

**Appendix D-3 to DIR Contract No. DIR-TEX-AN-NG-CSA-ICXXX
CUSTOMER SERVICES AGREEMENT
TEXAS DEPARTMENT OF INFORMATION RESOURCES
INTERNET TERMS AND CONDITIONS**

SIGNATURE PAGE

NOTICE INFORMATION:

All written notices provided pursuant to the Agreement shall be sent to the following:

To Qwest:	Qwest Communications Company, LLC 1801 California Street, Suite 900 Denver, Colorado 80202 Facsimile #: (888) 778-0054 Attention: Legal Department	To End User:	_____ _____ _____ Facsimile #: _____ Attention: _____
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1. Parties; Definitions. This Agreement is made by and between Qwest Communications Company, LLC (“Qwest”), the Department of Information Resources (DIR) and the End User identified on the signature page of this Agreement (“End User”). Capitalized terms used herein are defined herein. The provision of Service under this Customer Services Agreement is available only to qualified End Users. End User represents that it is an End User (as defined in Section 10 below).

2. Services. Qwest will provide the Services in accordance with the DIR Contract No. DIR-TEX-AN-NG-CTSA-004 (“Master Service Agreement”), this Customer Services Agreement and the applicable SLA referenced herein. The Service is comprised of the following service components and features, and will vary depending upon the dedicated Internet access port (“DIA Port”) that End User orders: (i) a dedicated, high-speed network connection to the Internet from the Qwest point of presence (“POP”) to the Qwest domestic U.S. Internet Protocol (“IP”) network; and (ii) routing services, based upon the Transmission Control Protocol/Internet Protocol (“TCP/IP”). The specific bandwidth and, therefore, the speed or rate at which End User may transmit and receive data via its Internet connection will vary depending upon the DIA capacity that End User orders. The Service provided hereunder is subject to the Network SLA, which is effective as of the first day of the second month after initial installation of Services. The rates and additional terms for the Service are set forth in the Master Service Agreement. By its signature above, End User specifically authorizes Qwest to provide the DIR its invoices, billing invoices and other customer proprietary network information, as requested by DIR.

3. Billing. Billing will be in accordance with Section 4 of Exhibit H-2 of DIR-TEX-AN-NG-CSA-ICXXX. DIR shall bill End User at the applicable Effective Rates set forth in Exhibit C-1 of the Master Services Agreement. End User shall pay in full the invoices or interagency voucher received from DIR in accordance with Section 6.1, Exhibit H-2 of the DIR-TEX-AN-NG-CSA-ICXXX. Section 771.008, Government Code, applies to interagency payments under this User Agreement. The parties expressly agree that Chapter 2251, Government Code, will be used to govern payments and disputes for political subdivision – End Users. End Users acknowledge and agree that DIR shall retain a portion of funds received for its costs. In accordance with Chapter 2251, Government Code, DIR shall pay invoices calculated at the Rates to DIR set forth in Exhibit C-1 to the Master Services Agreement. Qwest will rely solely on the DIR for payments of sums due it under this Customer Service Agreement. Except as expressly set forth in this EUSA, DIR is not responsible for End Users’ performance or failure to perform under this Agreement. Neither Vendor nor End User shall look to DIR to enforce any provision of this Agreement except as related to the billing duties set forth herein. Should DIR become an End User, it shall be responsible for its performance of the applicable End User covenants in the Agreement.

4. Term. The Term shall commence upon the Effective Date of the User Agreement and conclude upon the expiration or termination of the last-to-expire (or terminate) DIA Port.

5. Ordering. To order Service, Customer must work with Qwest provisioning to complete the Qwest electronic order confirmation process (Architecture Confirmation Document) necessary to deliver service that Customer and Qwest mutually agree to prior to submitting an order for Ports. The Architecture Confirmation Document (“ACD”) must be approved by Qwest and sent via e-mail or fax to a Qwest Order Entry Engineering Center (“OEC”) representative in order to obtain Service hereunder. Qwest shall be obligated to provide the Service only after such ACD is accepted by Qwest. Customer specifically agrees that all orders submitted to Qwest by Customer during the Term of the Agreement shall be governed by the rates, terms and conditions set forth in the Master Services Agreement. Qwest reserves the right to reject any ACD in its reasonable discretion.

6. End User Obligations. All use of the Services and Qwest’s network shall comply with the AUP, which is made a part of this User Agreement. Qwest reserves the right to amend the AUP effective upon posting to the web site or other notice to End User. To the extent allowed under applicable law, End User Agrees to defend, indemnify and hold harmless Qwest, its affiliates, and contractors

from any and all third party claims, liabilities, costs and expenses, including reasonable attorneys' fees, arising from or related to its use, resale or modification of the Services, including any violation of the AUP. End User assumes total responsibility for its use of the Services and the Internet. Except as expressly set forth in this Customer Services Agreement, the DIR is not responsible for End Users' performance or failure to perform under this Customer Services Agreement. Neither Qwest nor End User shall look to DIR to enforce any provision of this Customer Services Agreement except as related to the billing and payment duties set forth herein.

7. Termination.

- a. Qwest may (a) immediately suspend all or any part of the Services, and/or (b) terminate this Customer Services Agreement (effective after the applicable notice period): (i) for Cause, (ii) the filing of a petition in bankruptcy by or against End User; or (iii) in the event of any violation of the AUP. End User may terminate: (a) this Customer Services Agreement for Cause (other than for any Service related claims, which shall be governed by the remedies set forth in the SLA); (b) a Service Exhibit in accordance with its terms; or (c) if Cause exists to terminate all or substantially all of the Order Forms, then End User may terminate the Customer Services Agreement in its entirety. If End User terminates this Customer Services Agreement for Cause prior to the conclusion of the Term, then End User shall remain liable for charges accrued but unpaid as of the termination date. If this Agreement is terminated prior to the conclusion of the Term, either: (a) by End User for any reason other than Cause; or (b) by Qwest pursuant to this Section, then End User shall pay for all accrued and unpaid charges for Services provided through the effective date of such termination.
- b. End Users may terminate this Customer Services Agreement in accordance with Exhibit H, Section 9 of the DIR-TEX-AN-NG-CSA-ICXXX.

8. Master Agreement. Except as specifically provided in this Customer Services Agreement, all non-conflicting provisions of the Master Services Agreement apply to this Customer Services Agreement.

9. Definitions.

"AUP" means Qwest's Acceptable Use Policy which is posted on Qwest's website at <http://www.qwest.com/legal/>.

"Cause" means the failure of a party to perform a material obligation under this Customer Services Agreement which failure is not remedied, if curable, upon thirty (30) calendar days written notice.

The parties agree that End User's and DIR's ability to comply with this definition of "Confidential Information" and any provision in which it appears is subject to their superior duty to conform with the requirements of the Texas Public Information Act. With that limitation stated, the parties define the term as follows: "Confidential Information" means written or electronic information that is either: (a) marked as confidential and/or proprietary, or which is accompanied by written notice that such information is confidential/proprietary, or (b) not marked or accompanied by notice that is confidential/proprietary, but which, if disclosed to any third party, could reasonably and foreseeably cause competitive harm to the owner of such information. Confidential Information shall not include information which, as demonstrated by the receiving party: (a) is in the public domain or otherwise ceases to be secret or confidential through no breach of this Agreement by the receiving party; (b) is already known or is independently developed by the receiving party independent of any disclosure by the disclosing party; or (c) is revealed to recipient by a third party who does not thereby breach any obligation of confidentiality and who discloses such Information in good faith.

"CPE" means customer equipment, software and/or other materials used in connection with the Services.

"End User(s)" means any Texas State agency as defined in §2151.002(2), Texas Government Code (including institutions of higher education as defined in Texas Education Code §61.003, except a public junior college), State agencies purchasing through this contract by an Interagency Contract, as authorized by Chapter 771, Texas Government Code, political subdivision as defined in §2170.004(4), Texas Government Code and certain private institutions of higher education as described in Section §2170.004(5), Texas Government Code and assistance organizations as described in Section §2170.004(b), Texas Government Code.

"Force Majeure Event" is defined in Exhibit A of DIR Contract No. DIR-TEX-AN-NG-CTS-004.

"MRC" means a monthly recurring charge as set forth in an Exhibit or an Order Form with respect to the Services.

"NRC" means a one-time non-recurring charge as set forth in an Exhibit or an Order Form with respect to the Services.

"Order Form" means Service order request forms issued by Qwest, as amended from time to time.

"Services" means the DIA services provided by Qwest and/or its affiliates, subcontractors and vendors pursuant to the Service Exhibit attached hereto.

"SLA" and "Network SLA" mean the general network service level agreement applicable to the Service(s) ordered hereunder, as such SLA is set forth in [in Attachment D-1](#) to Exhibit D of the DIR Contract No. DIR-TEX-AN-NG-CTSA-004.