or otherwise unauthorized access to Cardholder Data stored by or for Service Provider, Service Provider shall immediately notify DIR, in the manner required, and provide DIR or its designee, the Issuers, and the acquiring financial institution and their respective designees access to Service Provider's facilities and all pertinent records to conduct a review of Service Provider's compliance with these requirements. Service Provider shall maintain appropriate business continuity procedures and systems to ensure security of Cardholder Data in the event of a disruption, disaster or failure of Service Provider's primary data systems which involve a risk to Cardholder Data. Service Provider shall provide access to its security systems and procedures, as reasonably requested by DIR or its designee. Service Provider shall cooperate fully with any reviews of their facilities and records provided for in this **Section 13.5(d)**. Service Provider will comply with any assessment, validation, or verification of PCI DSS rules and regulations.

13.6 FTI Compliance.

The following provisions are included in accordance with IRS Publication 1075 ("**Pub 1075**"). For purposes of this section only, all words in this section shall have the meaning provided in Pub 1075, notwithstanding any other definition that may be provided elsewhere in this Agreement. The following terms and conditions shall apply to Service Provider's performance of the Services to the extent provided by Pub 1075. Affected DIR Customer(s) shall be responsible for identifying to Service Provider the location of FTI that is subject to the following provisions (i.e. the databases, servers, mainframes, etc.). DIR and Service Provider will amend this section from time to time as needed to maintain currency with the then-current requirements of Pub 1075.

In performance of this Agreement, Service Provider agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of Service Provider or Service Provider's employees.

- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Disclosure to anyone other than an officer or employee of Service Provider will be prohibited.

- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

- (4) Service Provider certifies that the data processed during the performance of this Agreement will be completely purged from all data storage components of his or her computer facility, and no output will be retained by Service Provider at the time the work is completed. If immediate purging of all data storage

components is not possible, Service Provider certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

(5) Any spoilage or any intermediate hard-copy printout that may result during the processing of IRS data will be given to the affected DIR Customer or its designee. When this is not possible, Service Provider will be responsible for the destruction of the spoilage or any intermediate hard-copy printouts, and will provide the affected DIR Customer or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.

(6) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in Pub 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

(7) No work involving FTI furnished under this Agreement will be subcontracted without prior written approval of the IRS.

(8) Service Provider will maintain a list of employees with authorized access. Such list will be provided to the affected DIR Customer and, upon request, to the IRS reviewing office.

(9) DIR will have the right to void the Agreement, whole or in part, if Service Provider fails to provide the safeguards described above.

Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five (5) years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as one (1) year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee United States for Federal employees in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

Additionally, it is incumbent upon Service Provider to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material

is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

Granting a contractor access to FTI must be preceded by certifying that each individual understands the affected DIR Customer's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the affected DIR Customer's files for review. As part of the certification, and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, Service Provider should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

The IRS, DIR and the affected DIR Customer shall have the right to send its officers and employees into the offices and plants of Service Provider for inspection of the facilities and operations provided for the performance of any work under this Agreement. On the basis of such inspection, specific measures may be required in cases where Service Provider is found to be noncompliant with Agreement safeguards.

13.7 **Survival.**

Notwithstanding the expiration or any termination of this Agreement, (a) the limitations on use and disclosure by Service Provider under this Article with respect to DIR Personal Data shall survive the expiration or any termination of this Agreement and shall be perpetual and (b) each Party's confidentiality obligations under this Agreement shall continue for any period required by applicable Law, or in the absence of a required period for five (5) years after the expiration or termination of this Agreement, or, if sooner, until such time as the Confidential Information is publicly known and made generally available through no action or inaction of the receiving Party.

13.8 **Requirements for Information in Legal Proceedings.**

- (a) **Preservation of Legal Privilege.** If DIR notifies Service Provider, or Service Provider is otherwise aware, that particular DIR Confidential Information may be within DIR attorney-client or work-product privileges of DIR, then regardless of any applicable exclusions, Service Provider (i) shall not disclose such DIR Confidential Information or take any other action that would result in waiver of such privileges and (ii) shall instruct all Service Provider Personnel who may have access to such communications to maintain privileged material as strictly confidential and otherwise protect DIR privileges.
- (b) **Service Provider Responsibility for DIR Information.** To the extent requested by DIR, Service Provider shall comply with DIR litigation response plan, including policies and procedures to prepare for and respond to discovery requests, subpoenas, investigatory demands, and other requirements for information related to legal and regulatory proceedings, as such plan may be revised from time to time, including preparing for and complying with requirements for preservation and production of data in connection with legal and regulatory proceedings and government investigations. Upon receipt of any request, demand, notice, subpoena, order or other legal information request relating to legal proceedings or investigations by third parties relating to any Materials, DIR Confidential Information or related Systems in Service Provider's possession, Service Provider shall immediately notify DIR and provide DIR with a copy of all documentation of such legal information request, to the extent Service Provider legally may do so and shall cooperate with DIR in responding to such request, demand, notice, subpoena, order or other legal information request.
- (c) **Cost of Compliance.** Service Provider's cost of complying with this **Section 13.8** shall be at no additional charge to DIR.

14. MATERIALS

14.1 DIR Owned and Licensed Materials.

- (a) **Ownership of DIR Owned Materials.** As between the Parties, DIR shall be the sole and exclusive owner of (i) all Materials and other intellectual property owned by DIR or any DIR Customer as of the Effective Date, (ii) all Materials and other intellectual property acquired by DIR or any DIR Customer on or after the Effective Date, and (iii) certain Developed Materials as provided in **Section 14.2** (collectively, "**DIR Owned Materials**"), including all United States and foreign patent, copyright, trade secret and other intellectual property rights in the DIR Owned Materials.
- (b) **License to DIR Owned Materials.** As of the Commencement Date, DIR hereby grants to Service Provider and, if and to the extent necessary for Service Provider to provide the Services, to Subcontractors designated by Service Provider, a non-exclusive, non-transferable, royalty-free limited right and license during the Term to Use the DIR Owned Materials provided by DIR and/or the DIR Customers to Service Provider for the express and sole purpose of providing the Services, subject to any conditions or limitations arising from the financial participation of United States federal government authorities in the development or acquisition of such DIR Owned Materials or otherwise imposed under applicable Laws. Service Provider shall have no right to the source code to such DIR Owned Materials unless and to the extent approved in advance in writing by DIR. DIR Owned Materials shall remain the property of DIR. Service Provider shall not (i) use any DIR Owned Materials for the benefit of any person or Entity other than DIR or the DIR Customers, (ii) separate or uncouple any portions of the DIR Owned Materials, in whole or in part, from any other portions thereof, or (iii) reverse assemble, reverse engineer, translate, disassemble, decompile or otherwise attempt to create or discover any source or human readable code, underlying algorithms, ideas, file formats or programming interfaces of the DIR Owned Materials by any means whatsoever, without the prior approval of DIR, which may be withheld at DIR's sole discretion. Except as otherwise requested or approved by DIR, Service Provider shall cease all use of DIR Owned Materials upon the end of the Term and shall certify such cessation to DIR in a notice signed by an officer of Service Provider. THE DIR OWNED MATERIALS ARE PROVIDED BY DIR TO SERVICE PROVIDER ON AN AS-IS, WHERE-IS BASIS. DIR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE DIR OWNED MATERIALS OR THE CONDITION OR SUITABILITY OF THE DIR OWNED MATERIALS FOR USE BY SERVICE PROVIDER TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- (c) **License to DIR Third Party Materials.** Subject to Service Provider having obtained any Required Consents, DIR hereby grants to Service Provider, for the sole purpose of performing the Services and subject to DIR's and/or the DIR Customers' underlying rights and any conditions or limitations imposed under applicable Laws, the same rights of access and use as DIR and/or the applicable DIR Customer possesses under the applicable licenses with respect to the DIR licensed Third Party Materials provided by DIR and/or DIR Customers to Service Provider. Subject to Service Provider having obtained any Required Consents, DIR shall also grant such rights to Subcontractors designated by Service Provider if and to the extent necessary for Service Provider to provide the Services. Except as otherwise expressly agreed by the applicable third party licensors, Service Provider shall comply with the duties, including use restrictions and nondisclosure obligations, imposed on DIR and/or the DIR Customers by such licenses, which have been provided to Service Provider in writing in advance of Service Provider's use thereof. If licenses are not available, DIR shall, at a minimum, notify Service Provider in writing of (i) the name of the software product and vendor, (ii) the number of licenses available to DIR and/or the DIR Customers, and (iii) any other duties, restrictions and obligations known to DIR or the DIR Customers. Except as otherwise requested or approved by DIR (or the relevant licensor), Service Provider shall cease all use of such Third Party Materials upon the end of the Term. THE DIR LICENSED THIRD PARTY MATERIALS ARE PROVIDED BY DIR TO SERVICE

PROVIDER ON AN AS-IS, WHERE-IS BASIS. DIR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE DIR LICENSED THIRD PARTY MATERIALS OR THE CONDITION OR SUITABILITY OF THE DIR LICENSED THIRD PARTY MATERIALS FOR USE BY SERVICE PROVIDER TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14.2 Developed Materials.

- (a) **DIR Ownership.** Except as otherwise expressly provided in Sections 14.2(c) and 14.2(d), DIR shall be the sole and exclusive owner of all (i) Developed Materials that are modifications, enhancements, improvements, or Upgrades to or Derivative Works of DIR Owned Materials, including all United States and foreign patent, copyright, trade secret and other intellectual property rights therein, and (ii) the copyright in all other Developed Materials that are provided to DIR as a Deliverable (as defined in Section 14.2(c)). All Developed Materials owned (or to be owned) by DIR pursuant to this Section 14.2(a) shall be considered "**works made for hire**" (as that term is used in the United States Copyright Act, 17 U.S.C. Section 101, or in analogous provisions of other applicable Laws). Service Provider hereby irrevocably and perpetually assigns, and shall assign, to DIR without further consideration to the extent of such ownership by DIR all of Service Provider's right, title and interest in and to such Developed Materials, including all United States and foreign patent, copyright, trade secret and other intellectual property rights. Service Provider acknowledges that DIR and the successors and assigns of DIR shall have the right to obtain and hold in their own name all rights, title and interest in and to all such rights in such Developed Materials. Service Provider agrees to execute any documents and take any other actions reasonably requested by DIR to effectuate the purposes of this Section 14.2(a). DIR hereby grants Service Provider certain license and other rights with respect to such Developed Materials, as described in Section 14.1(b).
- (b) **Source Code and Documentation.** Service Provider shall, promptly as it is developed by Service Provider, provide DIR with the source code, if any, and object code and documentation for all Developed Materials owned by DIR pursuant to Section 14.2(a). Such source code and technical documentation shall be sufficient to allow a reasonably knowledgeable and experienced programmer to maintain and support such Materials. The user documentation for such Materials shall accurately describe in terms understandable by a typical Authorized User the functions and features of such Materials and the procedures for exercising such functions and features.
- (c) **Service Provider Owned Developed Materials.** Service Provider shall be the sole and exclusive owner of all Developed Materials that are modifications, enhancements, improvements or Upgrades to or Derivative Works of Service Provider Owned Materials or to the extent not owned by DIR pursuant to Section 14.2(a), including all United States and foreign patent, copyright, trade secret and other intellectual property rights in such Materials; provided, however, that if the creation of any such Developed Material is specifically requested by DIR or a DIR Customer and is provided through performance of the Services, it shall be treated as commercially available Service Provider Owned Developed Material for purposes of all license and other rights of DIR and DIR Customers therein granted pursuant to this Agreement, including under Section 14.6. DIR acknowledges that Service Provider and the successors and assigns of Service Provider shall have the right to obtain and hold in their own name all rights, title and interest in and to Developed Materials owned by Service Provider pursuant to this Section 14.2(c). DIR agrees to execute any documents and take any other actions reasonably requested by Service Provider to effectuate the purposes of this Section 14.2(c). Service Provider hereby grants DIR and the DIR Customers certain license and other rights with respect to such Developed Materials, as described in Sections 14.3(b) and 14.6.
- (d) **Third Party Materials.** The ownership of Derivative Works of Third Party Materials created by Service Provider in connection with the Services shall, as between Service Provider and DIR, be considered Developed Materials owned by DIR. DIR's ownership of such Derivative Works may

be subject to or limited by the terms of the underlying agreement with the owner of the underlying Third Party Materials; provided, that Service Provider shall notify DIR in advance if the terms of any such agreement will preclude or limit DIR's ownership of such Derivative Work and shall obtain DIR's consent prior to proceeding with such Derivative Work.

- (e) **Disclosure by Service Provider of Developed Materials.** Service Provider shall promptly disclose in writing to DIR the Developed Materials that are developed under this Agreement. With respect to each disclosure, Service Provider shall indicate the features or concepts that it believes to be new or different.
- (f) **Waiver of Moral Rights.** To the extent permitted by Law, Service Provider hereby waives and shall cause Service Provider Personnel who will provide any Services to waive any moral rights in the DIR owned Developed Materials, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation, whether arising under the Berne Convention or otherwise. Service Provider acknowledges the receipt of equitable compensation for its assignment and waiver of such moral rights and agrees to provide equitable compensation to Service Provider Personnel for any assignment or waiver of moral rights.

14.3 Service Provider Owned and Licensed Materials.

- (a) **Ownership of Service Provider Owned Materials.** As between the Parties, Service Provider shall be the sole and exclusive owner of the (i) Materials and other intellectual property lawfully owned by it or its Affiliates prior to the Effective Date, (ii) Materials and other intellectual property acquired by Service Provider or its Affiliates on or after the Effective Date (including any such Materials and intellectual property purchased from DIR pursuant to this Agreement) other than Materials and other intellectual property obtained by Service Provider or its Affiliates from third parties specifically for or on behalf of DIR or a DIR Customer, (iii) certain Developed Materials as provided in **Sections 14.2(c)** and **14.2(d)**, and (iv) Materials and other intellectual property that are not developed by or on behalf of Service Provider pursuant to this Agreement or otherwise paid for by DIR or any DIR Customer under this Agreement (collectively, "**Service Provider Owned Materials**"), including all United States and foreign patent, copyright, trade secret and other intellectual property rights in the Service Provider Owned Materials.
- (b) **License to Service Provider Owned Materials.** As of the Commencement Date, Service Provider hereby grants to DIR and the DIR Customers during the Term, at no additional charge, a world-wide, non-exclusive, irrevocable (provided that Service Provider Owned Materials are used in accordance with the terms hereof), royalty-free right and license to Use, with the right to allow, other DCS Service Providers, DIR Contractors and other third parties to Use for the benefit of or Use by DIR and DIR Customers, the Service Provider Owned Materials (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto), including to (i) receive the full benefit of the Services, (ii) perform or have performed services of the nature of the Services, including in-scope processes and services, (iii) monitor, access, interface with or use the Materials then being used in the performance of the Services, and (iv) perform or have performed ancillary services and functions, including related information technology services and functions. Service Provider Owned Materials shall remain the property of Service Provider. The rights and obligations of DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) with respect to such Service Provider Owned Materials following the expiration or any termination of this Agreement, in whole or in part, are set forth in **Section 14.6**. DIR and DIR Customers will not cause or permit any (i) reverse engineering, decompilation, translation, or disassembly of the source code of all or any portion of the Service Provider Owned Materials; or (ii) distribution (other than to DIR and DIR Customers under confidentiality obligations) of the Service Provider Owned Materials.
- (c) **License to Service Provider Third Party Materials.** As of the Commencement Date, and subject to Service Provider having obtained any Required Consents, Service Provider hereby

grants to DIR and the DIR Customers during the Term, at no additional charge, a world-wide, non-exclusive, irrevocable (provided that the Third Party Materials are used in accordance with the terms hereof), royalty-free right and license to Use, with the right to grant sublicenses to DIR Contractors and other third parties to Use for the benefit of DIR and DIR Customers, the Third Party Materials for which Service Provider holds the license or for which Service Provider is financially responsible under this Agreement (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto) for the benefit of DIR and the DIR Customers, including to (i) receive the full benefit of the Services, (ii) perform or have performed services of the nature of the Services, including in-scope processes and Services, (iii) monitor, access, interface with or use the Materials then being used in the performance of the Services, and (iv) perform or have performed ancillary services and functions, including related information technology services and functions. To the extent a DIR Contractor requires a license to Service Provider licensed Third Party Materials for the performance of services or functions previously performed by Service Provider in circumstances in which the services or functions in question have not been terminated or taken completely away from Service Provider and such Third Party Software is generally commercially available at established market rates, if Service Provider is required to buy additional licenses to accommodate such use by a DIR Contractor, then DIR or the DIR Contractor shall pay shall reimburse Service Provider for such license fees, provided that Service Provider notifies DIR of such fee, obtains DIR's approval prior to incurring it; and uses commercially reasonable efforts (including providing DIR the benefit of discounted license fees that are available to Service Provider under the circumstances) to minimize any fee to be paid or reimbursed by DIR or the DIR Contractor. Except as provided in this provision, neither DIR or the DIR Customers nor the DIR Contractors shall be required to pay any other fees or expenses in connection with such licenses to such Third Party Software. The rights and obligations of DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) with respect to such Service Provider licensed Third Party Materials following the expiration or any termination of this Agreement, in whole or in part, are set forth in **Section 14.6**.

- (d) **Embedded and Dependent Materials.** To the extent that Service Provider Owned Materials or Third Party Materials are either (i) embedded in or (ii) dependent on or necessary for the Use of any Developed Materials owned by DIR pursuant to **Section 14.2(a)** or any Third Party Materials that DIR or any DIR Customer licenses, then subject to **Section 14.2(d)** Service Provider shall not be deemed to have assigned its or any third party's intellectual property rights in such Materials to DIR, but Service Provider hereby grants to DIR, the DIR Customers and Entities that qualify as DIR Customers a world-wide, non-exclusive, perpetual, irrevocable, royalty-free right and license to Use, with the right to allow other DCS Service Providers, DIR Contractors and other third parties the right to Use for the benefit of or Use by DIR, the DIR Customers and Entities that qualify as DIR Customers, such Materials (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto); provided, however, such license shall not extend to DIR's, any DIR Customer's or any Entity that qualifies as a DIR Customer's commercial exploitation of such Service Provider Owned Materials or Third Party Materials on a stand-alone basis. Following the expiration or any termination of this Agreement and the termination of the Service(s) for which such Service Provider Owned Materials were used, Service Provider shall, at DIR's request, provide Upgrades, maintenance, support and other services for such Service Provider Owned Materials or Third Party Materials in accordance with **Section 14.6(b)** or **14.6(c)**, as applicable.
- (e) **Source Code Escrow.** At DIR's request, Service Provider shall deposit in escrow with an escrow agent selected by DIR the source code and related documentation for Service Provider Owned Materials consisting of Software in any of the following circumstances:
- (i) in the case of any such Software that is no longer routinely supported by Service Provider; or

- (ii) in the case of any such Software for which source code is made available to other Service Provider customers (including through such escrow arrangements).

In the event of the occurrence of any event giving rise to termination of this Agreement by DIR pursuant to **Section 20.4**, Service Provider shall provide reasonable assurance to DIR that such occurrence has not and shall not jeopardize Service Provider Owned Materials continuing to be routinely supported by Service Provider comparable to that provided prior to such occurrence. If Service Provider shall be unable to comply with the foregoing to DIR's reasonable satisfaction, Service Provider shall, upon direction from DIR, comply with the obligations of this **Section 14.3(e)** as if such Service Provider Owned Materials were then no longer routinely supported by Service Provider.

At DIR's request, Service Provider shall deposit in escrow, with an escrow agent selected by DIR, the source code and related documentation, to the extent available to Service Provider, for any Third Party Materials consisting of Software used by Service Provider to perform the Services; provided, however, that this obligation will not be applicable to COTS Third Party Materials. Any such escrow shall be governed by terms that are substantially in the form of the Escrow Agreement attached hereto as **Exhibit 26**, provided that if Service Provider, after exercising commercially reasonable efforts is unable to secure such terms and conditions, Service Provider will obtain DIR's approval to any material deviation from such terms and conditions prior to such agreement. Unless approved by DIR, Service Provider shall not use any Third Party Materials consisting of Software for the performance of the Services without obtaining the right to the source code for such software, other than COTS Third Party Materials as permitted above, whether by escrow or otherwise. While Service Provider shall not be required to escrow third party COTS software, Service Provider shall ensure that Service Provider provides all licenses and other rights required by DIR (and its successors or designees) to perform Services under this Agreement.

14.4 Work Product; Other Materials.

All Work Product shall be owned by DIR. DIR shall have all right, title and interest in and to the Work Product and all copies made from them. To the extent any Work Product is not deemed a "**work made for hire**" by operation of law, Service Provider hereby irrevocably assigns, transfers and conveys, and shall cause its employees, contractors and agents to assign, transfer and convey, to DIR without further consideration all of its and their right, title and interest in and to such Work Product, including all rights of copyright, trade secret, moral rights and other similar rights in such materials. Service Provider acknowledges, and shall cause its employees, contractors and agents to acknowledge, that DIR and the successors and permitted assigns of DIR shall have the right to obtain and hold in their own name any such intellectual property rights in and to such Work Product. Service Provider agrees to execute, and shall cause its employees, contractors and agents to execute, any documents or take any other actions as may reasonably be necessary, or as DIR may reasonably request, to perfect DIR's ownership of any such Work Product. This Agreement shall not confer upon either Party intellectual property rights in Materials of the other Party (to the extent not covered by this **Article 14**) unless otherwise so provided elsewhere in this Agreement.

14.5 General Rights.

- (a) **Copyright Legends.** Each Party agrees to reproduce copyright legends which appear on any portion of the Materials which may be owned by the other Party or third parties.
- (b) **No Implied Licenses.** Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to one Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Materials owned by the other Party, any Affiliate of Service Provider or any DIR Customer.

- (c) **Incorporated Materials.** Without limiting the provisions of Section 14.3(d), should either Party incorporate into Developed Materials any intellectual property subject to third party patent, copyright or license rights, any ownership or license rights granted herein with respect to such Materials shall be limited by and subject to any such patents, copyrights or license rights; provided that, prior to incorporating any such intellectual property in any Materials, the Party incorporating such intellectual property in the Materials has disclosed this fact and obtained the prior approval of the other Party.
- (d) **Residuals.** This Agreement shall not restrict an individual who is an employee or representative of a Party from using ideas, concepts or know-how relating to the provision of information technology, network management and data processing products and services that are retained solely in the unaided memory of such individual after performing the obligations of such Party under this Agreement, except to the extent that such use infringes upon any patent, copyright or trademark right of a Party (or in the case of DIR any DIR Customer) or its Affiliates; provided, however, that this Section 14.5(d) shall not operate or be construed as permitting an employee or representative of Service Provider to disclose, publish, disseminate or use (i) the source of any proprietary information of DIR or a DIR Customer, (ii) any financial, statistical or personnel information of DIR or a DIR Customer, or (iii) the operational plans of DIR or the DIR Customers. An individual's memory is unaided if the individual has not intentionally memorized the information for the purpose of retaining and subsequently using or disclosing it as otherwise permitted under this Section 14.5(d) and does not identify the information as Confidential Information upon recollection.

14.6 Ongoing DIR Rights.

As part of Termination Assistance Services, Service Provider shall provide the following to DIR, DIR Customers and their designee(s) with respect to Materials:

- (a) **DIR Customer Owned and Licensed Materials.** With respect to DIR Owned Materials and DIR Customer licensed Third Party Materials, Service Provider shall, at no cost to DIR:
 - (i) deliver to DIR all such Materials and all copies thereof in the format and medium in use to provide the Services; and
 - (ii) following confirmation by DIR that the copies of such Materials delivered by Service Provider are acceptable and the completion by Service Provider of any Termination Assistance Services for which such Materials are required, destroy or securely erase all other copies of such Materials then in Service Provider's possession and cease using such Materials and any information contained therein for any purpose.
- (b) **Service Provider Owned Materials.**
 - (i) **Commercially Available Service Provider Owned Materials.** With respect to those Materials owned by Service Provider or Service Provider Affiliates or Subcontractors that are implicated by the Assistance Event that are used to provide the Services (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto) and that are commercially licensed or otherwise commercially available:
 - (A) Service Provider hereby grants to DIR, the DIR Customers and Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) a worldwide, perpetual, non-exclusive, irrevocable, royalty-free, fully paid-up license on standard terms and conditions no less favorable than those offered generally by Service Provider to commercial licensees of such Materials (or at DIR election under then current terms and conditions applicable between

Service Provider and DIR for similar items) to Use, with the right to grant sublicenses to Use for the benefit of DIR and DIR Customers, such Materials; provided that, in all events, such terms and conditions shall be at least broad enough to permit DIR and the DIR Customers to use such Materials to provide for the Services and uses for which such Materials are in use at the time of such expiration or termination;

- (B) Service Provider shall deliver to DIR, the DIR Customers and Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) (A) a copy of such Materials and related documentation, (B) the source code and object code for such Materials to the extent such code is reasonably necessary to permit them to Use such Materials, (C) the source code and object code for such Materials that are not Commercial Off The Shelf products and (D) the source code and object code for such Materials that are Commercial Off The Shelf products if Service Provider does not offer or provide upgrades, maintenance, support and other services for such Service Provider Owned Materials as provided in **Section 14.6(b)(ii)**; and
- (C) Service Provider shall offer to provide to DIR, the DIR Customers and Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) Upgrades, maintenance, support and other services for such Materials on reasonable commercial terms and conditions and for reasonable fees and charges (on the basis of most favored customer pricing based on Service Provider customers receiving similar volumes of services similar to such Upgrades, maintenance, support and other services).

- (ii) **Non-Commercially Available Service Provider Owned Materials.** With respect to those Materials owned by Service Provider or Service Provider Affiliates or Subcontractors that are implicated by the Assistance Event that are used to provide the services (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials and media related thereto) and that are not then commercially licensed or otherwise commercially made available, unless otherwise expressly agreed by DIR in writing prior to the first use of such Materials, Service Provider hereby grants to DIR (or, at DIR's direction, its designee) a worldwide, perpetual, irrevocable, non-exclusive, non-transferable (except to the extent this Agreement is assigned in accordance with this Agreement) a fully paid-up license, to Use such Materials following the expiration or termination of the term or termination of the Service(s) for which such Materials were in use. Such license shall be limited to the use of such Materials by DIR (or, at DIR's direction, its designee) to provide for the DIR Customers and Entities that qualify as DIR Customers or have provided for them by a third party, services similar to the Services and such other uses permitted therefor under this Agreement. Unless DIR has otherwise consented prior to the first use of such Materials, DIR (or, at DIR's direction, its designee) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses and other rights specified above; provided that, if a DIR Contractor uses such Materials for such purpose for more than one (1) year after the expiration or termination of the Term or termination of the Service(s) for which such Materials were used, DIR or such DIR Contractor shall thereafter pay Service Provider a commercially reasonable license fee to be agreed upon by the Parties.

Without limiting or altering Service Provider's obligations under **Section 9.12**, if Service Provider is unwilling or unable to grant DIR or its designee the license and other rights described in the preceding paragraph, Service Provider shall so notify DIR and shall not use such non-commercially available Materials to provide the Services without DIR's prior written approval. In seeking DIR's approval, Service Provider may propose alternative terms, such as a fee for such license, a limitation on the use of such Materials

by DIR Contractors, or a limitation on the license period and/or the substitution of a functionally equivalent product.

At DIR's request, Service Provider shall provide Upgrades, maintenance, support and other services for such non-commercially available Materials on reasonable commercial terms and conditions, which shall include pricing no less favorable than the pricing customarily charged to other commercial customers receiving equivalent services. If Service Provider fails to offer or provide Upgrades, maintenance, support or other services, Service Provider shall deliver source code and object code for such Materials to the extent such materials include source code, together with the right to modify, enhance and create derivative works of such materials (provided that, in such event, the licensed Service Provider owned materials shall thereafter be provided on an "as is" basis).

Notwithstanding the foregoing, during the Termination Assistance Services period, Service Provider may substitute a license for Third Party Software or Materials sufficient to perform, without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of such non-commercially available Materials. If it proposes to do so, Service Provider shall notify DIR and describe in detail the features, functionality and cost of the substitute product. DIR may, in its sole discretion, elect to use a different product for such purpose. In such case, Service Provider shall direct the amount it would have expended in procuring the proposed substitute product toward the procurement of the product selected by DIR.

Unless DIR has otherwise agreed in advance, DIR, the DIR Customers and Entities that qualify as DIR Customers (and, to the extent applicable, their designee(s)) shall not be obligated to pay any fees or costs in connection with their receipt of the licenses and other rights contained in this **Section 14.6(b)**. Service Provider's use of any such Materials to provide the Services shall obligate Service Provider to provide, at no additional cost, the license and other rights set forth in this **Section 14.6(b)** to DIR, the DIR Customers, Entities that qualify as DIR Customers and their designees. As of the Effective Date, Service Provider is not using Commercially Available Service Provider Owned Materials or Non-Commercially Available Service Provider Owned Materials to provide the Services.

- (c) **Third Party Materials.** Unless otherwise expressly set forth in this Agreement, with respect to Third Party Materials for which Service Provider holds the license or for which Service Provider is financially responsible under this Agreement, upon the effective date of an Assistance Event, Service Provider hereby grants to DIR, the DIR Customers and Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) a sublicense (with the right to grant sublicenses) on the same rights and terms (including warranties) that are available to Service Provider (or Service Provider's Affiliates or Subcontractors) to such Third Party Materials that are implicated by that Assistance Event for the benefit of DIR, the DIR Customers and Entities that qualify as DIR Customers; provided that, during the applicable period of time in which Service Provider performs the relevant Termination Assistance Services, Service Provider may, with DIR's approval, substitute one of the following for such sublicense:
- (i) the transfer or assignment to DIR, any DIR Customer or Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) of the underlying license for such Third Party Materials on terms and conditions acceptable to all applicable parties;
 - (ii) the procurement for DIR, any DIR Customer or Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) of a new license (with terms at least as favorable as those in the license held by Service Provider or its Affiliates or Subcontractors and with the right to either grant sublicenses or allow a third party the right to access and Use such Materials for the benefit of or Use by DIR, DIR Customers and Entities that qualify as DIR Customers) to such Third Party Materials for the benefit of DIR, the DIR Customers and Entities that qualify as DIR Customers; or

- (iii) the procurement for DIR, any DIR Customer or Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) of a substitute license for new Third Party Materials sufficient to perform, without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of such Third Party Materials.

Service Provider shall deliver to DIR, the DIR Customers and Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) a copy of such Third Party Materials (including source code, to the extent it has been available to Service Provider) and related documentation and shall cause maintenance, support and other services to continue to be available to DIR, the DIR Customers and Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) to the extent it has been available to Service Provider. Unless DIR has otherwise agreed in advance in accordance with **Section 6.4(c)**, DIR, the DIR Customers and Entities that qualify as DIR Customers shall not be obligated to pay any fees or costs in connection with their receipt of the licenses, sublicenses and other rights specified in this **Section 14.6(c)**. Service Provider shall not use any Third Party Materials in connection with the Services for which it is unable to offer the license or other rights set forth in this **Section 14.6(c)** without DIR's prior written approval (and absent such approval, Service Provider's use of any such Third Party Materials shall obligate Service Provider to provide, at no additional cost, such license and other rights to DIR, the DIR Customers, Entities that qualify as DIR Customers and their designees). DIR, however, shall be obligated to make monthly or annual payments attributable to periods after Service Provider's completion of all Termination Assistance Services with respect to the Services for which such Third Party Materials were used for the right to use and receive maintenance or support related thereto, but only to the extent Service Provider would have been obligated to make such payments if it had continued to hold the licenses in question or DIR has agreed in advance to make such payments.

To the extent DIR has agreed in advance to pay any fees or costs in connection with its receipt of the licenses, sublicenses or other rights set forth in this **Section 14.6(c)**, Service Provider shall, at DIR's request, identify the licensing and sublicensing options available to DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s), and the fees and costs associated with each. Service Provider shall use commercially reasonable efforts to obtain the most favorable options and the lowest possible fees and costs for Third Party Materials. Service Provider shall not commit DIR, the DIR Customers or Entities that qualify as DIR Customers to paying any such fees or expenses without DIR's prior approval. If the licensor offers more than one form of license, DIR (not Service Provider) shall select the form of license to be received by DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s).

15. REPRESENTATIONS, WARRANTIES AND COVENANTS

15.1 Work Standards.

Service Provider represents, warrants and covenants that (i) the Services shall be rendered with promptness, due care, skill and diligence; (ii) the Services shall be executed in a professional and workmanlike manner, in accordance with the Service Levels and accepted industry standards of first tier providers of services that are the same as or similar to the Services; (iii) Service Provider shall use adequate numbers of qualified individuals with suitable training, education, experience, know-how, competence and skill to perform the Services; (iv) Service Provider shall provide such individuals with training as to new products and services prior to the implementation of such products and services in DIR's and the DIR Customers' environments; (v) Service Provider shall have the resources, capacity, expertise and ability in terms of Equipment, Materials, know-how and personnel to provide the Services.

15.2 Maintenance.

- (a) **Service Provider Responsibility.** Service Provider represents, warrants and covenants that, unless otherwise agreed and to the extent it has operational responsibility under this Agreement, it

shall maintain the Equipment and Software so that they operate substantially in accordance with the Service Levels and their Specifications, including (i) maintaining Equipment in good operating condition, subject to normal wear and tear, (ii) undertaking repairs and preventive maintenance on Equipment in accordance with the applicable Equipment manufacturer's recommendations and requirements, and (iii) performing Software maintenance in accordance with the applicable Software supplier's documentation, recommendations and requirements.

- (b) **Out of Support Third Party Equipment and Software.** For Third Party Equipment and Third Party Materials consisting of Software that is no longer supported by the licensor or manufacturer for which Service Provider has operational responsibility under this Agreement, Service Provider shall use commercially reasonable efforts to perform maintenance for such Equipment or Software as required to meet its obligations under this Agreement.

15.3 Efficiency and Cost Effectiveness.

Service Provider represents, warrants and covenants that it shall use commercially reasonable efforts to provide the Services in a cost-effective and efficient manner consistent with the required level of quality and performance. Without limiting the generality of the foregoing, such efforts shall include:

- (a) **Timing of Actions.** Making adjustments in the timing of actions (consistent with DIR priorities and schedules for the Services and Service Provider's obligation to meet the Service Levels).
- (b) **Timing of Functions.** Delaying or accelerating, as appropriate, the performance of non-critical functions within limits acceptable to DIR.
- (c) **Systems Optimization.** Tuning or optimizing the Systems (including memory), Applications Software, databases and/or processes to optimize performance and minimize costs.
- (d) **Usage Scheduling.** Controlling its use of the System and/or the DIR data network by scheduling usage, where possible, to low utilization periods.
- (e) **Alternative Technologies.** Subject to Section 9.5, using alternative technologies to perform the Services.
- (f) **Efficiency.** Efficiently using resources for which DIR is charged hereunder, consistent with industry norms, and compiling data concerning such efficient use in segregated and auditable form whenever possible.

15.4 Intellectual Property.

- (a) **Ownership and Use.** Service Provider represents, warrants and covenants that it is either the owner of or is authorized to use, and possesses sufficient rights to grant the rights and licenses contained in this Agreement to, any and all Materials, Equipment, Systems and other resources or items provided by Service Provider. As to any such Materials, Equipment, Systems, resources or items that Service Provider does not own, Service Provider shall advise DIR as to the ownership and extent of Service Provider's rights with regard to such Materials, Equipment, Systems, resources or items to the extent any limitation in such rights would materially impair Service Provider's performance of its obligations under this Agreement or the right and licenses granted by Service Provider under this Agreement.
- (b) **Performance.** Service Provider represents, warrants and covenants that any Service Provider Owned Materials consisting of Software and any Equipment provided by Service Provider shall Comply in all material respects with their applicable documentation and Specifications and shall provide the functions and features and operate in the manner described therein.

- (c) **Developed Materials Compliance.** Service Provider warrants and covenants that Developed Materials shall be free from material errors in operation and performance, shall Comply in all material respects with the applicable documentation and Specifications, and shall provide the functions and features and operate in the manner described in **Exhibit 2** or otherwise agreed by the Parties (including in the Transition Plan and Transformation Plan), for the later of one hundred twenty (120) days and the completion of three (3) full production cycles involving such Developed Material. During such warranty period, Service Provider shall correct any failure to Comply at no additional charge to DIR and shall use commercially reasonable efforts to do so as expeditiously as possible. In the event that Service Provider fails or is unable to repair or replace such nonconforming Developed Material, DIR shall, in addition to any and all other remedies available to it hereunder, be entitled to obtain from Service Provider a copy of the source code and/or object code and/or other applicable documentation to such Developed Material, provided that with respect to any such provided source code for Service Provider owned Developed Materials, DIR (or its designee) may utilize such source code only for the repair or maintenance of such Service Provider owned Developed Material, and/or to facilitate the Termination Assistance Services to be provided by Service Provider during the Termination Assistance period (to the extent reasonably necessary for DIR to continue to have Services performed for it pursuant to the terms of this Agreement). The foregoing will not extend to any failure to Comply attributable to (i) any change or modification to the Developed Material not contemplated by this Agreement, performed by Service Provider or its Affiliate or Subcontractor, or recommended or approved by Service Provider or (ii) DIR operating such Developed Material other than (A) in accordance with the applicable documentation and Specifications, (B) for the purpose(s) contemplated by this Agreement, or (C) on types of hardware contemplated by this Agreement or recommended, supplied or approved by Service Provider.
- (d) **Nonconformity of Service Provider Owned Software.** In the event that the Service Provider Owned Materials consisting of Software (excluding Service Provider Owned Developed Materials that are addressed in **Section 15.4(c)**) or any Equipment provided by Service Provider do not Comply with their applicable documentation and Specifications and/or materially adversely affects the Services provided hereunder, Service Provider shall expeditiously repair such Software or Equipment, or replace such Software or Equipment with conforming Software or Equipment.

15.5 Non-Infringement.

- (a) **Performance of Responsibilities.** Except as otherwise provided in this Agreement, each Party represents, warrants and covenants that it shall perform its obligations and responsibilities under this Agreement in a manner that does not infringe or misappropriate, or constitute an infringement or misappropriation of, any patent, copyright, trademark, trade secret or other intellectual property, proprietary or privacy rights of any third party; provided, however, that the performing Party shall not have any obligation or liability to the extent any infringement or misappropriation is caused by (i) modifications made by the other Party or its contractors or subcontractors, without the approval of the performing Party, (ii) the other Party's combination of the performing Party's work product or Materials with items not furnished, specified, recommended, or approved by the performing Party or contemplated by this Agreement, (iii) a breach of this Agreement by the other Party, (iv) the failure of the other Party to use corrections or modifications provided by the performing Party offering equivalent features and functionality, (v) adherence to detailed specifications provided by the other Party that the performing Party is required to comply with (provided the performing Party notifies the other Party of the possibility of infringement or misappropriation if and to the extent it knows or reasonably should know of such possibility), or (vi) Third Party Materials, except to the extent that such infringement or misappropriation arises from the failure of the performing Party to obtain the necessary licenses or Required Consents or to abide by the limitations of the applicable Third Party Materials licenses. Each Party further represents, warrants and covenants that it shall not use or create Materials in connection with the Services which are libelous, defamatory or obscene.

- (b) **Third Party Materials Indemnification.** In addition, with respect to Third Party Materials provided by Service Provider pursuant to this Agreement, Service Provider covenants that it shall obtain and provide intellectual property indemnification for DIR and the DIR Customers (or obtain intellectual property indemnification for itself and enforce such indemnification on behalf of DIR and the DIR Customers) from the suppliers of such Materials. Unless otherwise approved in advance by DIR, such indemnification shall be (i) comparable to the intellectual property indemnification provided by Service Provider to DIR and the DIR Customers under this Agreement or (ii) in Service Provider's reasonable judgment, the best indemnification reasonably available in the industry for the same or substantially similar types of products for the intended use of such Materials.

15.6 General.

- (a) **Service Provider.** Service Provider represents, warrants and covenants to DIR that:
- (i) It is a corporation duly incorporated, validly existing and in good standing under the Laws of its state of incorporation;
 - (ii) It has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
 - (iii) Except as otherwise provided in **Article 5**, it has obtained all licenses, authorizations, approvals, consents or permits required to perform its obligations under this Agreement under all applicable federal, state or local Laws and under all applicable rules and regulations of all authorities having jurisdiction over the Services, including under all applicable Laws of the State;
 - (iv) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party;
 - (v) The execution, delivery and performance of this Agreement shall not constitute a violation of any judgment, order or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default; and
 - (vi) As of the Effective Date there is, to Service Provider's knowledge, no pending claim, suit or proceeding against or affecting Service Provider or any of its Affiliates or Subcontractors that would reasonably be expected to adversely affect Service Provider's ability to perform and fulfill its obligations under this Agreement including, without limitation, actions pertaining to the proprietary rights described in **Sections 15.4** and **15.5**. Service Provider shall notify DIR within fifteen (15) days of Service Provider's knowledge of any such claim, suit or proceeding. Without limiting the terms of **Section 13.1(b)(iv)**, Service Provider shall notify DIR, within five (5) Business Days, if process is served on Service Provider in connection with this Agreement where such matter may reasonably affect the Services or a Party's rights including any subpoena for Service Provider's records, and shall send a written notice of the service together with a copy of the same to DIR within five (5) Business Days of such service.
- (b) **DIR.** DIR represents, warrants and covenants to Service Provider that:
- (i) DIR has statutory authority to enter into this Agreement, perform its obligations hereunder and offer its contracted services to the DIR Customers; and

- (ii) The execution, delivery and performance of this Agreement shall not constitute a violation of any judgment, order or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default.

15.7 Certifications.

Service Provider, for itself and on behalf of its Subcontractors, certifies that it:

- (a) 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 Agreement,
- (b) Is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate,
- (c) Neither it, nor anyone acting for it, has violated the antitrust Laws of the United States or the State of Texas, 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) Has not received payment from DIR or any of its employees for participating in the preparation of the Agreement,
- (e) Under Sections 2155.004 and 2155.006, Texas Government Code, is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate,
- (f) To the best of its knowledge and belief, 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 Agreement,
- (g) Is not 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;
- (h) As of the Effective Date, 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;
- (i) Agrees that any payments due under this Agreement will be applied towards any debt, including but not limited to delinquent taxes and child support, that is owed to the State;
- (j) Is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (k) For itself and on behalf of its Subcontractors, has identified (and will identify, for the duration of the Term) (i) all current or former employees of the State assigned or proposed to work on the Agreement 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Agreement, Service Provider certifies for itself and on behalf of its Subcontractors, it shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity and (ii) any former executive head of a State agency employed by Service Provider;

- (l) Represents and warrants that the provision of Services or other performance under the Agreement will not constitute an actual or potential conflict of interest and certifies that it will not create the appearance of impropriety, and, if these facts change during the course of the Agreement, Service Provider certifies it shall disclose for itself and on behalf of Subcontractors, the actual or potential conflict of interest and any circumstances which create the appearance of impropriety;
- (m) Represents and warrants that DIR and/or the Customer's payment to Service Provider and Service Provider's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or 556.008, Texas Government Code; and
- (n) Service Provider acknowledges the applicability of Sections 2155.444 and 2155.4441, Texas Government Code, in fulfilling the terms of the Agreement.
- (o) Service Provider shall comply with the requirements of 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 1996 Act, who will perform any labor or services under this Agreement.

During the Term, Service Provider shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Service Provider covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

15.8 Inducements; DIR Code of Ethics.

In addition to these provisions applying to Service Provider, Service Provider shall impose the provisions of this Section in each of its subcontracts and each such representation, warranty and covenant shall be fully applicable with respect to Service Provider and each Subcontractor:

- (a) **Reliance.** In executing this Agreement, the DIR relies on Service Provider's representations, warranties and covenants regarding the following: (i) Service Provider regularly provides the types of Services described in the RFO to other public or private entities; (ii) Service Provider has the skills, qualifications, expertise, financial resources and experience necessary to perform the Services described in this Agreement in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and has performed similar Services for other public or private entities; (iii) Service Provider 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 current program, operating environment for the Services, this Agreement and the needs and requirements of DIR, the DIR Customers and the State during the Term; (iv) Service Provider has had the opportunity to review and understand the State's stated objectives in entering into this Agreement and, based on such review and understanding, Service Provider has the ability and capacity to perform the Services for the Term in accordance with the terms and conditions of this Agreement; (v) Service Provider also has reviewed and understands all of the risks associated with the data center services program as described in the RFO and the Agreement, including the risk of non-appropriation of funds; (vi) Service Provider shall at all times be capable of and legally authorized to provide the Services; and (vii) the Charges assessed to DIR and the DIR Customers shall be true and correct.
- (b) **Inducements.** Service Provider represents, warrants and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has, shall have, or shall give commissions, payments, kickbacks, lavish or extensive entertainment or other inducements of more than minimal value to any employee or agent of DIR in connection with this Agreement. Service Provider also represents, warrants and covenants that, to the best of its knowledge, neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has given

any such payments, gifts, entertainment or other thing of value to any employee or agent of DIR. Service Provider also acknowledges that the giving of any such payments, gifts, entertainment or other thing of value is strictly in violation of DIR policy on conflicts of interest, and may result in the cancellation of this Agreement and other existing and future contracts between the Parties.

- (c) **DIR Code of Ethics.** Service Provider represents, warrants and covenants that, in the performance of the Services and its other contractual obligations hereunder, it shall comply with the DIR Code of Ethics, as modified from time to time.
- (d) **No Financial Interest.** Service Provider represents, warrants and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has, shall have, or shall acquire, any contractual, financial, business or other interest or advantage, direct or indirect, that would conflict in any manner or degree with Service Provider's performance of its duties and responsibilities to DIR under this Agreement or otherwise create an appearance of impropriety with respect to this Agreement; and Service Provider shall promptly inform DIR of any such interest that may be incompatible with the interests of DIR.
- (e) **No Abuse of Authority for Financial Gain.** Service Provider represents, warrants and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, has used or shall use the authority provided or to be provided under this Agreement to improperly obtain financial gain, advantage or benefit for Service Provider, any of its Affiliates, any of their employees or any member of the immediate family of any such employee.
- (f) **No Use of Information for Financial Gain.** Service Provider represents, warrants and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, has used or shall use any DIR Confidential Information acquired in connection with this Agreement to obtain financial gain, advantage or benefit for Service Provider, any of its Affiliates, any of their employees, nor any member of the immediate family of any such employee, or any member of the immediate family of any such employee.
- (g) **Independent Judgment.** Service Provider represents, warrants and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, has accepted or shall accept another DIR contract that would impair the independent judgment of Service Provider in the performance of this Agreement.
- (h) **No Influence.** Service Provider represents, warrants and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee, has accepted or shall accept anything of value, or an inducement that would provide a financial gain, advantage or benefit, based on an understanding that the actions of Service Provider, any such Affiliates or any such employees on behalf of DIR would be influenced thereby; and neither Service Provider nor any of its Affiliates shall attempt to influence any DIR employee by the direct or indirect offer of anything of value.
- (i) **No Payment Tied to Award.** Service Provider represents, warrants and covenants that neither Service Provider nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee, has paid or agreed to pay any person or Entity, other than bona fide employees working solely for Service Provider or such Affiliates or any Subcontractors, any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Agreement.
- (j) **No Collusion.** Service Provider represents, warrants and covenants that the prices presented in Service Provider's response to the RFO were arrived at independently, without consultation, communication or agreement with any other proposer for the purpose of restricting competition, the prices quoted were not knowingly disclosed by Service Provider to any other proposer and no

attempt was made by Service Provider to induce any other person or Entity to submit or not to submit a proposal for the purpose of restricting competition.

15.9 Malicious Code.

Each Party shall cooperate with the other Party and shall take commercially reasonable actions and precautions consistent with **Exhibit 2** to prevent the introduction and proliferation of Malicious Code into DIR's or a DIR Customer's environment or any System used to provide the Services and to notify the other Party expeditiously of any Malicious Code in any such environment or System of which it become aware. Without limiting Service Provider's other obligations under this Agreement, in the event Malicious Code is found in Equipment, Software or Systems managed or supported by Service Provider or used by Service Provider to provide the Services, Service Provider shall, at no additional charge to DIR, eliminate or permanently quarantine such Malicious Code and reduce the effects of such Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, mitigate such losses and restore such data with generally accepted data restoration techniques.

15.10 Disabling Code.

Service Provider represents, warrants and covenants that, without the prior written consent of DIR, Service Provider shall not insert into the Software any code that could be invoked to disable or otherwise shut down all or any portion of the Software, Equipment and/or Systems. Service Provider further represents, warrants and covenants that, with respect to any disabling code that may be part of the Software, Service Provider shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or any termination of this Agreement, without DIR's prior written consent. Service Provider also represents, warrants and covenants that it shall use commercially reasonable efforts to not use Third Party Materials consisting of Software containing disabling code without the prior approval of DIR. For purposes of this provision, code that serves the function of ensuring software license compliance (including passwords) shall not be deemed disabling code, provided that Service Provider will use commercially reasonable efforts to attempt to learn from third parties whether such code is included in third party products and will notify DIR accordingly and obtain DIR's approval prior to installing such code in any Software, Equipment or System.

15.11 Compliance with Laws.

- (a) **Compliance by Service Provider.** Subject to **Sections 15.11(d)** and **(e)**, Service Provider represents, warrants and covenants that, with respect to the provision of the Services and the performance of any of Service Provider's other legal and contractual obligations hereunder, Service Provider 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 identifying and procuring applicable permits, certificates, approvals and inspections required under such Laws. If any charge of non-compliance by Service Provider with any such Laws occurs or Service Provider 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, Service Provider shall promptly notify DIR of such charge or non-compliance, as applicable.
- (b) **Compliance Data and Reports.** At no additional charge, Service Provider shall provide DIR with data and reports in Service Provider'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).
- (c) **Materials, Equipment and Systems Compliance.** Service Provider represents, warrants and covenants that the Materials, Equipment and Systems owned, developed, implemented, provided or used by Service Provider in providing the Services are in compliance with all applicable Laws and shall remain in compliance with such Laws during the Term.

- (d) **Notice of Laws.** Service Provider shall notify DIR of any Laws and changes in Laws applicable to the providers of services similar to the Services or to the performance of activities or functions similar to any of Service Provider's other legal and contractual obligations hereunder ("**Service Provider Laws**") that would reasonably be expected to affect the Services or Service Provider's obligations under this Agreement. DIR shall notify Service Provider of any other Laws applicable to DIR, including those specific to DIR's business that are supported by Service Provider under this Agreement ("**DIR Laws**"), that would reasonably be expected to materially affect the Services or Service Provider's performance of its obligations under this Agreement. Service Provider shall undertake reasonable efforts, including through Service Provider Personnel, to maintain general familiarity with DIR Laws, and shall bring requirements of any such Laws known to Service Provider to DIR's attention. Subject to its non-disclosure obligation under other customer contracts, Service Provider shall use commercially reasonable efforts to obtain information regarding such requirements from other outsourcing customer engagements and to communicate such information to DIR in a timely manner. Each Party shall further use commercially reasonable efforts to advise the other of Laws and changes in Laws about which such Party becomes aware in any way impacting the performance, provision, receipt and use of the Services, but without assuming an affirmative obligation of inquiry, except as otherwise provided herein, and without relieving the other Party of its obligations hereunder. At DIR's request, Service Provider Personnel shall participate in DIR provided compliance training programs.
- (e) **Interpretation of Laws or Changes in Laws.** Service Provider shall be responsible for interpreting and agrees to interpret Service Provider Laws and shall make adjustments to the Services as needed to maintain compliance with such Service Provider Laws applicable to this Agreement. DIR shall be responsible for interpreting and agrees to interpret DIR Laws and, with Service Provider's cooperation, advise Service Provider of changes that must be made to the Services or Service Provider's other obligations under this Agreement that are required to maintain DIR's compliance with DIR Laws. In the event a change to the Services or other Service Provider's obligations under this Agreement is required in order to comply with applicable Laws, the Parties shall timely comply, with such implementation to be undertaken in accordance with Change Control and **Section 15.11(g)**, as applicable. For purposes of clarity, DIR maintains final approval rights, in its sole discretion, to interpret any such change needed under this **Section 15.11(e)** relating to all applicable Laws provided, however, that such approval rights in the case of Service Provider Laws will be limited to those Service Provider Laws impacting or otherwise related to DIR or a DIR Customer's operating environment. To the extent the impact of any Law (including change in Law) applicable to the provision of the Services and the performance of any of Service Provider's other legal and contractual obligations hereunder cannot be readily identified by Service Provider, the Parties shall cooperate in interpreting such Law and shall seek in good faith to identify and agree upon the impact on the performance, provision, receipt and use of the Services. If the Parties are unable to agree upon such impact, DIR shall retain the right, in its sole discretion, to interpret such Law and determine its impact. In addition, if Service Provider reasonably concludes, after due inquiry, that the compliance obligations associated with any Law applicable to the provision of the Services and the performance of any of Service Provider's other legal and contractual obligations hereunder are unclear or that there is more than one reasonable approach to achieving compliance, Service Provider shall escalate the issue to DIR for a final decision. In no event shall either Party be obligated to interpret and/or offer legal advice regarding Laws applicable to the other Party.

Without limiting either Party's obligations under this **Section 15.11(e)**, the Parties intend to proactively cooperate with each other in understanding DIR Laws and Service Provider Laws, and the impact such laws may have on the Services and DIR's use or receipt of the Services.

- (f) **Implementation of Changes in Laws.** In the event of any changes in Laws (including laws applicable to the provision of the Services and the performance of any of Service Provider's other legal and contractual obligations hereunder, to the extent Service Provider has knowledge of such Laws, including from DIR), Service Provider 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. Without modifying the Parties' respective financial obligations set forth in **Attachment 4-B**, Service Provider shall bear the costs associated with compliance with (A) Service Provider Laws, and (B) DIR Laws unless the change(s) required for compliance meets the definition of New Service, in which case it shall be treated as a Project. Any such changes required for compliance with DIR Laws may be accomplished by reprioritizing certain Service Provider activities in accordance with Section 4.8.

- (g) **Termination.** In the event that any change(s) in Laws results in an increase of ten percent (10%) or more in the estimated average monthly Charges or otherwise has a material adverse impact on Service Provider's ability to perform the Services and DIR would not have incurred such additional cost or impact if it had not outsourced the Services in question to Service Provider, then DIR may, within one hundred eighty (180) days of such aggregate increase being attained and upon at least ninety (90) days prior notice to Service Provider, terminate this Agreement in its entirety or the impacted Service as of the termination date specified in the notice.
- (h) **Responsibility.** Subject to **Section 15.11(e)**, Service Provider will be responsible for any Losses imposed on Service Provider, DIR, or the DIR Customers resulting from any failure of Service Provider or any third party engaged by Service Provider to comply with applicable Laws or respond in a timely manner to changes in such Laws.

15.12 Equal Opportunity Compliance.

Service Provider represents, warrants and covenants that it shall abide by all applicable Laws pertaining to equal employment opportunity, including state and federal Laws. In accordance with such Laws, Service Provider agrees that no individual in the United States shall, 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 program or activity performed by Service Provider under this Agreement. If Service Provider is found to be in non-compliance with these requirements, Service Provider agrees to take appropriate steps to correct these deficiencies. Upon request, Service Provider shall furnish to DIR information regarding Service Provider's nondiscriminatory 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.

15.13 Information Furnished to DIR.

Service Provider represents that, based on the knowledge of the undersigned after reasonable due diligence, all written information made a part of this Agreement is true, accurate and complete, and contains no untrue statement of a material fact or omits any material fact necessary to make such information not misleading. Service Provider hereby agrees to provide DIR with notice within two (2) Business Days in the event it discovers that any information that has been provided to DIR becomes or turns out not to be true and correct. Such notice shall identify the information as incorrectly provided and shall set forth the correct information.

15.14 Previous Contracts.

Other than as specifically disclosed by Service Provider in writing, Service Provider represents that neither it, nor any of its Affiliates or Subcontractors, is in default or breach of any other contract or agreement related to information systems facilities, equipment or services that it or they may have with DIR, the State or any other DIR or State related Entity. Service Provider further represents that neither it, nor any of its Affiliates or Subcontractors, has been a party to any contract for information system facilities, equipment or services with DIR, the State or any other DIR or State-related Entity that was finally terminated within the previous five (5) years for the reason that Service Provider or such person or Entity failed to perform or otherwise breached an obligation of such contract. Service Provider hereby certifies that it has provided disclosure of all pending, resolved, or completed litigation, mediation, arbitration or other alternate dispute resolution procedure involving Service Provider, its Affiliates and Subcontractors that would reasonably be

expected to materially adversely affect Service Provider's ability to perform and fulfill its obligations under this Agreement.

15.15 Completeness of Due Diligence Activities.

Service Provider acknowledges that it has been provided with sufficient access to DIR Facilities, information and personnel, and has had sufficient time in which to conduct and perform a thorough due diligence of DIR's operations and business requirements and assets currently used by DIR and the DIR Customers in providing the Services. Accordingly, Service Provider shall not seek any adjustment in the Charges based on any incorrect assumptions made by Service Provider in arriving at the Charges.

15.16 Interoperability.

Service Provider represents, warrants and covenants that the Software, Equipment and Systems provided by Service Provider and/or used to provide the Services shall be interoperable with the software, equipment and systems used by DIR or the DIR Customers to the extent necessary to provide the same or similar services and/or to deliver records to, receive records from or otherwise interact with the Software, Equipment and Systems to receive the Services.

16. INSURANCE AND RISK OF LOSS

Service Provider shall continuously maintain the insurance coverages set forth in **Exhibit 24**. **Exhibit 24** contains provisions or other information applicable to Service Provider's obligations respecting insurance and to the Parties' allocation of certain risks of loss.

17. INDEMNITIES

17.1 Indemnity by Service Provider.

Service Provider agrees to indemnify, defend and hold harmless DIR and the DIR Customers and their respective officers, directors, employees, agents, representatives, successors and assigns from and against any and all Losses and defend such persons against all threatened Losses due to non-Party claims (with DIR Customers being deemed a Party for this purpose) arising from or in connection with any of the following:

- (a) **Representations, Warranties and Covenants.** Service Provider's breach of any of its representations, warranties, or obligations set forth in **Sections 15.6(a), 15.7, 15.8, 15.9, 15.10, and 15.11.**
- (b) **Assumed Contracts.** Service Provider's decision to terminate or failure to observe or perform any duties or obligations to be observed or performed by Service Provider under any of the Third Party Materials licenses, Equipment Leases or Third Party Contracts assigned to Service Provider or for which Service Provider has assumed financial or operational responsibility pursuant to this Agreement.
- (c) **Licenses, Leases and Contracts.** Service Provider's failure to observe or perform any duties or obligations to be observed or performed by Service Provider under Third Party Materials licenses, Equipment Leases or Third Party Contracts used by Service Provider to provide the Services (other than Third Party Materials Service Provider is required to use by another DCS Service Provider pursuant to a license held by such other DCS Service Provider), including any action undertaken by DIR or a DIR in conformity with the request or direction of Service Provider with respect to any such license, lease or contract, including pursuant to **Section 6.6(a).**
- (d) **DIR Data or Confidential Information.** Service Provider's breach of its obligations with respect to DIR Data or DIR Confidential Information.

- (e) **Infringement.** Infringement or misappropriation or alleged infringement or alleged misappropriation of a patent, trade secret, copyright or other intellectual property or other proprietary rights in contravention of Service Provider's representations, warranties and covenants in **Sections 15.4** and **15.5**.
- (f) **Compliance with Laws; Government Claims.** Losses, including government fines, penalties, sanctions, interest or other remedies, resulting from Service Provider's failure to perform its responsibilities under this Agreement in compliance with applicable Laws as required by this Agreement.
- (g) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Service Provider under **Section 11.4**.
- (h) **Claims Arising in Shared Facility Services.** Any claim for damage, interruption, delay or loss of service (not constituting Services provided pursuant to this Agreement) by a third party receiving services from a shared Service Provider facility or using shared Service Provider resources.
- (i) **Affiliate, Subcontractor or Assignee Claims.** Any claim, other than an indemnification claim under this Agreement, initiated by (i) a Service Provider Affiliate or Subcontractor asserting rights under this Agreement or (ii) any Entity to which Service Provider assigned, transferred, pledged, hypothecated or otherwise encumbered its rights to receive payments from DIR under this Agreement.
- (j) **Personal Injury and Property Loss or Damage.** Personal injury (including death) or any loss or damage to real or tangible personal property resulting from Service Provider's negligent or wrongful acts or omissions.
- (k) **Employment Claims.** Any claim resulting from any (i) violation by Service Provider or its officers, directors, employees, representatives or agents, of any applicable Laws or any common Law protecting persons or members of protected classes or categories, including Laws prohibiting discrimination or harassment on the basis of a protected characteristic; (ii) liability resulting from any failure by Service Provider to collect and withhold any social security or other employment taxes, workers' compensation claims and premium payments and contributions applicable to the wages and salaries of such Service Provider Personnel); (iii) payment or failure to pay any salary, wages or other cash compensation due and owing to any Service Provider Personnel, (iv) employee pension or other benefits of any Service Provider Personnel, (v) other aspects of the employment relationship of Service Provider Personnel with Service Provider or the termination of such relationship, including claims for wrongful discharge, claims for breach of express or implied employment contract and claims of joint employment; and/or (vi) liability resulting from representations (oral or written) by Service Provider or its respective officers, directors, employees, representatives or agents made in connection with the interview, selection, hiring and/or transition process, the offers of employment made to such employees, the failure to make offers to any such employees or the terms and conditions of such offers (including compensation and employee benefits).
- (l) **Government Claims.** Any claim by any government or any authority, department or agency thereof (excluding the State, DIR and the DIR Customers) resulting from Service Provider's failure to comply with its obligations under this Agreement.

THE PARTIES AGREE THAT THE INDEMNITIES ABOVE SHALL CONTINUE IN EFFECT EVEN IN THE CASE WHERE A PORTION OF THE DAMAGE IS CAUSED BY THE ACTS OR OMISSIONS (INCLUDING NEGLIGENCE) OF DIR OR DIR CUSTOMERS. HOWEVER, THE PARTIES FURTHER AGREE THAT SERVICE PROVIDER IN NO WAY WAIVES ANY DEFENSE OTHERWISE AVAILABLE TO IT IN ANY SUCH EVENT, INCLUDING THE RIGHT TO ASSERT COMPARATIVE FAULT OF DIR OR DIR CUSTOMERS.

17.2 Infringement.

In the event that (1) any Materials, Equipment, Systems, Services and other resources or items provided by Service Provider or used by Service Provider in the performance or delivery of the Services (other than Third Party Materials Service Provider is required to use by another DCS Service Provider) are found, or in DIR's reasonable opinion are likely to be found, to infringe upon the patent, copyright, trademark, trade secrets, intellectual property or proprietary rights of any third party in any country in which Services are to be performed or received under this Agreement or (2) the continued use of such Materials, Equipment, Systems, Services and other resources or items is enjoined, Service Provider shall, in addition to defending, indemnifying and holding harmless DIR as provided in **Section 17.1(e)** and to the other rights DIR may have under this Agreement, promptly and at its own cost and expense and in such a manner as to minimize the disturbance to DIR's and the DIR Customers' operations and activities do one of the following:

- (a) **Obtain Rights.** Obtain for DIR and the DIR Customers the right to continue using and receiving the benefits of such Materials, Equipment or Services.
- (b) **Modification.** Modify the item(s) in question so that it is no longer infringing (provided that such modification does not degrade the performance or quality of the Services or adversely affect DIR's and the DIR Customers' intended use as contemplated by this Agreement).
- (c) **Replacement.** Replace such item(s) with a non-infringing functional equivalent acceptable to DIR.
- (d) **Discontinued Use.** If, despite Service Provider's commercially reasonable efforts to effect the alternatives set forth in **Sections 17.2(a)-(c)** above, the Parties determine that none of such alternatives are feasible, Service Provider may discontinue its use of such infringing or potentially infringing Materials, Equipment or Services; provided, however, neither such right or such discontinuation shall limit nor expand DIR's rights or Service Provider's obligations under the Agreement; nor shall such right or such discontinuation excuse any breach by Service Provider of its obligation to provide the Services and to provide the Services in a non-infringing manner.

17.3 Indemnification Procedures.

With respect to claims which are subject to indemnification under this Agreement, the following procedures shall apply:

- (a) **Notice.** Promptly after receipt by any Entity entitled to indemnification under this Agreement of notice of the commencement or threatened commencement of any civil, criminal, administrative or investigative action or proceeding involving a claim in respect of which the indemnitee shall seek indemnification hereunder, the indemnitee shall notify the indemnitor of such claim. No delay or failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that such indemnitor has suffered actual prejudice by such delay or failure. Within fifteen (15) days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee that the indemnitor elects to assume control of the defense and settlement of that claim (a "**Notice of Election**").
- (b) **Procedure Following Notice of Election.** If the indemnitor delivers a Notice of Election within the required notice period, the indemnitor shall assume sole control over the defense and settlement of the claim; provided, however, that (i) the indemnitor shall keep the indemnitee reasonably apprised at all times as to the status of the defense, and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim asserting any liability against the indemnitee or imposing any obligations or restrictions on the indemnitee or ceasing to defend against such claim. The indemnitor shall not be liable for any legal fees or expenses incurred by the indemnitee following the delivery of a Notice of Election;

provided, however, that (A) the indemnitee shall be entitled to employ counsel at its own expense to participate in the handling of the claim, and (B) the indemnitor shall pay the fees and expenses associated with such counsel if the indemnitor has an actual or apparent conflict of interest with respect to such claim which is not otherwise resolved or if the indemnitor has requested the assistance of the indemnitee in the defense of the claim or the indemnitor has failed to defend the claim diligently and the indemnitee is prejudiced or likely to be prejudiced by such failure. Service Provider acknowledges that DIR's counsel is the Office of the Texas Attorney General, and Service Provider shall coordinate and cooperate with the Office of the Texas Attorney General on all defense and settlement matters relating to claims which are subject to indemnification under this Agreement. The indemnitor shall not be obligated to indemnify the indemnitee for any amount paid or payable by such indemnitee in the settlement of any claim if (1) the indemnitor has delivered a timely Notice of Election and such amount was agreed to without the written consent of the indemnitor, (2) the indemnitee has not provided the indemnitor with notice of such claim and a reasonable opportunity to respond thereto, or (3) the time period within which to deliver a Notice of Election has not yet expired.

- (c) **Procedure Where No Notice of Election Is Delivered.** If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitee shall have the right to defend the claim in such manner as it may deem appropriate. The indemnitor shall promptly reimburse the indemnitee for all such reasonable costs and expenses incurred by the indemnitee, including reasonable attorneys' fees.

17.4 Subrogation.

Except as otherwise provided in **Exhibit 24**, in the event that an indemnitor shall be obligated to indemnify an indemnitee pursuant to any provision of this Agreement, the indemnitor shall, upon payment of such indemnity in full, be subrogated to all rights of the indemnitee with respect to the claims to which such indemnification relates.

18. LIABILITY

18.1 General Intent.

Subject to the specific provisions and limitations of this **Article 18** and, to the extent allowed by applicable Laws (including the constitution of the State), it is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred as a result of the breaching Party's failure to perform its obligations in the manner required by this Agreement.

18.2 Force Majeure.

- (a) **General.** Subject to **Section 18.2(d)**, no Party shall be liable for any default or delay in the performance of its obligations under this Agreement 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 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, workarounds or other means. A strike, lockout or labor dispute involving Service Provider Personnel shall not excuse Service Provider from its obligations hereunder. In addition, the refusal of Service Provider Personnel to enter a facility that is the subject of a labor dispute shall excuse Service Provider from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of physical harm.
- (b) **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.

- (c) **Substitute Services; Termination.** If any event described in **Section 18.2(a)** has substantially prevented, hindered or delayed or is reasonably expected to substantially prevent, hinder or delay the performance by Service Provider of Services necessary for the performance of critical DIR or DIR Customer functions for longer than the recovery period specified in the applicable disaster recovery plan or, if there is no such specified recovery period, twenty-four (24) hours, Service Provider shall, unless and until otherwise directed by DIR, use commercially reasonable efforts to procure such Services from an alternate source at Service Provider's expense for so long as the delay in performance shall continue, up to the Charges actually paid to Service Provider for the Services with respect to the period of non-performance. If Service Provider is unable to procure such substitute services on an expedited basis or DIR elects to contract directly for such services, DIR may procure such Services from an alternate source at DIR's expense. In addition, if any event described in **Section 18.2(a)** substantially prevents, hinders or delays the performance by Service Provider of Services necessary for the performance of critical DIR functions (i) for more than seven (7) days, then DIR may, upon notice to Service Provider, 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 Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. Service Provider shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Service Provider's ability to perform.
- (d) **Disaster Recovery.** Upon the occurrence of a force majeure event that constitutes a disaster under the applicable disaster recovery plan, Service Provider shall promptly implement, as appropriate, the applicable business continuity and disaster recovery plan and provide business continuity and Disaster Recovery Services, including as described in **Exhibits 2.1, 15 and 16**. The occurrence of a force majeure event shall not relieve Service Provider of its obligation to implement, as appropriate, the applicable business continuity and disaster recovery plan and provide business continuity and disaster recovery Services, except to the extent execution of the disaster recovery plan is itself prevented by the force majeure event.
- (e) **Payment Obligation.** If Service Provider fails to provide Services in accordance with this Agreement due to the occurrence of a force majeure event, all amounts payable to Service Provider hereunder shall be equitably adjusted downward so that DIR is not required to pay any amounts for Services that DIR and/or any DIR Customer is not receiving, whether from Service Provider or from an alternate source at Service Provider's expense pursuant to **Section 18.2(c)**.
- (f) **Allocation of Resources.** Without limiting Service Provider's obligations under this Agreement, whenever a force majeure event or disaster causes Service Provider to allocate limited resources between or among Service Provider's customers and Affiliates, DIR and the DIR Customers shall receive at least the same treatment as comparable Service Provider customers. In no event shall Service Provider re-deploy or re-assign any Key Service Provider Personnel to another customer or account in the event of the occurrence of a force majeure event.

18.3 Limitation of Liability.

- (a) **Exclusions from Limitations.** EXCEPT AS PROVIDED IN THIS **SECTION 18.3**, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, COLLATERAL, EXEMPLARY OR PUNITIVE DAMAGES,

INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- (b) **Liability Cap.** Additionally, except as provided in this **Section 18.3** and, in the case of DIR, to the extent authorized by applicable Laws (including the constitution of the State), the total aggregate liability of either Party, for all claims asserted by the other Party under or in connection with this Agreement, regardless of the form of the action or the theory of recovery, shall not exceed the following amounts: (i) for any claim arising from or related to the period beginning on the Effective Date until twelve (12) months after the Commencement Date, the Charges paid and payable by DIR during the eighteen (18) months preceding such action or claim or, in the event the Charges have not been paid for eighteen (18) months following the Commencement Date, an amount equal to the amounts specified in **Attachment 4-A** applicable to the first eighteen (18) contract months following the Commencement Date, and (ii) for the remainder of the Term, Charges paid and payable by DIR during the twelve (12) months preceding such action or claim .
- (c) **Exceptions to Limitations of Liability.** **Sections 18.3(a)** and **(b)** shall not apply with respect to:
- (i) Losses occasioned by the fraud, willful misconduct, or gross negligence of a Party.
 - (ii) Losses that are the subject of indemnification under this Agreement.
 - (iii) Any losses occasioned by any breach of Service Provider's representations, or warranties or covenants under this Agreement set forth in **Sections 15.6(a), 15.7, 15.8, 15.9, 15.10, and 15.11** under this Agreement.
 - (iv) Losses occasioned by Service Provider's refusal to provide Services or Termination Assistance Services. For purposes of this provision, "refusal" shall mean the refusal or failure to commence performance or the intentional cessation by Service Provider, in a manner impermissible under this Agreement, of the performance of all or a material portion of the Services or Termination Assistance Services then required to be provided by Service Provider under this Agreement.
 - (v) Any losses occasioned by Service Provider's breach of its obligations under **Article 13**.
- (d) **Items Not Considered Damages.** The following shall not be considered damages subject to, and shall not be counted toward the liability exclusion or cap specified in, **Section 18.3(a)** or **(b)**:
- (i) Service Level Credits or Deliverable Credits assessed against Service Provider pursuant to **Exhibit 3**.
 - (ii) Amounts withheld by DIR in accordance with this Agreement due to incorrect Charges or Services not provided.
 - (iii) Amounts paid by DIR but subsequently recovered from Service Provider due to incorrect Charges or Services not provided.
 - (iv) Invoiced Charges and other amounts that are due and owing to Service Provider for Services under this Agreement.
- (e) **Waiver of Liability Cap.** If, at any time, the total aggregate liability of one Party for claims asserted by the other Party under or in connection with this Agreement exceeds sixty percent (60%) of the applicable liability cap specified in **Section 18.3(b)** and, upon receipt of the request of the other Party, the Party incurring such liability refuses to waive such cap and/or increase the available cap to an amount at least equal to the original liability cap, then the other Party may,

upon notice, terminate this Agreement in its entirety as of the termination date specified in the notice.

- (f) **Acknowledged Direct Damages.** For the avoidance of doubt, the following shall be considered direct damages and neither Party shall assert that they are indirect, incidental, collateral, consequential or special damages or lost profits to the extent they result directly from the breaching Party's failure to perform in accordance with this Agreement:
- (i) Costs and expenses of restoring or reloading any lost, stolen or damaged DIR Data.
 - (ii) Costs and expenses of implementing a work-around in respect of a failure to provide the Services or any part thereof.
 - (iii) Costs and expenses of replacing lost, stolen or damaged Equipment and Materials.
 - (iv) Cover damages, including the costs and expenses incurred to procure the Services or corrected Services from an alternate source.
 - (v) Costs and expenses incurred to bring the Services in-house or to contract to obtain the Services from an alternate source, including the costs and expenses associated with the retention of external consultants and legal counsel to assist with any re-sourcing.
 - (vi) Straight time, overtime or related expenses incurred by either Party in performing (i) through (v) above, including overhead allocations for employees, wages and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges and similar charges.
 - (vii) Subject to **Section 15.11**, fines, penalties, sanctions, interest or other monetary remedies incurred as a result of a failure to comply with applicable Laws.
 - (viii) Service Level Credits or Deliverable Credits assessed against Service Provider.
 - (ix) Lost discounts, late fees and/or interest charges incurred by DIR and the DIR Customers resulting from Service Provider's breach of its obligations under **Section 11.2**.

The absence of direct damages listed in this **Section 18.3(f)** shall not be construed or interpreted as an agreement to exclude it as a direct damage under this Agreement.

- (g) **DIR Customer Claims and Damages.** Service Provider acknowledges and agrees that (i) DIR shall be entitled to assert actions, claims, rights, remedies and privileges against Service Provider on behalf of all DIR Customers that have received Services, (ii) direct damages suffered by each DIR Customer arising out of or relating to Service Provider's performance or failure to perform under this Agreement shall be deemed to be the direct damages of DIR to the extent such damage would constitute a direct damage hereunder or under applicable Law if such damage had been incurred directly by DIR, and (iii) the losses suffered by each DIR Customer of the type contemplated by **Section 18.3(c)** shall be deemed to be losses of DIR under **Section 18.3(c)** to the extent such losses would have been recoverable hereunder or under applicable Law if incurred by DIR. DIR and Service Provider agree that in the event DIR is finally awarded damages against Service Provider that arose directly as a result of a claim that Service Provider breached its obligations under the Agreement, such damages award will be reduced by the amount of any Service Level Credit (for which the right of Earnback has been lost or has expired), Deliverable Credit, or CAP Failure Credit which DIR has received from Service Provider solely to the extent such Service Level Credit, Deliverable Credit, or CAP Failure Credit, as the case may be, arises directly from the same event that is the basis of the damages award.

- (h) **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.

19. DISPUTE RESOLUTION

19.1 Informal Dispute Resolution.

Subject to compliance with Chapter 2260, Texas Government Code, prior to the initiation of formal dispute resolution procedures with respect to any dispute, other than as provided in **Section 19.1(e)**, the Parties shall first attempt to resolve such dispute informally, as follows:

- (a) **Initial Effort.** The Parties agree that the DIR Data Center Services Manager and the Service Provider Account Manager shall attempt in good faith to resolve all disputes (other than those described in **Section 19.1(e)** or **20.8**). In the event the DIR Data Center Services Manager and the Service Provider Account Manager are unable to resolve a dispute in an amount of time that either Party deems reasonable under the circumstances, such Party may refer the dispute for resolution to the senior executives specified in **Section 19.1(b)** below upon notice to the other Party.
- (b) **Escalation.** Within five (5) Business Days of a notice under **Section 19.1(a)** above referring a dispute for resolution by senior executives, the DIR Data Center Services Manager and the Service Provider Account Manager shall each prepare and provide to the Director of Technology Center Operations of DIR and the Vice President, State of Texas Data Center Services of Service Provider, respectively, summaries of the non-privileged relevant information and background of the dispute, along with any appropriate non-privileged supporting documentation, for their review. The designated senior executives shall confer as often as they deem reasonably necessary in order to gather and furnish to the other all non-privileged information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The designated senior executives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions shall be left to the discretion of the designated senior executives, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (c) **Provision of Information.** During the course of negotiations under **Section 19.1(a)** or **(b)** above, all reasonable requests made by one Party to another for non-privileged information, reasonably related to the dispute, shall be honored in order that each of the parties may be fully advised of the other's position. All negotiations shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one Party for these proceedings shall not be used as evidence by the other Party in any subsequent arbitration or litigation; provided, however, the underlying facts supporting such materials may be subject to discovery.
- (d) **Prerequisite to Formal Proceedings.** Upon the earlier to occur of (i) the designated senior executives under **Section 19.1(b)** concluding in good faith that amicable resolution through continued negotiation of a dispute does not appear likely and (ii) the thirty-first (31st) day following the date of the notice provided under **Section 19.1(a)** referring the dispute to senior executives, then the Parties shall be entitled to discontinue negotiations and to seek to resolve the dispute through the dispute resolution process provided for in Chapter 2260, Texas Government Code, and DIR Rule Number 1, Texas Administrative Code Section 201.1(b).
- (e) **Equitable Remedies.** Notwithstanding the provisions and time periods specified in this **Section 19.1**, at any time the Parties may use formal proceedings pursuant to the process set forth in Chapter 2260, Texas Government Code, and DIR Rule Number 1, Texas Administrative Code Section 201.1(b), in order to (i) avoid the expiration of any applicable limitations period, (ii) preserve a superior position with respect to other creditors, (iii) address a claim arising out of the

breach of a Party's obligations under **Article 13**, (iv) pursue claims for injunctive relief with respect to a Party's obligations to the extent resulting in irreparable injury, or (v) address a claim arising out of the breach or attempted or threatened breach of the obligations described in the following sentence. Service Provider acknowledges that, in the event it breaches (or attempts or threatens to breach) its obligation to provide any Services (including Termination Assistance Services) in accordance with this Agreement, its obligation respecting continued performance in accordance with **Section 19.3**, or its obligation to provide access to computers or files containing DIR Data in accordance with **Section 13.4**, DIR and/or the DIR Customers may be irreparably harmed and DIR may proceed directly to court. If a court of competent jurisdiction should find that Service Provider has breached (or attempted or threatened to breach) any such obligations, Service Provider agrees that DIR shall be entitled to seek injunctive relief, including entry of an appropriate order compelling performance by Service Provider and restraining it from any further breaches (or attempted or threatened breaches).

19.2 Jurisdiction.

Except as otherwise expressly provided in this **Article 19**, each Party irrevocably agrees that any legal action, suit or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in the United States District Court for the Western District of Texas, Austin Division, or in the state courts of the State of Texas and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts *in personam*, generally and unconditionally with respect to any action, suit or proceeding brought by it or against it by the other Party; provided, however, that this Section shall not prevent a Party against whom any legal action, suit or proceeding is brought by the other Party in the state courts of the State of Texas from seeking to remove such legal action, suit or proceeding, pursuant to applicable federal Law, to the United States District Court for the Western District of Texas, Austin Division, and in the event an action is so removed each Party irrevocably accepts and submits to the jurisdiction of the aforesaid district court.

19.3 Continued Performance.

- (a) **General.** Each Party agrees that it shall, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any dispute is being resolved; provided, that this provision shall not operate or be construed as extending the Term of this Agreement or prohibiting or delaying a Party's exercise of any right it may have to terminate this Agreement as expressly provided herein. For purposes of clarification, DIR Data may not be withheld by Service Provider pending the resolution of any dispute.
- (b) **Non-Interruption of Service.** Service Provider acknowledges and agrees that any interruption to the Service may cause irreparable harm to DIR and/or the DIR Customers and may adversely impact the ability of the State to carry out vital public safety and other governmental functions (including homeland security matters), in which case an adequate remedy at Law would not be available. Except to the extent expressly permitted under Chapter 2251, Texas Government Code, Service Provider expressly acknowledges and agrees that, pending resolution of any dispute or controversy, it shall not deny, withdraw, or restrict Service Provider's provision of the Services to DIR and/or the DIR Customers under this Agreement.

19.4 Governing Law.

This Agreement and the rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without giving effect to the principles thereof relating to the conflicts of Laws. Nothing in this Agreement shall be construed to waive the State's sovereign immunity. The Parties expressly disclaim, to the fullest extent permitted by Law, any application of the Uniform Computer Information Transactions Act which may otherwise be or become applicable (including through enactment subsequent to the Effective Date) during the Term.

20. TERMINATION

20.1 Termination for Cause.

- (a) **By DIR.** If Service Provider:
- (i) commits a material breach of its obligations with respect to the Transition Services or the Transformation Services as provided in Sections 4.2(g) and 4.3(h) as applicable and such breach is not cured within the applicable timeframe for cure provided in such provision;
 - (ii) commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of the breach from DIR;
 - (iii) commits a material breach of this Agreement which is not capable of being cured within the period specified pursuant to Section 20.1(a)(ii);
 - (iv) commits numerous breaches of its duties or obligations which collectively constitute a material breach of this Agreement and Service Provider fails to do both of the following: (A) cure each such breach within thirty (30) days of notice thereof; and (B) develop within fifteen (15) days following written notice of breach from DIR a complete plan reasonably acceptable to DIR for curing the breach and correcting the deficiencies causing such breaches on a permanent basis; provided, however, this Section 20.1(a)(iv) shall in no manner limit (X) DIR's right of termination pursuant to any other provision of this Section 20.1(a), or (Y) Service Provider's obligation to cure individual nonmaterial breaches of this Agreement;
 - (v) becomes liable for or incurs Service Level Credits under this Agreement that, in the aggregate, exceed fifty percent (50%) of the cumulative and annualized At Risk Amount during any rolling six (6) month period (exclusive of any earnback during such period);
 - (vi) fails to perform in accordance with the Minimum Service Level for same Critical Service Level for three (3) consecutive Measurement Windows or during four (4) of any six (6) consecutive Measurement Windows (provided that the applicable Measurement Window is at least one month in duration);
 - (vii) commits a material breach of Section 15.8 of this Agreement; or

then DIR may, upon notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. The express acknowledgment that a certain amount of Service Level Credits or number of Service Level defaults constitutes grounds for termination under Sections 20.1(a)(v) and (vi) does not imply that a lesser amount or number cannot constitute a material breach of this Agreement and therefore grounds for termination under other Subsections.

- (b) **By Service Provider.** In the event that DIR fails to pay Service Provider amounts due and owing in accordance with Chapter 2251, Texas Government Code exceeding in the aggregate three (3) months of Monthly Base Charge by the specified due date and fails to cure such default within thirty (30) days of notice from Service Provider of its intention to terminate for failure to make such payment, Service Provider may, upon further notice to DIR specifying Service Provider's intention to terminate this Agreement in accordance with this provision following an additional thirty (30) days, terminate this Agreement in its entirety as of the termination date specified in the further notice (provided that DIR has not cured the default prior to the effective date of termination). Service Provider acknowledges and agrees that this Section 20.1(b) describes Service Provider's sole right to terminate this Agreement and Service Provider hereby waives any other rights it may have to terminate this Agreement.

20.2 Termination for Convenience.

DIR may, upon at least ninety (90) days prior notice to Service Provider, terminate this Agreement, in whole or in part, for convenience and without cause as of the termination date specified in the notice.

20.3 Termination Upon Service Provider Change of Control.

In the event of a change in Control of Service Provider (or that portion of Service Provider providing all or any material portion of the Services under this Agreement) or the Entity that Controls Service Provider (if any), where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Service Provider (or that portion of Service Provider providing all or any material portion of the Services under this Agreement) are acquired by any Entity, or Service Provider (or that portion of Service Provider providing all or any material portion of the Services under this Agreement) is merged with or into another Entity to form a new Entity, then at any time within twelve (12) months after the last to occur of such events, then DIR may, upon at least ninety (90) days prior notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice.

20.4 Termination for Insolvency.

If Service Provider (a) files for bankruptcy, (b) 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, (c) passes a resolution for its voluntary liquidation, (d) has a receiver or manager appointed over all or substantially all of its assets, (e) makes an assignment for the benefit of all or substantially all of its creditors, or (f) enters into an agreement or arrangement for the composition, extension, or readjustment of substantially all of its obligations or any class of such obligations, then DIR may, upon notice to Service Provider (and during the period such proceeding, condition, event or situation continues or otherwise remains open or unresolved), terminate this Agreement, in whole or in part, as of the termination date specified in the notice.

20.5 DIR Rights Upon Service Provider's Bankruptcy.

- (a) **General Rights.** In the event of Service Provider's bankruptcy or other formal procedure referenced in **Section 20.4** or of the filing of any petition under bankruptcy Laws affecting the rights of Service Provider 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 shall have the immediate right to retain and take possession for safekeeping all DIR Data, DIR Confidential Information, DIR licensed Third Party Materials, DIR owned Equipment, DIR owned Materials, DIR-owned Developed Materials and all other Materials, Equipment or Systems to which DIR and/or the DIR Customers are or would be entitled during the Term or upon the expiration or any termination of this Agreement. Service Provider shall cooperate fully with DIR and the DIR Customers and assist DIR and the DIR Customers in identifying and taking possession of the items listed in the preceding sentence. DIR shall have the right to hold such DIR 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 that they shall be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material or filing. Service Provider and DIR agree that without this material provision, DIR would not have entered into this Agreement or provided any right to the possession or use of DIR Data, DIR Confidential Information or DIR Materials covered by this Agreement.
- (b) **DIR Rights in Event of Bankruptcy Rejection.** Notwithstanding any other provision of this Agreement to the contrary and to the maximum extent permitted by applicable Laws, in the event that Service Provider 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**"), (i) any

and all of the licensee and sublicensee rights of DIR and the DIR Customers arising under or otherwise set forth in this Agreement, including the rights of DIR, the DIR Customers and Entities that qualify as DIR Customers referred to in **Section 14.6**, shall be deemed fully retained by and vested in DIR, the DIR Customers and Entities that qualify as DIR 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 Service Provider is the debtor; (ii) DIR, the DIR Customers and Entities that qualify as DIR Customers shall have all of the rights afforded to non-debtor licensees and sublicensees under Section 365(n) of the Bankruptcy Code; and (iii) to the extent any rights of DIR, the DIR Customers and/or Entities that qualify as DIR Customers under this Agreement which arise after the expiration or any termination of this Agreement 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, the DIR Customers and/or Entities that qualify as DIR Customers after any Bankruptcy Rejection as though this Agreement were terminated or expired. DIR shall under no circumstances be required to terminate this Agreement, in whole or in part, after a Bankruptcy Rejection in order to enjoy or acquire any of its rights under this Agreement, including any of the rights of DIR, the DIR Customers or Entities that qualify as DIR Customers set forth in **Section 14.6** unless and to the extent required by applicable Laws.

20.6 Termination for Material Adverse Change in Service Provider's Financial Condition.

If (i) Service Provider receives a "going concern" explanation or qualification from its external auditor, or (ii) Moody's Investors Service lowers Service Provider's long term credit rating to Ba2 or lower or Standard & Poor's lowers Service Provider's long term credit rating to BB or lower and in the reasonable opinion of DIR such change in the financial condition of Service Provider may impair or otherwise compromise the ability of Service Provider to perform its obligations under this Agreement, then DIR may, in its sole discretion, terminate this Agreement by giving Service Provider at least thirty (30) days prior notice. With respect to the events described in (ii) above, prior to exercising its right to terminate, DIR shall meet with Service Provider within ten (10) days following notification (or awareness) of such event and permit Service Provider to submit to DIR a plan that comprehensively addresses DIR's concerns related to Service Provider's ability to perform its obligations under this Agreement. If DIR in its sole discretion determines that the plan does not adequately address its concerns, DIR will have the right to terminate this Agreement as described above.

20.7 Critical Services.

Without limiting DIR's rights under **Section 20.1**, if Service Provider commits a material breach which has a significant impact on the ability of DIR or any DIR Customer to conduct a material aspect of its operations, and Service Provider is unable to cure such breach within forty-eight (48) hours, DIR may, in addition to its other remedies at Law and in equity, obtain from a third party or provide for itself comparable services which shall allow DIR and the DIR Customers to conduct their operations until Service Provider has cured the breach or this Agreement is terminated. Service Provider shall reimburse DIR for all costs and expenses of obtaining or providing such services up to the Charges actually paid to Service Provider for the Services with respect to the period of non-performance but in no event longer than the earlier to occur of (a) 180 days from the start of such delay, or (b) the remaining Term, provided that DIR continues to pay Service Provider for such Charges. The express inclusion of this remedy in this **Section 20.7** does not limit DIR's right to use a similar remedy for other breaches by Service Provider of this Agreement.

20.8 Absolute Right.

If (a) Service Provider becomes listed on the prohibited vendors list authorized by Executive Order Number 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) Service Provider becomes suspended or debarred from doing business with the

federal government as listed in the Excluded Parties List System maintained by the General Services Administration, then DIR may, upon notice to Service Provider, terminate this Agreement, in whole or, to the extent possible under applicable Law, in part, as of the termination date specified in the notice.

20.9 Lack of Sufficient Funds or Statutory Authority.

If funding for DIR's and the DIR Customers' obligations under this Agreement is reduced by Law or funds sufficient to pay Service Provider for the Services provided hereunder are not appropriated by applicable governing bodies or otherwise made available by Law, then DIR may, upon at least thirty (30) days prior notice to Service Provider, decrease the amount and types of the Services in such manner and for such periods of time as DIR may elect. In such event, the Charges shall be adjusted downward in accordance with **Exhibit 4**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Service Provider shall not be providing to the extent that **Exhibit 4** does not provide for such reduction and the Parties shall negotiate equitable adjustments to the Service Levels if and to the extent that any resulting reductions in scope or volume of Services directly affect Service Provider's ability to meet the Service Levels, provided that Service Provider notifies DIR the extent to which it will not be able to meet such Service Levels and uses commercially reasonable efforts to meet the Service Levels notwithstanding such reductions. DIR shall promptly notify Service Provider if DIR believes that the necessary funding or authorizations shall not be obtained. If partial funding sufficient only for a portion of the Services shall be made available, the Parties may agree to perform their respective obligations relative to such Services, and this Agreement shall be amended accordingly. DIR and many of the DIR Customers are State agencies whose authority is subject to the actions of the State legislature. Some DIR Customers may additionally be subject to the actions of the United States Congress or other governmental authorities. If funds sufficient to pay DIR's and the DIR Customers' obligations under this Agreement are not appropriated by applicable governmental authorities or if DIR's statutory authority to enter into this Agreement is repealed by the State legislature or ruled unconstitutional by a court of competent jurisdiction, then DIR may, upon notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. If DIR, any DIR Customer(s) and/or the subject matter of this Agreement become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would (a) render the continued provision of the Services impossible or unnecessary, (b) render this Agreement invalid, illegal or otherwise unenforceable, (c) substantially decrease the amount and types of the Services or (d) terminate the appropriations for this Agreement, then DIR may, upon notice to Service Provider, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. If DIR elects to terminate in accordance with this **Section 20.9**, subject to statutory or legislative restrictions, Service Provider may assert a claim for Termination Charges in accordance with Chapter 2260, Texas Government Code, and DIR Rule Number 1, Texas Administrative Code Section 201.1(b).

20.10 General Termination Rights.

- (a) **Partial Terminations.** If DIR chooses to terminate only a portion of this Agreement, the Charges and applicable Termination Charges shall be adjusted downward in accordance with **Exhibit 4**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Service Provider shall not be providing to the extent that **Exhibit 4** does not provide for such reduction.
- (b) **Termination Charges.** If DIR elects to terminate pursuant to **Section 20.2**, DIR shall pay to Service Provider a Termination Charge calculated in accordance with **Exhibit 4**. If DIR elects to terminate pursuant to **Section 20.3**, DIR shall pay to Service Provider an amount equal to seventy percent (70%) of the Termination Charge calculated in accordance with **Exhibit 4**. If this Agreement is terminated in its entirety, the Termination Charge shall be calculated as of the later of (i) the end of the Term and (ii) the satisfactory completion of all Termination Assistance Services requested by DIR in connection with such termination. If this Agreement is terminated in part, the Termination Charge shall be calculated as of the satisfactory completion of all Termination Assistance Services requested by DIR in connection with such termination. Except as expressly set forth in this **Section 20.10(b)**, there shall be no Termination Charge or other costs,

claims, damages or expenses payable to Service Provider in connection with the expiration or any other termination of this Agreement.

- (c) **Other Terminations.** In addition to the provisions of this Article, DIR may terminate this Agreement as expressly provided in this Agreement or under Law.

21. GENERAL

21.1 Delegation of Authority.

Whenever, by any provision of this Agreement, 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 Service Provider on request.

21.2 No Waiver of Sovereign Immunity.

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

21.3 RFO Errors and/or Omissions.

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

21.4 Abandonment or Default.

Abandon means to relinquish or renounce the Agreement for any reason other than for a force majeure event. If Service Provider abandons the Agreement, DIR reserves the right to cancel the Agreement without notice and either re-solicit and re-award the Agreement or take such further action or no action in the best interest of the State. The abandoning Service Provider will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of Services, unless the specifications or scope of work significantly changes.

21.5 Place of Performance.

Unless otherwise agreed to in writing, all Services performed by Service Provider, its Subcontractors and agents must be performed in the United States.

21.6 Binding Nature and Assignment.

- (a) **Binding Nature.** This Agreement shall be binding on the Parties and their respective successors and permitted assigns. Except in the instance of an assignment or transfer by DIR of all or any portion of this Agreement pursuant to **Section 21.7(b)**, the assigning Party shall remain liable for the performance of any assigned or transferred obligations hereunder.
- (b) **Assignment.** Service Provider may not assign all or any portion of its rights under or interests in this Agreement (including by operation of law) or delegate any of its duties without the 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 discretion. Except where otherwise specifically agreed in writing by DIR, DIR's acceptance of any assignment or delegation

does not release Service Provider from its obligations pursuant to this Agreement. DIR may, without the approval of Service Provider, assign or transfer its rights or obligations under this Agreement, in whole or in part, to any other State agency as directed by the State legislature or as otherwise required under Law. The consent of a Party to any assignment of this Agreement shall not constitute such Party's consent to further assignment. Each party to whom an assignment or transfer is made must assume all or any part of Service Provider's or DIR's interests in this Agreement, the Services, and any documents executed with respect to this Agreement, including, without limitation, its obligation for all or any portion of the payments due hereunder.

- (c) **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 Service Provider assigns this Agreement in contravention of this Section by operation of Law, such assignment shall be voidable at the option of DIR.

21.7 Entire Agreement; Amendment.

This Agreement, including any Exhibits and attachments referred to herein or attached hereto, each of which is incorporated herein for all purposes, constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no agreements, representations, warranties, promises, covenants, commitments or undertakings other than those expressly set forth herein. This Agreement supersedes all prior agreements, representations, warranties, promises, covenants, commitments or undertakings, whether written or oral, with respect to the subject matter contained in this Agreement. No amendment, modification, change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such amendment, modification, change, waiver or discharge is sought to be enforced.

21.8 Notices.

- (a) **Primary Notices.** Any notice, notification, request, demand or determination provided by a Party pursuant to the following:
- (i) **Section 4.4** (Termination Assistance Services);
 - (ii) **Section 4.5(a)** (Use of Third Parties – Right of Use);
 - (iii) **Section 6.7** (Notice of Defaults);
 - (iv) **Section 7.5** (Measurement and Monitoring);
 - (v) **Section 7.7** (Notice of Adverse Impact);
 - (vi) **Section 10.2** (Savings Clause);
 - (vii) **Section 11.6** (Extraordinary Events);
 - (viii) **Section 13.1(d)** (Loss of Confidential Information);
 - (ix) **Sections 17.3** (Indemnification Procedures);
 - (x) **Section 18.2** (Force Majeure);
 - (xi) **Section 18.3(e)** (Waiver of Liability Cap);
 - (xii) **Section 19.1** (Informal Dispute Resolution);

- (xiii) **Article 20** (Termination); and
- (xiv) **Section 21.7** (Binding Nature and Assignment);

shall be in writing and shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (i) by hand, (ii) by an express courier with a reliable system for tracking delivery or (iii) by registered or certified mail, return receipt requested, postage prepaid. Unless otherwise notified, the foregoing notices shall be delivered as follows:

In the case of DIR:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Sally Ward, Data Center Services Manager
Telephone: 512.463.9003
E-mail Address: sally.ward@dir.texas.gov

With a copy to:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Martin Zelinsky, General Counsel
Telephone: 512. 475.4759
E-mail Address: martin.zelinsky@dir.texas.gov

And

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Mary Cheryl Dorwart, Director, Enterprise Contracts Division
Telephone: 512.463.3909
E-mail Address: mc.dorwart@dir.texas.gov

In the case of Service Provider:

ACS State & Local Solutions, Inc.
8260 Willow Oaks Corporate Drive
Fairfax, VA 22031
Attention: Contracts
Telephone: 703-891-8727
E-mail Address: andre.gamrasni@acs-inc.com

With a copy to:

ACS State & Local Solutions, Inc.
8260 Willow Oaks Corporate Drive

Fairfax, VA 22031
Attention: Legal Department
Telephone: 703-891-8845
E-mail Address: paul.webber@acs-inc.com

- (b) **Other Notices.** All notices, notifications, requests, demands or determinations required or provided pursuant to this Agreement, other than those specified in **Section 21.9(a)**, may be sent in hard copy in the manner specified in **Section 21.9(a)**, or by e-mail transmission (where receipt is acknowledged by the recipient) or facsimile transmission (with acknowledgment of receipt from the recipient's facsimile machine) to the addresses set forth below:

In the case of DIR:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Sally Ward, Data Center Services Manager
Telephone: 512.463.9003
E-mail Address: sally.ward@dir.texas.gov

With a copy to:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Martin Zelinsky, General Counsel
Telephone: 512.475.4759
E-mail Address: martin.zelinsky@dir.texas.gov

And

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Mary Cheryl Dorwart, Director, Enterprise Contracts Division
Telephone: 512.463.3909
E-mail Address: mc.dorwart@dir.texas.gov

In the case of Service Provider:

ACS State & Local Solutions, Inc.
8260 Willow Oaks Corporate Drive
Fairfax, VA 22031
Attention: Contracts
Telephone: 703-891-8727
E-mail Address: andre.gamrasni@acs-inc.com

- (c) **Written Complaints.** In addition to other remedies contained in this Agreement, Service Provider may direct its written complaints regarding DIR to the following office:

Public Information Office
Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Public Information Officer
Facsimile Number: (512) 475-4759

- (d) **Notice of Change.** A Party may from time to time change its address or designee for notification purposes by giving the other prior notice of the new address or designee and the date upon which it shall become effective.

21.9 Counterparts.

This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

21.10 Headings.

The article and section headings and the table of contents used herein are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

21.11 Relationship of Parties.

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

21.12 Severability.

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

21.13 Consents and Approval.

Except where expressly provided as being in the sole discretion of a Party, where any agreement, approval, acceptance, consent, confirmation, determination, notice or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

21.14 Waiver of Default; Cumulative Remedies.

- (a) **Waiver of Default.** A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not

be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the Party waiving its rights.

- (b) **Cumulative Remedies.** Except as expressly set forth herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at Law, in equity or otherwise. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party at Law, in equity, by contract or otherwise.

21.15 Survival.

Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect. Additionally, 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.

21.16 Publicity.

- (a) Except as provided in Subsection (b) below, Service Provider must not use the name of DIR, the State, or any other DIR Customer, or refer to DIR or any such DIR Customers directly or indirectly in any media release, or public announcement, relating to this Agreement 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 DIR Customer, an administrative agency of the State, or the Federal government.)
- (b) Service Provider may publish, at its sole expense, any media release or public announcement, relating to this Agreement 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 DIR customer, an administrative agency of the state, or a governmental agency or unit of another state or the federal government), or results of Service Provider's performance under this Agreement only with DIR's prior review and approval, which DIR may exercise at its sole discretion. Service Provider 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. Service Provider will provide additional copies at the request of DIR.

21.17 Service Marks.

Service Provider agrees that it shall not, without DIR's prior consent, use any of the names, service marks or trademarks of DIR or the DIR Customers in any of its advertising or marketing materials.

21.18 Export.

The Parties acknowledge that certain Equipment, Materials and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the Laws of the United States, the European Union, the United Nations and other jurisdictions. Without limiting the Parties' respective obligations under **Section 15.11**, no Party shall export or re-export any such items or any direct product thereof or undertake any transaction or service in violation of any such Laws and, to the extent within Service Provider's control, Service Provider shall be responsible for, and shall coordinate and oversee, compliance with such export Laws in respect of such items exported or imported hereunder.

21.19 Third Party Beneficiaries.

The Parties acknowledge and agree that DIR Customers that are agencies or other Entities of the State are intended third party beneficiaries of this Agreement and are entitled to enforce the terms of this Agreement

to the extent provided in and in accordance with the Service Management Manual (which shall provide, at a minimum that DIR shall participate and seek the reasonable participation of the Office of the Attorney General, along with any such DIR Customer in evaluating and presenting any claim or dispute). Except as expressly provided in the preceding sentence, this Agreement is entered into solely between, and may be enforced only by, DIR and Service Provider and shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including employees, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

21.20 Covenant Against Pledging.

Service Provider agrees that, without the prior written consent of DIR, it shall not assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from DIR under this Agreement for any reason whatsoever. To the extent DIR permits Service Provider to assign, transfer, pledge, hypothecate or otherwise encumber its rights to receive payments from DIR under this Agreement, Service Provider shall continue to be DIR's sole point of contact with respect to this Agreement, including with respect to payment. The person or Entity to which such rights are assigned, transferred, pledged, hypothecated or otherwise encumbered shall not be considered a third party beneficiary under this Agreement and shall not have any rights or causes of action against DIR.

21.21 Hiring of Employees.

- (a) **Solicitation and Hiring.** Except as expressly set forth herein, during the Term and for a period of twelve (12) months thereafter, Service Provider shall not directly or indirectly recruit for employment in a position involved in the performance of Service Provider's obligations under this Agreement, any employees of DIR or a DIR Customer or individual DIR Contractors without the prior approval of DIR. Except as expressly set forth herein, including, without limitation, in connection with the expiration or any termination of this Agreement, during the Term and for a period of twelve (12) months thereafter, DIR shall not solicit for employment, directly or indirectly any employee of Service Provider involved in the performance of Service Provider's obligations under this Agreement without the prior consent of Service Provider. In each case, the prohibition on solicitation and hiring shall extend ninety (90) days after the termination of the employee's employment or, in the case of Service Provider employees, the cessation of his or her involvement in the performance of Services under this Agreement. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.
- (b) **Publications.** Neither the publication of classified advertisements in newspapers, periodicals, Internet bulletin boards, or other publications of general availability or circulation nor the consideration and hiring of persons responding to such advertisements shall be deemed a breach of this **Section 21.21**, unless the advertisement and solicitation is undertaken as a means to circumvent or conceal a violation of this provision and/or the hiring party acts with knowledge of this hiring prohibition.

21.22 Further Assurances.

Each Party covenants and agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each Party shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

21.23 Liens.

Service Provider shall not file, or by its action or inaction permit, any liens to be filed on or against property or realty of DIR or any DIR Customer. In the event that any such liens arise as a result of Service Provider's action or inaction, Service Provider shall obtain a bond to fully satisfy such liens or otherwise

remove such liens at its sole cost and expense within ten (10) Business Days. If Service Provider fails to do so, DIR may, in its sole discretion, pay the amount of such lien, and/or deduct such amounts from payments due to the Service Provider.

21.24 Covenant of Good Faith.

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

21.25 Acknowledgment.

The Parties each acknowledge that the terms and conditions of this Agreement have been the subject of active and complete negotiations, and that such terms and conditions should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

21.26 References.

Unless otherwise directed by DIR, Service Provider shall regularly use DIR as a reference for all prospective Service Provider customers interested in purchasing services that include the same or substantially similar services to the Services. The Parties anticipate that, unless otherwise directed by DIR, Service Provider shall use DIR as a reference for all major state and local sector efforts within the United States and not less than one major non-state and local sector pursuit per year. Notwithstanding **Section 13.1**, but subject to appropriate confidentiality arrangements and applicable Law, Service Provider acknowledges and agrees that DIR may freely discuss all aspects of Service Provider's performance and DIR's satisfaction with such performance with prospective Service Provider customers. Service Provider shall provide such prospective Service Provider customers with appropriate DIR contact information.

21.27 Guaranty

As a material condition to the effectiveness of this Agreement, Service Provider shall cause to be executed and deliver to DIR the guaranty set forth in **Exhibit 28**.

Authority to Execute.

IN WITNESS WHEREOF, the Parties have executed this Master 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

ACS State & Local Solutions, Inc.

[Signature on File]

[Signature on File]

Karen Robinson
Executive Director

[December 30, 2011]

[December 30, 2011]

Date

Date

[on file]

Legal