TEX-AN NG
Communications Technology Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

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TEX-AN NG
Communications Technology Services Agreement

This TEX-AN NG Communications Technology Services Agreement is entered into by and between the State of Texas, acting by and through the Texas Department of Information Resources ("DIR"), with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Level 3 Communications, LLC. ("Vendor"), with a principal place of business at 1025 Eldorado Blvd., Broomfield, CO 80021.

Preamble.

WHEREAS, in accordance with the laws of the State, DIR issued the Request for Offers for TEX-AN Next Generation (TEX-AN NG) on the Texas Comptroller of Public Accounts' Electronic State Business Daily Website, RFO number DIR–TEX-AN NG–001 (the RFO);

WHEREAS, in response to the RFO, Vendor submitted Vendor's Response, dated September 8, 2010, as revised, amended and supplemented thereafter (the "Response") and Vendor submitted Best and Final Offer (BAFO) response dated January 7, 2011;

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

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

Article 1. Introduction.

Section 1.1 Provision, Performance and Management by Vendor.

DIR desires that certain Communications Technology Services procured in accordance with state law (pursuant to Chapter 2170, Texas Government Code) be provided, performed and managed by Vendor as and to the extent described in this CTSA. Vendor has carefully reviewed DIR's requirements, has performed all due diligence it deems necessary, and desires to deploy, perform and manage such communications technology Services for DIR, the Customers, Authorized End Users and, as required, other TEX-AN NG Vendors and TEX-AN 2000 Providers .

Section 1.2 Vendor's Experience and Qualifications.

The Vendor represents and warrants that it is an established provider of communications technology Services as awarded under this CTSA and has the skills, qualifications, expertise, financial resources and experience necessary to provide the communications technology Services, plans, reports and other deliverables described in this CTSA.

Section 1.3 Definitions.

Except as otherwise expressly provided in this CTSA, all capitalized terms (including derivatives of such terms) used in this CTSA shall have the meanings ascribed to them in *Exhibit A Definitions*; provided however, that any such defined terms, if not capitalized herein, shall have the same meaning as the defined term unless the context or industry usage require a different meaning. Words having well-known technical or trade meanings shall be accorded such meaning, unless expressly defined otherwise herein. Uncapitalized terms or phrases are to be given their usual meaning.

Article 2. Contract Documents.

Section 2.1 Definition.

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

Section 2.2 Compliance with Procurement Laws.

This CTSA is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR–TEX-AN NG–001, on August 11, 2010, for TEX-AN Next Generation Communications Technology Services. DIR subsequently issued a Best and Final Offer (BAFO) opportunity dated December 13, 2010. Vendor responded to both opportunities and DIR and Vendor have engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this CTSA. Upon execution of all CTSAs arising from the RFO, a notice of award for RFO DIR–TEX-AN NG–001 shall be posted by DIR on the Electronic State Business Daily.

Section 2.3 Order of Precedence.

In the event of any conflict or contradiction between or among the TEX-AN NG Communications Technology Services Agreement elements, the documents will control in the following order of precedence:

(a) The CTSA (this document), and all amendments thereto,

(b) *Exhibit A Definitions* to the CTSA, and all amendments thereto,

(c) *Exhibit B Terms and Conditions* to the CTSA, and all amendments thereto,

(d) All other Exhibits to the CTSA, and all amendments thereto,

(e) Attachments to the CTSA, and all amendments thereto,

(f) Appendices to the CTSA, and all amendments thereto;

(g) Vendor's Response to BAFO, dated January 7, 2011, and incorporated by reference herein.

(h) The Vendor's Initial Response to the RFO, dated September 8, 2010, and incorporated by reference herein.

(i) The RFO Number DIR–TEX-AN NG–001, as amended and clarified by the Vendor questions and the DIR official responses, and incorporated by reference herein.

Article 3. Term.

Section 3.1 Initial Term.

The initial Term of this CTSA shall commence as of 12:00:01 a.m., Central Time on the Effective Date and continue until 11:59:59 p.m., Central Time, on _08/24/2011____, unless this Contract is terminated earlier as provided herein, in which case the initial Term of this Contract shall end at 11:59:59 p.m., Central Time, on the effective date of such termination.

Section 3.2 Extension(s).

By giving written notice to Vendor no less than 90 days prior to the expiration date of the initial Term or the then-current Renewal Term, DIR, upon mutual agreement of the Parties, shall have the right to extend the Term of the CTSA for up to five years from the expiration of the initial Term, in any combination of months or years as necessary to complete the purpose of this Procurement. Upon mutual agreement, DIR may extend the CTSA more than once up to a total of an additional five year period (each a Renewal Term). The exact period(s) of the extension(s) shall be specified in the DIR notice of extension. The total period of time during which the CTSA is in effect is the Term.

Article 4. Relationship among DIR, Vendor, other TEX-AN NG Vendors, Authorized End Users and Customers.

Section 4.1 DIR as Vendor's Customer.

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

Vendor agrees to process all DIR orders for Services available under the CTSA through the CTSA.

Section 4.2 Direct sales transaction Customers for Vendor.

If Vendor is awarded any of the following Services: Local Services and/or SOHO Internet Connectivity Services under this CTSA (direct sales transactions), then Vendor shall receive Purchase Orders for such Services from the direct sales transaction Customer(s). Vendor shall bill direct sales transaction Customers such Services at the Prices allowed by this Contract that includes the DIR Cost Recovery Fee (CRF). Vendor shall remit the associated CRF to DIR on a monthly basis. Vendor shall also be responsible for sales reports and other administrative duties associated with providing these Services to the direct sales transaction Customers. See *Appendix B, Terms and Conditions, Section 9.15, Reporting of direct sales transactions and payment of CRF.*

Vendor agrees to process all direct sales transaction Customer orders for Services available under the CTSA through the CTSA.

Section 4.3 Customers as Authorized End Users of Vendor's Services.

As specified in Section 2170.004, Texas Government Code, certain Texas governmental and non-governmental entities are authorized to use the telecommunications services for which DIR contracts. For DIR's purposes, these entities are Customers. From the Vendor's perspective, these entities are "Authorized End Users," whether as organizations or persons employed by such organizations. When ordering certain Services from Vendor, the Customer may enter into a certain TEX-AN NG Customer Services Agreement, with DIR and Vendor, which sets forth the terms and conditions for the deployment, acceptance and delivery of such certain Services by Vendor to such Customer. Under each TEX-AN NG Customer Services Agreement, DIR shall be the billing agent on behalf of Vendor to receive payment for the Services from the Customer. DIR shall ensure that Customers commit funds for payment of Services by issuing Purchase Orders to DIR. The minimally acceptable terms and conditions of the TEX-AN NG Customer Services Agreement are attached as *Exhibit H, Attachments H-1 and H-2*.

Section 4.4 Nondiscrimination between and among TEXAN NG Vendors.

An award from the RFO is not exclusive to the Vendor. Vendor acknowledges that DIR intends to award or has awarded multiple contracts for Services out of the RFO. Vendor further acknowledges that some of the Services Provided by Vendor hereunder may also be provided by Other TEX-AN NG Vendors. Finally, Vendor acknowledges that Vendor may have a dependency on Other TEX-AN NG Vendors in order to serve a particular Customer. Therefore, Vendor warrants and covenants , for itself and its Subcontractors, it shall not discriminate against another TEX-AN NG Vendor in the deployment and delivery of any Service in any manner to DIR, an Authorized End User and/or any Customer, or otherwise cause any disruption to Services as deployed and delivered to DIR, Authorized End Users and/or Customers by any Other TEX-AN NG Vendor.

Section 4.5 Covenant of cooperation among all.

Vendor shall fully cooperate with all Other TEX-AN NG Vendors in fulfilling the terms of this CTSA and/or TEX-AN NG Customer Services Agreement with DIR and Authorized End Users and/or Customers. DIR shall ensure that all agreements executed with Other TEX-AN NG Vendors pursuant to the Procurement shall obligate such Other TEX-AN NG Vendors to fulfill the requirements that are imposed on Vendor in this Section 4.5. Vendor acknowledges that this covenant is material to DIR and that failure to maintain such cooperation shall constitute a Material Breach.

Section 4.6 Special covenant to cooperate with DIR on Internal Business Process Improvements.

DIR is currently developing internal systems to support its Service delivery processes (quote to care), including the BMC Remedy OnDemand application version 7.6.03. All TEX-AN NG Vendors shall interface with internal service delivery systems once implemented. DIR intends to implement systems based on applications and interfaces that consist of generally accepted data and formats. Vendor shall provide timely, complete and commercially reasonable cooperation in implementation and use of the DIR adopted systems at no additional cost to DIR or the Customers. As of the Effective Date, the BMC Remedy OnDemand application includes Service Request Management (Service Ordering), Asset Management, Performance and Service Level Management, Incident Management (Help Desk/Trouble Tickets), Problem Management, Change Management, and Knowledge Management. Other systems in development to support Tex-AN-NG include DIR Enterprise Billing and Customer Relationship Management (CRM). As of the Effective Date, DIR and Vendor have agreed to the following formats and data to include detailed data for quotes, orders, trouble tickets, billing, Service Level Agreements and network monitoring and formats to include email, delimited flat files and web services XML. DIR will

provide reasonable written notice to Vendor as these systems become available for Vendor's use. If Vendor is unable to implement and use the DIR adopted systems, DIR reserves the right to terminate the CTSA. Vendor shall promptly notify DIR if it encounters an unforeseen challenge to implementing the BMC Remedy OnDemand application as described above. DIR agrees to negotiate in good faith to resolve the Vendor's challenge, reserving the right to terminate the CTSA if no resolution is apparent within 30 days of notification of the challenge.

Article 5. Awarded Services.

Section 5.1 Description.

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

Section 5.2 Rates, Prices and telecommunications fees and surcharges.

(a) The Rates for the Services as set forth in *Exhibit C* to the CTSA are the Rates To DIR, with the exception of the Prices for direct sales transactions – Local Services and/or SOHO Internet connectivity Services – for which Vendor shall directly bill the Customers at the Prices as set forth in *Exhibit C*. For all other Services in use, Vendors shall present a Monthly Consolidated Invoice to DIR based on the Rates To DIR. In its role as billing agent for Vendor, DIR shall bill to Authorized End Users and Customers the Rates To DIR, plus an additional percentage as DIR's Cost Recovery Fee (CRF), as authorized by Chapter 2170, Texas Government Code. Vendor acknowledges and agrees that DIR shall retain its CRF from the amounts it collects from Authorized End Users and Customers, prior to paying the net amount to Vendor.

(b) If the Vendor is awarded Local Services and /or SOHO Internet Connectivity Services, *Exhibit C* also contains the Prices to direct sales transaction Customers for these Services, which include the Vendor's Rate plus the CRF. Vendor shall bill the direct sales transaction Customers for the Price as defined above and shall remit the CRF to DIR on a monthly basis. Vendor shall provide DIR with monthly direct sales transaction Reports.

(c) *Exhibit C* also lists for each awarded Service, all applicable telecommunications fees and/or surcharges that are required to be assessed by Vendor against Customers by federal or state law. DIR shall include the listed telecommunications fees and surcharges on bills to Customers and Customers shall be responsible for paying such telecommunications fees and surcharges in full. If applicable to the direct sales transactions, Vendor shall include the telecommunications fees and surcharges on its bills to the direct sales transaction Customers, and the direct sales transaction Customers shall be responsible for paying such telecommunications fees and surcharges in full. No telecommunications fees and surcharges that are not set forth in *Exhibit C* may appear on bills to DIR or Customers.

Section 5.3 Cost Recovery Fees.

DIR's TEX-AN NG program is a cost recovery program. DIR, in its discretion, formulates CRFs per Service designed to fulfill its program needs, as authorized in Chapter 2170, Texas Government Code. Such CRFs may change over time and DIR will provide Vendor with 30 days advance notice of a change in the CRFs. With the exception of direct sales transactions, DIR shall bill for such CRFs and collect same from the Authorized End Users and Customers. Changes to the direct sales transaction CRFs will be made exclusively

through the contract amendment process, each such amendment to be effective from and after the CRF Amendment Effective Date. For direct sales transaction CRF changes, Vendor shall implement, charge and remit to DIR on a going forward basis the new effective CRF in 2 billing periods from CRF Amendment Effective Date. Vendor hereby consents to the assessment of the CRFs on its Rates To DIR. Vendor acknowledges that DIR is its billing agent for all Services other than the direct sales transaction Services. Vendor consents to DIR retaining the CRF portion of receipts received from Customers and consents to receiving the net proceeds as payment in full for its non-direct sales transaction Services sold hereunder. Such payment shall be made as long as the net amount received by Vendor is equal to the undisputed billed amount. For the direct sales transaction Services, Vendor shall include the applicable direct sales transaction CRF, as a component of its Price, in its bills to the direct sales transaction Customers and shall remit the direct sales transaction CRF to DIR on a monthly basis. See *Exhibit B, Terms and Conditions, Section 9.15, Reporting of direct sales transactions and payment of CRF.*

Section 5.4 Authorized Changes to Rates To DIR and Prices.

Vendor may propose changes to the Rates to DIR and/or the Prices for direct sales transactions by offering to lower the amounts set forth in *Exhibit C*. Vendor must identify the Service and the specific Rate(s) or Price to be lowered. DIR shall have a reasonable time to review and determine, in its sole and absolute discretion, that the changed value in either the Rate To DIR or the resulting Price for direct sales transaction Services to the Customer is a best value. If DIR approves the change in the Rate to DIR and or Price, the Parties shall agree to the manner of documenting the new Rate and/or Price. The Parties agree to make such new Rates to DIR and/or Prices available to Customers as quickly as possible. Vendor initiated Point of Presence location changes that have an adverse effect on Rates to DIR and/or Prices to direct sales transaction Customers must be authorized by an amendment to the CTSA before the new Rates to DIR and/or Prices to direct sales transaction Customers may be billed. During the Term, DIR may transition its amendment process to a fully automated system. Vendor shall cooperate with DIR to transition its change process for Rates To DIR and/or Prices to a new automated system . The Parties shall mutually agree to an amendment process.

Article 6. Notices.

(a) Delivery of notice.

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

(1) Three (3) Business Days after the date of mailing if sent by certified U.S. mail, postage prepaid, with return receipt requested;

(2) When transmitted if sent by electronic transmission, with a confirmation of transmission; or

(3) When delivered if delivered personally or sent by express courier service.

(b) Notice.

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

(1) Communications that are routine and administrative in nature should be sent to the Contract Managers.

(2) All other notices and communications should be sent to the following:

If to Vendor: Level 3 Communications, LLC.

1025 Eldorado Blvd.
Broomfield, CO 80021

With a copy to: (LEGAL NOTICE)
Fax: (720) 567-1943
Attn: General Counsel

If to DIR: Director,
Communications Technology Services Division

With a copy to: Attorney, Communications Technology Services Division
Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Facsimile: (512) 475-4759

(c) Change of Designee.

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

Article 7. Contract Amendments.

Section 7.1 Business Plan.

This Section represents the Parties' business plan for negotiating amendments and modifications to the CTSA, as required by *Article 7, Exhibit B Terms and Conditions*.

Section 7.2 Vendor Proposed Changes to Exhibit C.

The Vendor may propose changes in the contents of *Exhibit C* for Services of this CTSA. See *Article 7, Exhibit B Terms and Conditions*.

Section 7.3 All Other Changes.

All other modifications to the CTSA must be accomplished through a formal written amendment executed by an authorized representative of DIR and Vendor. DIR and Vendor reserve the right to require periodic update of the *Terms and Conditions,* of the CTSA and all relevant documents associated therewith, to maintain alignment with new and changed legislation, legal requirements, rules and regulatory requirements relevant to the performance by Vendor of this CTSA.

Section 7.4 Mutual Covenant of Cooperation.

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

Article 8. Miscellaneous.

Section 8.1 Integration.

This CTSA, together with any documents and exhibits specifically referred to herein, constitute the entire agreement with respect to the subject matter hereof between the Parties. On execution of this CTSA, all prior agreements and understandings between the Parties relating to the subject matter hereof shall be null and void. The Parties specifically acknowledge that there are no unwritten side agreements or oral agreements

between them which alter, amend, modify or supplement this CTSA as of the Effective Date.

Section 8.2 Counterparts.

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

Authority to Execute.

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

Department of Information Resources	**Level 3 Communications, LLC. (Vendor)**
_Signature on File_____	_Signature on File_____
_Karen Robinson_____	_Michael Mooney_____
_Executive Director_____	_S.V.P._____
_DIR_____	_____
_08/24/2011_____	_08/23/2011_____
Date	Date
_Signature on File_____	
Office of General Counsel	

TEX-AN NG
Communications Technology Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

Exhibit A.
Definitions

Exhibit A. Definitions

Contents of *Exhibit A Definitions* follow:

Article 1. Introduction..... A-3
Article 2. Definitions..... A-3

Article 1. Introduction.

The purpose of *Exhibit A Definitions* is to define certain terms used for the CTSA. DIR does not warrant the completeness or accuracy of the contents.

Article 2. Definitions.

1. **Accept** – Agreement from DIR and/or its Custoemr(s) that Service installations, moves, changes or other actions have been successfully completed.
2. **Adjustment** – Has the meaning set forth in *xhhibit B, Terms and Conditions, Section 9.08, Billing Adjustments.*
3. **Affiliate** – (i) Any person or entity directly or indirectly owning, controlling or holding, with power to vote, fifty percent (50%) or more of the outstanding voting securities of Vendor; (ii) any person or entity for which fifty percent (50%) or more of the outstanding voting securities are directly or indirectly owned, controlled or held, with power to vote by Vendor; or (iii) any person, or entity directly or indirectly controlling, controlled by, or under common control with, Vendor.
4. **Article** – A numbered portion of the text of the CTSA.
5. **Assignee** – An individual or organization that receives an assignment of all or part of the interests of one of the Party's to the CTSA, and that undertakes to assume the responsibilities of that original Party.
6. **Attachment** – A form or document appended to an Exhibit to the CTSA.
7. **Authorized End Users** – Individuals or organizations that are eligible to use the Services by statute, also known as **Customers.**
8. **Best and Final Offer or BAFO** – An optional step in this Procurement in which DIR seeks from selected Vendors refinement of their Responses in designated areas. This process may be repeated more than once.
9. **Billing Plan** – A plan initially submitted with Vendor's Response demonstrating compliance with the RFO for billing matters. The final Billing Plan, as agreed upon by the Parties is attached to the CTSA as *Attachment F-17 Billing Plan*.
10. **Business** – A person, partnership, corporation, or other entity engaged in commerce, manufacturing, or a service.
11. **Business Day** – Monday through Friday, excluding State holidays, 7:00 a.m. to 6:00 p.m. local time. State holidays will include all holidays with the status "All Agencies closed." State holidays will not include State optional holidays or holidays that require skeleton crews. If the CTSA calls for performance on a day that is not a Business Day, then performance is intended to occur on the next Business Day.
12. **Cause** – The conditions described in *Exhibit B Terms and Conditions, Section 11.03(d) Termination for cause*.
13. **Comptroller of Public Accounts (CPA)** – The State's chief tax collector, accountant, revenue estimator, and treasurer. CPA includes the Texas State Treasury.
14. **Confidential Information** – To the extent consistent with the Texas Public Information Act, any communication or record (whether oral, written, electronically stored, or transmitted, or in any other form) that consists of:
    a. Non-public budget, expense, payment, and other financial information;
    b. Privileged Work Product;

c. Information designated by Vendor, DIR or any other Customer as confidential, including all information designated as confidential under the Texas Public Information Act, Texas Government Code, Chapter 552, or otherwise exempted from public disclosure under such Act;

d. Information that is utilized, developed, received, or maintained by DIR, the Vendor, or Authorized End Users or Customer for the purpose of fulfilling a duty or obligation under this CTSA and/or a TEX-AN NG Customer Services Agreement and that has not been publicly disclosed by the party that developed such information; and

e. Vendor's Proprietary Intellectual Property and related technical and design documentation provided by the Vendor pursuant to this CTSA, excluding user-related materials that have been released by the Vendor to the public.

15. **Consolidated State Network** – Means the consolidated telecommunications system as defined by Section 2170.001(a)(2), Texas Government Code, as the network of telecommunications services serving the state government. This Consolidated State Network is composed of DIR, Customer and Vendor Network segments as defined herein.

16. **Contract Anniversary Date** – Period commencing on the Effective Date and ending one year later and for each year in the Term thereafter.

17. **Contract Manager** – For each Party, the individual assigned the duty to be the primary point of contact for CTSA administrative matters.

18. **Corrective Action Plan** – Has the meaning assigned in *Section 11.02 (c),Tailored Remedies, Exhibit B, Terms and Conditions.*

19. **Cost Recovery Fee (CRF)** – A fee assessed on the Rates To DIR for each Service, billed to and collected from Customers, which is designed to recover the costs incurred by DIR in operation of the TEX-AN NG Program. For direct sales transactions, Vendor includes the CRF in its Price to the direct sales transaction Customers and remits the CRF to DIR on a monthly basis. The CRF is authorized by Chapter 2170, Texas Government Code.

20. **Credits** – Monetary assessments against amounts owed Vendor as a remedy for billing Adjustments and /or Deficiencies,, as more particularly described in *Exhibit D Performance Management*.

21. **CRF Amendment Effective Date** – The date on which a contract amendment which changes the direct sales transaction CRF is to be effective, as more particularly described in *Section 5.3, Exhibit B* to the CTSA.

22. **Customer** – Any eligible purchaser of Services. Customers are defined in accordance with Section 2170.004, Texas Government Code. Customers for telecommunications services include state agencies as defined in Section 2151.002, Texas Government Code, each house of the legislature, a legislative agency, an agency that is not a state agency as defined in Section 2151.002, Texas Government Code; a political subdivision, including a county, municipality, or district; a private institution of higher education accredited by a recognized accreditation agency as defined by Section 61.003, Education Code, that: A) engages in distance learning, as defined by Section 57.021, Utilities Code; and B) receives federal funds for distance learning initiatives; and assistance organizations, as defined in Section 2175.001, Texas Government Code. A customer for the receipt of Services also may include those state agencies purchasing from a DIR contract through an Interagency Agreement as authorized by Chapter 771, Texas Government Code and any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code.

23. **Customer Network** – Customer networks are built and maintained by the Customer. Customer Networks may or may not connect to the DIR Network or a Vendor Network, depending upon whether the Customer needs access to Services provided by the DIR Network or a Vendor Network. Network to network demarcation points are determined on a case by case basis depending upon type of Service.

24. **Deficiency** – Any failure of Vendor to provide the Services or to otherwise perform or comply with its duties under this CTSA, including any specific areas of Vendor performance that fail to meet performance expectations, standards, SLAs or schedules, and any failure of Vendor to be reasonably responsive to a reasonable request of DIR and/or a Customer for information, assistance, or support relating to the Services within the timeframe mutually agreed to by DIR and/or the Customer, and Vendor.

25. **Deliverable** – A report or item tha must be completed and delivered under the terms of the CTSA or a TEX-AN NG Custoemr Services Agreement. The measurable result or output of a process prepared, developed or procured by Vendor as part of the Services under the CTSA or a TEX-AN NG Cusotomer Services Agreement.

26. **Descriptions** – The description(s) of the awarded Services set forth in *Exhibit C*.

27. **DIR Network** – The DIR Network provides connectivity for primarily state government agencies but also includes educational institutions, political subdivisions and assistance organizations. Customer and Vendor Networks connect to the DIR Network for interconnectivity and for enterprise services such as connectivity to the state data centers and internet service. Network to network demarcation points are determined on a case by case basis depending upon type of Service.

28. **Disentanglement** – The process of winding up all issues in the business relationship between DIR and Vendor in the event of early termination of the CTSA. See *Section 11.06, Payment and other provisons at CTSA termination, Exhibit B, Terms and Conditions.*

29. **Disentanglement Plan** – The plan developed and submitted by Vendor and approved by DIR, in its sole and absolute discretion, to provide for the orderly and efficent winding up of the issues of the business relationship between Vendor and DIR in the event of early termination of the CTSA. See *Section 11.06, Payment and other provisons at CTSA termination, Exhibit B, Terms and Conditions.*

30. **Disentanglement Services** - The services provided by Vendor pursuant to an approved Disentanglement Plan to provide for the orderly and efficient winding up of the issues of the business relationship between Vendor and DIR in the event of early termination of the CTSA. *See Section 11.06, Payment and other provisions at CTSA termination, Exhibit B, Terms and Conditions.*

31. **Disputes** – A billing Dispute is a disagreement over the accuracy of charges in an Invoice either to DIR or a Customer. Other Disputes may be disagreements over actions taken or not taken pursuant to the CTSA or a TEX_AN NG Custoemr Services Agreement, which are subject to the provisions of *Section 11.10 Dispute Resolution* of the CTSA.

32. **Effective Date** – The commencement date for the CTSA, which is the date on which the last Party signs the CTSA.

33. **Electronic State Business Daily** – a web portal operated by the Comptroller of Public Accounts, to which all state agencies must post procurement opportunities, in compliance with Section 2155.083, Texas Government Code.

34. **Equipment** – Computer hardware, routers, telecommunication devices, and the like utilized under this CTSA.

35. **Exhibit** – a document appended to the CTSA as listed in the Table of Contents.

36. **Expiration Date** – 11:59:59 p.m., Central Time, on _August 24_, _2016_, unless the initial Term or the then-current Renewal Term, is extended in accordance with the CTSA, in which case the Expiration Date shall be 11:59:59 p.m., Central Time on the last day of such extension(s).

37. **FCC** – the Federal Communication Commission, with regulatory authority over the telecommunications industry, including certain telecommunications carriers.

38. **Force Majeure Event** – an event experienced by a Party that is within the scope of the CTSA clause found at *Exhibit B, Section 3.03.*

39. **Government Entity or Entities** – A subset of Customers that includes all publicly owned entities, such as State agencies, institutions of higher education, and local governments.

40. **Independent Verification and Validation contractors** – A third party provider of independent assessment and testing methodologies for quality assurance or performance verification purposes.

41. **Information and Communication Technology (ICT) Contracts Program** – A streamlined cooperative purchasing program for state, local, public education, and other public entities within and outside the State of Texas, administered by the Contracting & Procurement Services Division of DIR.

42. **Intellectual Property** – Any trademarks, patents, inventions, copyrights, trade secrets, or domain names created prior to, on, or after the Effective Date.

43. **Invoice** – Depending on the context in which used, may mean the Monthly Consolidated Invoice issued by Vendor to DIR, or an Invoice issued to a direct sales transaction Customer for direct sales transaction Services, including Internet Service for non-state agencies, Local Services and SOHO. In the proper context, Invoice may refer to both types of Invoices.

44. **Key Personnel** – All individuals identified by Vendor in *Attachment F-7 Service Delivery Implementation Plan* as Key Personnel will be considered Key Personnel.

45. **Local Services** – A type of Service as specified in Section 3 of the RFO, which may be directly sold to Customers by Vendor as set forth in *Article 4* of the CTSA, if awarded to Vendor under this CTSA.

46. **Marketing Plan** – A plan initially submitted with Vendor's Response to demonstrate Vendor's resources and activities to promote the CTSA and gain Customers. The Marketing Plan, as approved by DIR, in its sole and absolute discretion, is attached to the CTSA as *Attachment F-8.*

47. **Material Breach** – Substantial failure in the performance of a material term of the contract.

48. **Monthly Consolidated Invoice** – A formal, single statement of charges provided by Vendor to DIR, which includes the Invoice file, Detailed Billing File, Adjustment file and monthly informational memorandum for all Services provided by Vendor.

49. **Monthly Statement** – A revised summary of all DIR accounts with detailed adjustments for each account provided by Vendor after resolution of disputes.

50. **Parties** – Has the meaning given in the Preamble to CTSA.

51. **Party** – Has the meaning given in the Preamble to the CTSA and in the introduction to the TEX-AN NG Customer Services Agreement, *Exhibit H* to the CTSA.

52. **Prices** – Are the values for direct sales transaction Services as reflected in *Exhibit C* to the CTSA, which Vendor is allowed to directly bill to Customers and are composed of the Vendor's Rate to DIR plus the CRF.

53. **Privileged Work Product** – Work product considered privileged from discovery/disclosure under the Texas Rules of Civil Procedure, Texas Rules of Evidence, Federal Rules of Civil Procedure or Federal Rules of Evidence.
54. **Procurement** – The TEX-AN NG Program established by DIR in the RFO to select Vendors for the provision of Services.
55. **Project** – A transaction that requires special treatment by the Vendor due to size, complexity or importance of the Services ordered.
56. **Public information** – Information that meets the following two conditions:
    a. is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body; and
    b. is determined to not be Confidential Information, or exempt from disclosure, under the Texas Public Information Act, Texas Government Code, Chapter 552.
57. **PUC** – The State Public Utility Commission, a state agency with regulatory authority over the telecommunications industry based on Texas law and Federal Law delegated from the FCC.
58. **Purchase Order** – DIR's or Customer's fiscal form or format, which is used when making a purchase of Services (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
59. **Rates To DIR** – Are the monetary values for the Services that Vendor bills to DIR which do not include the CRF, as more particularly described in *Exhibit C* to the CTSA.
60. **Renewal Term(s)** – Has the meaing set forth in *Section 3.2* of the CTSA.
61. **Request for Offer (RFO)** – Has the meaning given in the Preamble to the CTSA.
62. **Response** – Has the meaning given in the Preamble to the CTSA.
63. **Retail** - Means products and service provided by Vendor to end-user customers, as opposed to Wholesale customers like Competitive Local Exchange Carriers (CLECs), Interexchange Carriers (IXCs) or System Integrators (SIs).
64. **Section** – A numbered or lettered portion of the text within an Article of the CTSA.
65. **Services** – The communications technology Services described in Section 3 of the RFO and awarded to Vendor under this CTSA.
66. **Service Level Agreement(s) (SLA(s))** – An agreement(s) between Parties that contains service performance metrics with corresponding service level objectives, which DIR, Authorized End Users and Customers rely on to measure the quality and/or reliability of Services.
67. **Small Office/Home Office (SO/HO) Internet connectivity** – A type of Service as specified in Section 3 of the RFO, which may be directly sold to Customers by Vendor as set forth in *Article 4* of the CTSA, if awarded to Vendor under this CTSA.
68. **Service Order Completion Notice (SOCN)** – Written notice from Vendor that contains data elements notifying DIR and/or the Customer that the Service for a given Order has been fully installed and is ready for Acceptance.
69. **Software** – All operating systems, applications software, and related documentation used by Vendor to provide the Services under this CTSA.
70. **State** – The State of Texas, acting by and through the Department of Information Resources.

71. **Stop Marketing Order** – Has the meaning set forth in *Exhibit B,Terms and Conditions, Section 11.02(c)(5), Tailored Remedies.*
72. **Subcontract** – Any written agreement between Vendor and other party to fulfill the requirements of this TEX-AN NG Communications Technology Services Agreement. All Subcontracts are required to be in writing and signed by the Vendor and Subcontractor.
73. **Subcontractor** – A party to a Subcontract which is not the Vendor.
74. **Subcontractor Compliance Obligations** – Has the meaning set forth in *Exhibit B Terms and Conditions, Section 4.03(c) Subcontractor's compliance.*
75. **Subsection** – A numbered or lettered portion of the text within a Section of the CTSA.
76. **Table of Contents** – The list of Articles, Sections, Exhibits and Attachments to the CTSA found at the beginning of the CTSA.
77. **Term** – The period of time during which the CTSA is in effect between DIR and the Vendor, as more particularly described in *Article 3* of the CTSA.
78. **TEX-AN NG Communications Technology Services Agreement, Contract, or CTSA** – The final version of the contractually binding agreement between the Texas Department of Information Resources and the Vendor awarded pursuant to the RFO, including all Exhibits and Attachments thereto.
79. **TEX-AN NG Communications Technology Services, TEX-AN NG Services or Services** – The specified Services within scope of the DIR–TEX-AN NG–001 RFO and as to the scope of the CTSA, only those Services awarded to Vendor.
80. **TEX-AN NG Customer Services Agreement** – A contractual document containing the terms, conditions, and scope for Services to be deployed and operated under this CTSA, and executed by the Customer, Vendor, and DIR. *Attachments H-1 and H-2* contain the template for the form of TEX-AN NG Customer Services Agreement.
81. **TEX-AN NG Program** – the activities and contracts authorized by Chapter 2170, Texas Government Code, administered by the Department of Information Resources on behalf of the State.
82. **TEX-AN 2000 Agreements** – The agreements for the provision of telecommunications services to DIR and its Customers by that will no longer be needed as of the Effective Date. The individual TEX-AN 2000 Agreements will terminate by their own terms as governed by each such Agreement.
83. **TEX-AN 2000 Providers** – Providers of telecommunications services under the TEX-AN 2000 Agreements.
84. **Texas Ethics Commission** – the state agency responsible for investigation of violations and enforcement of the ethical standards for public officials and employees in accordance with state law.
85. **Thing of Value** – Has the meaning set forth in *Exhibit B, Section 11.03, Termination of the CTSA.*
86. **Third Party Customer -** A person or entity that purchases Services from Vendor other than DIR or a Customer. Third Party Customers would be Vendor's Customers who are not acquiring services under the CTSA.
87. **Transition Assistance Services** – Are only related to the meaning set forth in *Exhibit B, Terms and Conditions, Section 16.04, Transition Assistance Services.*
88. **Transition Effective Date** – Only refers to the meaning set forth in *Exhibit B, Terms and Conditions, Section 16.01, Scope.*

89. **Transition Period** – Only refers to the meaning set forth in *Exhibit B, Terms and Conditions, Section 16.02, General Statement for Transition.*

90. **Transition Plan for Expiration of the CTSA** – The period of time and activities for the transition of TEX-AN NG Services under this CTSA from the Vendor to DIR or a successor service provider designated by DIR at the end of the Term. See *Article 16* of the CTSA.

91. **Vendor** – has the meaning given in the Preamble to the CTSA.

92. **Vendor Network** – A Vendor Network is built and maintained by a Vendor for supporting Customer and DIR Requirements. A Vendor Network provides similar connectivity for Customers as the DIR Network. Vendor Networks also provide access between Customer Networks and the enterprise services on the DIR Network. Network to network demarcation points are determined on a case by case basis depending upon type of Service.

93. **Vendor's Proprietary Software** – all software owned by Vendor or its affiliates and used in providing the Services and all modifications and enhancements to such software.

— End of Exhibit A —

TEX-AN NG
Communications Technology Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

Exhibit B.
Terms and Conditions

Exhibit B. Terms and Conditions

Contents of *Exhibit B Terms and Conditions* follow:

Article 1. Introduction. B-3
Article 2. Availability of Appropriated Funds. B-5
Article 3. General Terms and Conditions. B-5
Article 4. Vendor Personnel Management. B-9
Article 5. Governing Law and Regulations. B-13
Article 6. Service Levels and Performance Measurement. B-14
Article 7. Amendments and modifications. B-14
Article 8. Audit and Financial Compliance. B-15
Article 9. Terms and Conditions of Vendor Billing and DIR and Customer Payment. B-17
Article 10. Disclosure and Confidentiality of Information. B-22
Article 11. Remedies and Disputes. B-25
Article 12. Assurances and Certifications B-36
Article 13. Representations, Warranties and Covenants. B-39
Article 14. Intellectual Property. B-40
Article 15. Liability. B-43
Article 16. Transition Plan for Expiration of the CTSA. B-44
Article 17. End of Contract-Life Assignment. B-49

Article 1. Introduction.

Section 1.01 Inducements.

In executing this CTSA, the Department of Information Resources (DIR) relies on Vendor's representations, warranties and covenants regarding the following:

(1) Vendor, its agents and its Subcontractors, regularly provide the types of Services described in the RFO to other public or private entities;

(2) Vendor, its agents and its Subcontractors, have the skills, qualifications, expertise, financial resources and experience necessary to perform the Services described in the RFO, Vendor's Response, and this CTSA in an efficient, cost-effective manner, with a high degree of quality and responsiveness, and have performed similar Services for other public or private entities;

(3) Vendor has thoroughly reviewed, analyzed, and understood the RFO, has timely raised all questions or objections to the RFO, and has had the opportunity to review and fully understand the DIR's current program, operating environment for the Services, this CTSA and the needs and requirements of DIR, the Customers and the State during the Term of the CTSA;

(4) Vendor has had the opportunity to review and understand the State's stated objectives in entering into this CTSA and, based on such review and understanding, Vendor currently has the capability to perform the Services in accordance with the terms and conditions of this CTSA;

(5) Vendor also has reviewed and understands all of the risks associated with the TEX-AN NG Program as described in the RFO and the CTSA, including the risk of non-appropriation of funds;

(6) Vendor shall at all times be capable of and legally authorized to provide the Services;

(7) The Rates To DIR, Prices and any discounts offered hereunder shall be true and correct.

Accordingly, on the basis of these representations, warranties and covenants, DIR desires to engage Vendor to perform the Services under the terms and conditions set forth in this CTSA and Vendor covenants to perform the Services under the terms and conditions set forth in this CTSA.

Section 1.02 Transition from TEX-AN 2000 Agreements.

Vendor shall use its best efforts to cooperate with all TEX-AN 2000 Providers in ensuring the orderly transition from their provision of services under the applicable TEX-AN 2000 Agreements to Vendor's provision of Services under this CTSA.

Section 1.03 Construction of Agreement.

(a) Scope of Introductory Article.

These provisions are not intended to expand the scope of the Parties' obligations under this CTSA or to alter the plain meaning of the terms and conditions of thisCTSA.

(b) Definitions.

As used in this CTSA, the capitalized terms and conditions not defined in an Exhibit or Attachment will have the meanings assigned in *Exhibit A Definitions*.

(c) Severability.

If any provision of this CTSA is construed to be illegal or invalid, such interpretation will not affect the legality or validity of any other provisions. The illegal or invalid provision will be deemed stricken and deleted to the same extent and effect as if never incorporated in this CTSA, but all other provisions will remain in full force and effect.

(d) Survival of terms.

Termination or expiration of this CTSA for any reason will not release either Party from any liabilities or obligations set forth in this CTSA that:

(1) The Parties have expressly agreed will survive any such termination or expiration; or

(2) Remain to be performed or by their nature continue beyond the termination or expiration of this CTSA, including without limitation, the obligations related to *Confidential Information (Article 10, Exhibit B), Limited Warranty Disclaimers (Section 13.06, Exhibit B), Limitations of Liability (Section 15.03, Exhibit B), and Indemnification (Section 11.11(b), Exhibit B)*.

(e) Headings.

The Article and Section headings in this CTSA are for reference and convenience only and may not be considered in the interpretation of this CTSA.

(f) Global drafting conventions.

(1) The terms “include,” “includes,” and “including” are terms of inclusion, and where used in this CTSA, are deemed to be followed by the words “without limitation.”

(2) Any references to “sections,” “exhibits,” or “attachments” are deemed to be references to sections, exhibits, or attachments to this CTSA.

(3) Any references to agreements, contracts, statutes, or administrative rules or regulations in this CTSA are deemed references to these documents as amended, modified, or supplemented from time to time during the term of this Contract.

Section 1.04 No implied authority.

(a) The authority delegated to Vendor by DIR is limited to the terms of this CTSA. DIR is the State agency designated by the Texas Legislature to administer the TEX-AN NG Program, and no other agency of the State grants Vendor any authority related to this Program. Vendor is required to cooperate to the fullest extent possible to assist DIR in communications and negotiations with all Customers as directed by DIR. Vendor may not rely upon implied authority, and specifically is not delegated authority under this CTSA to:

(1) make public policy;

(2) promulgate, amend or disregard administrative regulations or program policy decisions made by DIR for administration of the TEX-AN NG Program; or

(3) unilaterally communicate or negotiate with any Customer or the Texas Legislature on behalf of DIR regarding the TEX-AN NG Program, except as specifically permitted under this CTSA.

(b) Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State or DIR.

Section 1.05 Legal Authority.

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

Article 2. Availability of Appropriated Funds.

Termination for non-appropriation of funds may be found at *Exhibit B, Section 11.03(c).*

Article 3. General Terms and Conditions.

Section 3.01 Delegation of authority.

Whenever, by any provision of this TEX-AN NG Communications Technology Services 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 Vendor on request.

Section 3.02 No waiver of sovereign immunity.

The Parties expressly agree that no provision of this TEX-AN NG Communications Technology Services 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.

Section 3.03 *Force majeure.*

Except for payment of amounts due, neither Party will be liable for any loss or damage, failure or delay in performing its obligations under this TEX-AN NG Communications Technology Services Agreement if such loss or damage, failure or delay is due to any cause beyond the reasonable control of such Party, including strikes, natural disasters, cable cuts, power blackout, fire, civil disturbance, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, epidemic, war, court order, or acts of God (a *Force Majeure* event). The existence of such causes of delay or failure will extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Each Party must give written Notice within five Business Days of their knowledge of a *Force Majeure* Event.

Section 3.04 More favorable terms.

(a) Vendor shall only charge Rates to DIR and Prices that are no higher in the aggregate than the charges charged by Vendor directly to substantially similar Retail Third Party Customers for the provision of the same or substantially similar Services on substantially similar terms and conditions.

(b) No later than each Contract Anniversary Date, Vendor shall certify to DIR, in writing, that it has been in full compliance with *Section 3.04 (a)* above at all times during the prior 12 month period. Any failure of Vendor to comply with this certification requirement or any certification filed by Vendor that is not true shall constitute a Material Breach. The sole remedy if Vendor has breached *Section 3.04 (a)* above, Vendor shall be obligated to award DIR and /or Customer, as appropriate, Credits on the next appropriate Invoice that are equal to the overcharges paid as a result of any such breach.

(c) DIR shall have the right, in its sole and absolute discretion, to conduct an audit of Vendor's compliance with this *Section 3.04* pursuant to the procedures set forth in *Exhibit B, Section 8.06*.

(d) Vendor represents and warrants that, as of the Effective Date, it shall comply prospectively with this *Section 3.04*.

Section 3.05 Publicity and Trademarks.

(a) Except as provided in Subsection (b) below, Vendor must not use the name of DIR, the State, or any other Customer, or refer to DIR or any such Customers directly or indirectly in any media release, or public announcement, relating to this CTSA or its subject matter, including, in any promotional or marketing materials, customer lists, or business presentations (other than proposals or reports submitted to DIR, a Customer, an administrative agency of the State, or the Federal government.

(b) Vendor may publish, at its sole expense, any media release or public announcement, relating to this CTSA or its subject matter, including, in any promotional or marketing materials, customer lists, business presentations (other than proposals or reports submitted to DIR or a Customer, an administrative agency of the State, or a governmental agency or unit of another State or the Federal government), or results of Vendor performance under this CTSA with DIR's prior review and approval, which DIR may exercise at its sole and absolute discretion. Vendor will provide DIR a copy of any such publication no less than five (5) Business Days prior to public release unless otherwise agreed by the Parties. Vendor will provide additional copies at the request of DIR. Approval of the annual Marketing Plan will constitute approval by DIR for Vendor to publish all materials approved in connection with such Marketing Plan.

(c) Trademarks. Each Party agrees not to display or use, in advertising or otherwise, any of the other Party's trade names, logos, trademarks, service marks, or other indicia of origin without the other Party's prior written consent, which consent may be revoked at any time by providing written notice.

Section 3.06 Assignment.

(a) Assignment by Vendor.

Vendor will not assign all or any portion of its rights under or interests in this CTSA or delegate any of its duties without prior written consent of DIR. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment by the Assignee, in a form acceptable to DIR in its sole and absolute discretion, and consent to same from DIR, in its sole and absolute discretion. Except where otherwise agreed in writing by DIR, assignment will not release Vendor from its obligations pursuant to this CTSA. The requirements of this *Section 3.06(a)* shall not apply in connection with Vendor's assignment to (i) any Affiliate, or (ii) any person acquiring all or substantially all the assets of Vendor or all or substantially all the assets of an Affiliate to which this CTSA, or any of this interests, rights and obligations of Vendor hereunder, previously has been assigned. Notwithstanding the foregoing, Vendor may, without DIR's consent, assign or delegate in whole or relevant part, its rights and obligations under this CTSA to a third party work to be performed under this CTSA, but Vendor will in each such case remain financially responsible for the performance of such obligations.

(b) Assignment by DIR.

Vendor understands and agrees DIR may in one or more transactions assign or transfer this CTSA. DIR will provide written notification of such assignment to Vendor. This assignment will only be made to another State agency or an entity designated by the Texas Legislature.

(c) Amendment.

Each Party agrees to cooperate to amend the TEX-AN NG Communications Technology Services Agreement as necessary to maintain an accurate record of the contracting Parties.

(d) Assumption.

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

Section 3.07 RFO errors and/or omissions.

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

Section 3.08 Abandonment or Default.

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

Section 3.09 Reserved.

Section 3.10 Place of Performance.

Vendor agrees to either provide or arrange to have a Vendor Affiliate provide Services to Customer in accordance with this CTSA, subject to availability and operational limitations of systems, facilities and equipment. Where required, a Vendor Affiliate authorized by the appropriate regulatory authority will be the service provider.

Section 3.11 Vendor Certifications.

Vendor 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 Contract,

(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 CTSA 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 Contract,

(e) Under Section 2155.004, Texas Government Code, is not ineligible to receive the specified CTSA and acknowledge that this CTSA 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 CTSA,

(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, and

(h) As of the effective date of the CTSA, 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 CTSA will be applied towards any debt, including but not limited to delinquent taxes 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 all current or former, within the last twelve (12) years, employees of the State assigned to work on the CTSA 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the CTSA, Vendor certifies for itself and on behalf of its Subcontracators, 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;

(l) Represents and warrants that the provision of Services or other performance under the CTSA will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the CTSA, Vendor 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 Vendor and Vendor's receipt of appropriated or other funds under this CTSA are not prohibited by Sections 556.005 or 556.008, Texas Government Code; and

(n) Under Section 2155.006, Texas Government Code, is not ineligible to receive the specified CTSA and acknowledge that this CTSA may be terminated and payment withheld if this certification is inaccurate.

(o) Vendor acknowledges the applicability of Sections 2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the CTSA.

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

Section 3.12 Internet Access to CTSA and Pricing Information

(a) Vendor Website

Within thirty (30) days from the effective date of the CTSA, Vendor will establish and maintain a website specific to the service offerings under the CTSA which is clearly distinguishable from other, non-TEX-AN NG CTSA offerings at Vendor's website. The website must include: the services offered, service specifications, CTSA documents and exhibits, CTSA pricing, Service Level Agreement information, contact information for Vendor, instructions for obtaining quotes and placing Purchase Orders. The Vendor's website shall list the DIR CTSA number, reference the DIR TEX-AN NG Contract program, display the DIR logo, and contain a link to the DIR website for the CTSA. All websites are subject to the prior review and approval of DIR.

(b) Accurate and Timely CTSA Information

Vendor warrants and represents that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after written notification by DIR.

(c) Website Compliance Checks

Periodic compliance checks of the information posted for the CTSA on Vendor's website will be conducted by DIR. CTSA

(d) Website Changes

Vendor hereby consents to a link from the DIR website to Vendor's website in order to facilitate access to CTSA information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

(e) Use of Access Data Prohibited

If Vendor stores, collects or maintains data electronically as a condition of accessing CTSA information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the CTSA, and shall not be disseminated to third parties or used for other marketing purposes. The CTSA constitutes a public document under the laws of the State and Vendor shall not restrict access to CTSA terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

(f) Responsibility for Content

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the CTSA.

Article 4. Vendor Personnel Management.

Section 4.01 Qualifications, retention and replacement of Vendor employees.

Vendor agrees to maintain the organizational and administrative capacity and capabilities to carry out all Vendor duties and responsibilities, including providing and supporting the Services, under this CTSA. The personnel Vendor assigns to perform the duties and responsibilities under this CTSA will be properly trained and qualified for the functions they are to perform. Vendor does not warrant the quality of training for which the State is responsible. Notwithstanding transfer or turnover of its personnel, or of its agents' or Subcontractors' personnel, Vendor remains obligated to perform all duties and responsibilities, including providing and supporting the Services, without degradation and in accordance with the terms of this CTSA.

Section 4.02 Responsibility for Vendor personnel.

(a) Under no circumstances will Vendor's employees, agents and Subcontractors be considered employees of DIR or the State, but will be considered Vendor's employees, agents or Subcontractors for all purposes.

(b) Except as expressly provided in this CTSA, neither Vendor nor any of Vendor's employees, agents or Subcontractors may act in any sense as agents or representatives of DIR or the State of Texas.

(c) Vendor's employees, agents or Subcontractors shall be paid exclusively by Vendor for all Services performed. Vendor 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) Vendor assumes sole and full responsibility for its acts and the acts of its employees, agents and Subcontractors relating to the performance of this CTSA.

(e) Vendor 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 Vendor, its officers, or its agents or its Subcontractors) are the sole responsibility of Vendor and are not the responsibility of DIR or any Customer, and that Vendor will indemnify and hold harmless the State from any and all such claims asserted against the State, DIR or any Customer. Vendor understands that any person who alleges a claim arising out of employment, alleged employment, agency, or subcontract by Vendor (including, but not limited to, claims of discrimination against Vendor, 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).

Section 4.03 Cooperation with DIR, other TEX-AN NG Vendors, and Customers.

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

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

(b) Cooperation with Customers.

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

(1) The investigation and prosecution of fraud, abuse, and waste in the TEX-AN NG Program;

(2) Audit, inspection, or other investigative purposes; and

(3) Testimony in judicial or quasi-judicial proceedings relating to the Services under this CTSA or other delivery of information to DIR or Customers' investigators or legal staff.

Section 4.04 Conduct of and responsibility for Vendor employees.

(a) While performing the Services, Vendor's employees, agents and Subcontractors must:

(1) Comply with applicable State, DIR and Customer rules, and regulations and DIR's requests regarding personal and professional conduct generally applicable to the Service locations, including, but not limited to, conforming to all phys-

ical security standards and requirements, as required given the Service location; and

(2) Otherwise conduct themselves in a businesslike and professional manner.

(b) If DIR determines, in its sole and absolute discretion, that a particular employee, agent, or Subcontractor is not conducting him/herself or itself in accordance with this *Section 4.04*, DIR may provide Vendor with notice and documentation concerning such conduct. Upon receipt of such notice, Vendor must promptly investigate the matter and take appropriate action that may include:

(1) Removing the employee, agent or Subcontractor from Service delivery under this CTSA;

(2) Providing DIR with written notice of such removal; and

(3) Replacing the employee, agent or Subcontractor with a similarly qualified individual acceptable to DIR, in its sole and absolute discretion, in the case of Key Personnel and Subcontractors.

(c) Vendor shall replace any employee, agent or Subcontractor who is not adequately performing assigned responsibilities or who, as mutually determined by the Parties, after consultation with Vendor, is unable to work effectively with DIR staff or Customer staff. In such event, Vendor will provide replacement employee(s), agent(s), or Subcontractor(s) with equal or greater skills and qualifications as soon as reasonably practicable. Replacement of Key Personnel will be subject to consultation with the Vendor and mutual agreement of the Parties. The Parties will work together in the event of any such required replacement so as not to disrupt Service delivery under the CTSA. Other than in instances when DIR determines, in its sole and absolute discretion, that removal must be handled immediately to avoid imminent harm to the TEX-AN NG Program or safety to others, DIR and Vendor will provide written notice and cooperate with the other entity in a manner intended to minimize staff turnover and the adverse impact any requested removal may have on the Services. Nothing in this CTSA will prevent Vendor from replacing employees not identified as Key Personnel.

(d) Vendor agrees that anyone used by Vendor to fulfill the terms of this CTSA is an employee, agent or Subcontractor of Vendor and remains under Vendor's sole direction and control.

(e) Vendor agrees to be responsible for the following with respect to its employees, agents or Subcontractors:

(1) Damages incurred by Vendor's employees, agents or Subcontractors within the scope of their duties under this CTSA; and

(2) Determination of the hours to be worked and the duties to be performed by Vendor's employees, agents or Subcontractors.

Section 4.05 Responsibility for Subcontractors.

(a) Vendor remains fully responsible for obligations, services, and functions performed by its Subcontractors to the same extent as if such obligations, services, and functions were performed by Vendor's employees or agents and for purposes of this CTSA such work will be deemed work performed by Vendor. DIR may request in writing and the Parties will mutually determine a replacement of any Subcontractor found to be unacceptable in accordance with *Section 4.04.*

(b) Vendor must not disclose Confidential Information of DIR, a Customer or the State to a Subcontractor unless and until such Subcontractor has agreed in writing to protect the confidentiality of such Confidential Information in the manner required of Vendor under this CTSA.

(c) Vendor must identify any Subcontractor that is a newly-formed subsidiary or entity, whether or not an Affiliate of Vendor, that will perform subcontracting services under this CTSA. The Vendor agrees that it is the sole point of contact for DIR with regard to all matters under this CTSA, including any matters with respect to Vendor's Subcontractors.

(d) Vendor shall not change a Subcontractor prior to submitting for DIR's approval, in its sole and absolute discretion, a revised HUB Subcontracting Plan. Only upon DIR's approval of a revised HUB Subcontracting Plan may Vendor proceed with replacement of a Subcontractor.

Section 4.06 DIR's ability to contract with Subcontractors.

(a) Vendor is permitted to secure from its employees performing Services for the TEX-AN NG Program and under this CTSA covenants not to compete with a term of not more than one year from the date of termination of employment (whether in employment agreements or other contractual arrangements). Other than as provided in the preceding sentence, Vendor may not limit or restrict, through a covenant not to compete, employment agreement or other contractual arrangement, DIR's ability to contract with former employees of Vendor who performed Services under this CTSA.

(b) Vendor may secure from its employees, agents and Subcontractors, agreements preventing use or disclosure of Vendor's Confidential Information, and agreements preventing such employees, agents and Subcontractors from soliciting Vendor's employees and Customers and their employees.

(c) Vendor shall secure from its Subcontractors performing Services covenants not to compete with Vendor with respect to the award of the particular Services for which Subcontractor was engaged to perform under the Subcontract. With the exception of termination for convenience, the covenant not to compete will be coterminous with the CTSA. In the event DIR terminates the CTSA for convenience, the covenant not to compete may continue for a term of not more than one year from the date of termination of the Subcontract.

Section 4.07 Security of Premises, Equipment, Data, and Personnel.

Vendor may, from time to time during the performance of the CTSA, have access to the premises, Equipment, software and other property, including data, files and/or materials (collectively referred to as "data") belonging to DIR or Customers. Vendor will use its commercial best efforts to preserve the safety, security, and the integrity of the premises, Equipment, data and other property of DIR or Customer, in accordance with the instruction of DIR or Customers. Vendor will be responsible for damage to DIR or Customer's equipment, software, workplace, and its contents, when such damage is caused by Vendor's employees, agents or Subcontractors.

Section 4.08 Background and/or Criminal History Investigation.

Prior to commencement of any Services, background and/or criminal history investigation of certain of the Vendor's employees, agents and Subcontractors who will be involved in the provision of Services to DIR under the CTSA, or to Customers under a TEX-AN NG Customer Services Agreement, may be performed by DIR or certain Customers per Section 411.1405 of the Texas Government Code, having legislative authority to require such investigations. Should any employee, agent, or Subcontractor of the Vendor who will be involved in the provision of Services to DIR under the CTSA, or to a Customer under a Customer Services Agreement, not be acceptable to DIR or Customer, in their sole and absolute discretion, as a result of the background and/or criminal history check, then DIR or Customer, in their sole and absolute discretion, may immediately require replacement of the employee, agent or Subcontractor in question.

Article 5. Governing Law and Regulations.

Section 5.01 Governing law and venue.

This CTSA is governed by the laws of the State without regard to conflict of laws principles, and interpreted in accordance with Texas law. Provided Vendor first complies with the procedures set forth in *Section 11.10 Dispute Resolution,* proper venue for a claim arising from this CTSA will be in a State court in Travis County, Texas.

Section 5.02 Vendor responsibility for compliance with laws and regulations.

(a) Vendor is responsible for compliance with all laws, regulations, and administrative rules that govern the performance of the Services including, but not limited to, all State and Federal telecommunications laws, tax laws, State and Federal employment and immigration laws, State and Federal regulatory requirements, and licensing provisions.

(b) Vendor is responsible for ensuring each of its employees, agents, or Subcontractors who are involved in the provision of Services under this CTSA are legally eligible to work in the State and the United States, properly licensed, certified, and/or have proper permits to perform any activity related to the Services.

(c) Vendor warrants that the Services comply with all applicable Federal, State, County and Municipal laws, regulations, codes, ordinances, guidelines, and policies. Vendor will indemnify DIR and any Customer from and against any losses, liability, claims, damages, penalties, costs, fees, or expenses arising from or in connection with Vendor's failure to comply with or violation of any Federal, State, and County and Municipal law, regulation, code, ordinance, or policy.

Section 5.03 Compliance with Immigration laws.

Vendor 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 CTSA.

Section 5.04 Equal Opportunity Compliance.

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

Section 5.05 Historically Underutilized Business (HUB) Program.

Vendor shall comply with Chapter 2161, Texas Government Code in the provision of Services under this Contract. Vendor's HUB Subcontracting Plan is incorporated into the

CTSA as *Exhibit I.* Vendor shall comply with the HUB Program Rules for reporting HUB subcontractor participation in the CTSA and for changing the HUB Subcontracting Plan throughout the Term.

Article 6. Service Levels and Performance Measurement.

Section 6.01 Performance measurement.

Satisfactory performance of this CTSA will be measured by:

(a) Adherence to this CTSA, including all representations, warranties and covenants;

(b) Compliance with Project work plans, schedules, and milestones as mutually agreed in accordance with the TEX-AN NG Customer Services Agreements;

(c) Delivery of the Services in accordance with the Service Level Agreements agreed to in *Exhibit D Performance Management*;

(d) Results of audits performed by DIR or its representatives in accordance with *Article 8;*

(e) Timeliness, completeness, and accuracy of required reports agreed to in *Exhibit F Reporting*; and

(f) Achievement of other performance measures developed by Vendor and DIR and as modified from time to time by written agreement.

Article 7. Amendments.

Section 7.01 Amendments.

(a) Adjustments to *Exhibit C, Attachment C-1* initiated by either Party.

The process for submitting, reviewing and approving/disapproving and appealing proposed adjustments or recommendations for changes to any element contained in *Exhibit C, Attachment C-1*, upon mutual agreement, shall be in accordance with *Article 3* of *Exhibit C* to the CTSA. The Parties desire to develop and implement an electronic fast-track system for the continuous improvement of the Rates To DIR and Prices available to the Customers under the CTSA, without reliance on a formal amendment process. A mutually agreed upon change to the contents of *Exhibit C*, approved in accordance with *Article 3* of *Exhibit C,* shall be considered an approved amendment of the CTSA for all purposes.

(b) Amendments and modifications resulting from changes in law or contract and as mutually agreed.

Except for changes subject *to Section 7.01 (a)* above, this CTSA may be amended by mutual written agreement of the Parties if changes in Federal or State laws, rules, regulations, policies, guidelines, or circumstances affect the performance of the Services, provisions need to be added or amended within the CTSA, or as otherwise agreed to in writing by the Parties. The Parties developed appropriate procedures for amending or modifying the CTSA in the *CTSA Article 7 Contract Amendments*.

(c) Modifications resulting from imposition of remedies.

This CTSA may be modified under the terms of *Article 11 Remedies and Disputes* of this *Exhibit B.*

Section 7.02 Required compliance with amendment procedures.

No different or additional Services will be authorized or performed except pursuant to amendment of this CTSA that is executed in compliance with the CTSA. No waiver of any term, covenant, or condition of this CTSA will be valid unless executed by both Parties. Vendor will not be entitled to payment for any Services that are not authorized by this CTSA or a properly executed amendment to the CTSA, authorized through the express written (including electronic signature) authorization of DIR and Vendor.

Article 8. Audit and Financial Compliance.

Section 8.01 Financial record retention and audit.

Vendor agrees, and shall cause its agents and its Subcontractors to agree, to maintain supporting financial information and documents that are adequate to ensure compliance with this CTSA, and are sufficient to ensure the accuracy and validity of Monthly Consolidated Invoices to DIR and direct billing to Customers for certain direct sales transactions. Vendor agrees, and shall cause its agencts and Subcontractors to agree, to maintain and retain such documents, including all original forms, records and associated documentation, for a period of four (4) years after the date of submission of the final billing or until the resolution of all litigation, claims, financial management reviews or audits pertaining to this CTSA, whichever is longer.

Section 8.02 Access to records, books, and documents.

(a) Upon 30 days notice by DIR, Vendor must provide, and cause its agents and its Subcontractors to provide, the officials and/or entities identified in this *Section 8.02* with prompt, reasonable, and adequate access to any records, books, documents, and papers that are directly pertinent to the performance of this CTSA and any TEX-AN NG Customer Service Agreements. Any access to facilities will be during normal working hours and subject to the security requirements of the facilities.

(b) Vendor and its agents and its Subcontractors must provide the access described in this *Section 8.02* upon DIR's request. This request may be for the following purposes:

(1) Audit;

(2) Investigation;

(3) Contract administration; or

(4) The making of copies.

(c) Reasonable access required must be provided to the following officials and/or entities with prior written notice:

(1) Any Independent Verification and Validation contractor or quality assurance contractor, when acting on behalf of DIR;

(2) The Office of the State Auditor or its designee;

(3) A State or Federal law enforcement agency;

(4) A special or general investigating committee of the Texas Legislature or its designee; and

(5) Any auditor or other entity identified by DIR.

(d) Vendor agrees, and will require its agents and its Subcontractors to agree, to provide reasonable access with prior written notice described wherever Vendor maintains such books, records, and supporting documentation. Vendor further agrees, and will require its agents and its Subcontractors to agree, to provide such access in reason-

able comfort and to provide any furnishings, Equipment, or other conveniences deemed reasonably necessary to fulfill the purposes described in this *Section 8.02*.

(e) Subject to Vendor's compliance with the State Auditor's rights as authorized in Section 2262.003, Texas Government Code, DIR does not object to Vendor's request that any auditor, inspector or other entity identified by the State under this CTSA that requires access to Vendor's Confidential Information will be required to execute a confidentiality agreement protecting the confidentiality of Vendor's information, in form reasonably satisfactory to Vendor.

Section 8.03 State Auditor's Office Audit.

In addition to and without limitation on the other audit provisions of this CTSA, pursuant to Section 2262.003, Texas Government Code, acceptance of funds under the CTSA by Vendor acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Vendor, and its agents and its Subcontractors, agree to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Vendor and the requirement to cooperate is included in any subcontract it awards pertaining to the CTSA. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

Section 8.04 Audits of Services, Deliverables and inspections.

(a) Upon notice from DIR, Vendor will provide, and will cause its agents and its Subcontractors to provide, such auditors and inspectors as DIR may from time to time designate, with access to:

(1) Vendor, agent and Subcontractor service locations, facilities, or installations; and

(2) Vendor, agent and Subcontractor Software and Equipment.

(b) Vendor must provide, and shall cause its agents and its Subcontractors to provide, as part of the Services, any assistance that such auditors and inspectors reasonably may require to complete such audits or inspections.

Section 8.05 Response/compliance with audit or inspection findings.

(a) Vendor must take action to ensure its employees', agents' or Subcontractors' compliance with or correction of any finding of non-compliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services or any other Deficiency contained in any audit, review, or inspection conducted under this *Article 8*. This action will include Vendor's delivery to DIR, for DIR's approval, a Corrective Action Plan in accordance with *Section 11.02(c)* that addresses Deficiencies identified in any audit(s), review(s), or inspection(s) within ten calendar days of the close of the audit(s), review(s), or inspection(s).

(b) Vendor must bear the expense of compliance with any finding of noncompliance under this *Section 8.05.*

(c) As part of the Services, Vendor must disclose to DIR, upon DIR's request, and will include in its Subcontracts a requirement that each of its Subcontractors will disclose upon request, a copy of those portions of its internal audit reports relating to the Services.

Section 8.06 Audit of telecommunications fees and surcharges, Rates To DIR, Prices and certifications filed pursuant to *Section 3.04* of the CTSA.

(a) Vendor will provide, and will cause its agents and its Subcontractors to provide, to DIR and its designees access to such financial records and supporting documentation reasonably requested by DIR to audit telecommunicaitons fees and surcharges, Rates To DIR, Prices for direct sales transaction Customers and any certifications filed pursuant to *Section 3.04* of the CTSA.

(b) In addition to its monthly review and payment of Monthly Consolidated Invoices under the CTSA, DIR may audit the applicable telecommunications fees and surcharges, Rates To DIR, Prices to direct sales transaction Customers and any certifications filed under Section 3.04 of the CTSA to determine that such telecommunications fees and surcharges, Rates To DIR, Prices to direct sales transaction Customers and any certifications filed pursuant to *Section 3.04* of the CTSA are accurate and in accordance with this CTSA.

(c) Results of an audit of a certification filed pursuant to *Section 3.04* of the CTSA shall be implemented in accordance with *Section 3.04(b).* If, as a result of any other audits listedin Section 8.06 (b) above, DIR determines that Vendor has overcharged the State, DIR will notify Vendor in writing of the amount of such overcharge, and provide to the Vendor the work papers supporting such position. Vendor will promptly pay to DIR the undisputed amount of the overcharge, plus interest as calculated in accordance with Chapter 2251, Texas Government Code, for late payments, and the Parties will use good faith efforts to resolve any disputed amounts as soon as practicable. In the event such audit reveals an overcharge of five percent (5%) or more to DIR which is not disputed and is in excess of five percent (5%) of the total invoiced amounts for all products and services for such period, Vendor will reimburse DIR for the reasonable cost of this audit.

Article 9. Terms and Conditions of Vendor Billing and DIR and Customer Payment.

Section 9.01 Monthly Consolidated Invoice to DIR.

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

Section 9.02 Invoices for direct sales transactions to Customers.

The Vendor shall provide to each direct sales transaction Customer a monthly Invoice for the direct sales transaction Services provided to such Customer, in electronic format, at the Prices (Rates To DIR plus CRF) and with any applicable telecommunications fees and surcharges as allowed by this CTSA.

Section 9.03 Limitations on the right to Bill.

The Vendor shall not submit a bill for any Services prior to the SOCN date which is 2 business days after the order completion. The completion date controls the start and stop of the services billed. Vendor shall stop billing one day after the order completion date.

Section 9.04 Telecommunications fees and surcharges and taxes.

(a) If there are applicable FCC, PUC or other authorized telecommunications fees and surcharges in effect as of the date of this CTSA which may appear on billings to Cus-

tomers, they are disclosed in the appropriate section per Service in *Exhibit C* to the CTSA. Any additional FCC, PUC or other authorized telecommunications fees and surcharges applicable to any Service may only be imposed during the Term, upon a written amendment to authorize such imposition under the CTSA. Vendor acknowledges that certain Customers that are political subdivisions of the State, are exempt from the imposition and collection of certain State telecommunications fees, including the Texas Universal Service Fund Charge and the Texas Infrastructure Fund assessment. In addition, State agency Customers have additional exemptions from State telecommunications fees, including the 9-1-1 emergency service fee, 9-1-1 equalization surcharge, poison control surcharge, and late charges imposed under Section 55.010, Texas Utilities Code. Vendor agrees to not bill for any items which are not mandated by the FCC, PUC or other proper authority and which are otherwise not applicable to the Services and for which Vendor has requested and received valid exemption certificates from Customers. Vendor agrees to promptly correct any incorrect billings of telecommunications fees and surcharges that occur. Vendor acknowledges that DIR makes no representation about the exemption status of any Customers that are "assistance organizations." Vendor must request and receive any exemption certificates that may apply from each assistance organization directly.

(b) During the Term, all changes in the law or fee structures, which creates or authorizes Vendor to impose an unlisted telecommunications fees and surcharges on the Services, which Vendor desires to impose, shall require an amendment in order to be effective against the State, DIR and Customers. In the event of a change in the law or telecommunications fees and surcharges structures, which results in an exemption from payment in favor of the State, DIR and/or Customers, Vendor shall give effect to the exemption without the necessity of an amendment hereto based on the presentation of valid exemption certificates or other notice being provided to Vendor.

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

Section 9.05 Reserved.

Section 9.06 Expenses.

Except as provided in this CTSA with respect to Rates To DIR, Prices to direct sales transaction Customers, and authorized telecommunications fees and surcharges, all other expenses incurred by Vendor in connection with its provision of the Services will not be paid by DIR or Customer unless agreed upon by DIR or Customer in writing. Vendor hereby waives any and all claims for additional compensation related to the Services except as set forth in *Exhibit C* hereto.

Section 9.07 Dispute Handling and Adjustments

(a) A billing inquiry is any question or issue about a Monthly Consolidated Invoice that may lead to a billing Dispute. It is DIR's responsibility to validate Vendor Monthly Consolidated Invoices each month. During that process, billing inquiries will arise, and the Vendor shall support DIR by timely answering or responding to billing inquiries. The Vendor shall respond within one Business Day of receipt of the billing inquiry.

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

(c) Direct sales transaction Customers shall have the same rights as DIR under *Section 9.07, Subsection (a) and (b)* above, for the Invoices they receive for direct sales transactions.

(d) If DIR or a direct sales transaction Customer disputes payment of all or any portion of an Invoice from the Vendor, DIR or the direct sales transaction Customer, respectively, will notify Vendor of such Dispute and the Parties, either DIR and Vendor or the direct sales transaction Customer and Vendor, as appropriate, will attempt in good faith to resolve the dispute in conformance with Chapter 2251, Texas Government Code. DIR and the direct sales transaction Customer will not be required to pay any disputed portion of a Vendor invoice. Notwithstanding any such Dispute, the Vendor must continue to perform the Services in compliance with the terms of this CTSA pending resolution of Disputes so long as all undisputed amounts continue to be paid to Vendor.

Section 9.08 Billing Adjustments

(a) A billing Adjustment is a modification or correction of a billing amount of an element of a Service or a SLA Credit. Billing Adjustments may be made on both recurring and non-recurring charges, and are used to settle Disputes and financial discrepancies.

(b) Vendors shall include in its Monthly Consolidated Invoice to DIR or its Invoices to direct sales transaction Customers, the following minimum items as billing Adjustments:

(1) Correction of a billing error discovered by Vendor, DIR or the direct sales transaction Customer, as appropriate;

(2) Back-billing;

(3) SLA Credits; and

(4) Any other elements Vendor considers Adjustments as set forth in its *Billing Plan, Exhibit F, Attachment F-17* hereto.

(c) The Vendor shall resolve all Disputes by any one of the three following approaches:

(1) Issue a proposed Dispute resolution for the full amount;

(2) Provide evidence acceptable to DIR or the direct sales transaction Customer, as appropriate that the disputed amount will be reduced; or

(3) Provide evidence acceptable to DIR or the direct sales transaction Customer, as appropriate, that the Dispute is not valid.

(d) For all Disputes, the Parties shall mutually agree to a resolution before issuing a billing Adjustment.

Section 9.09 Back-billing and POP moves.

(a) Rates To DIR or Prices to direct sales transaction Customers for Services inadvertently left off previous Monthly Consolidated Invoices or direct Invoices by the Vendor

shall be back-billed no more than 120 calendar days for usage and 120 calendar days for circuits (however, in no case may the back-billing include a time period prior to the delivery of the SOCN). Pursuant to PUC Rule 26.27, a six month limit from the date of discovery of an error applies to back-billing of all billed Services. Back-billing shall be included in the Adjustments.

(b) Vendor Initiated Point of Presence location moves for standard services shall not adversely affect the existing Rates To DIR and/or Prices to direct sales transaction Customers for a Service while under a term committment. Vendor shall provide DIR and affected Customer(s) no less than sixty (60) days advance written notice of the amount of an adverse change when a Vendor initiated Point of Presence location move will result in an adverse change to Rates to DIR and/or Prices to direct sales transaction Customers.

Section 9.10 Liability for taxes, insurance and indemnification.

(a) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR WILL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDORS', AGENTS' AND SUBCONTRACTORS' EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS TEX-AN NG COMMUNICATIONS TECHNOLOGY SERVICES AGREEMENT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR'S EMPLOYEES, AGENTS OR SUBCONTRACTORS WILL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER. DIR AND/OR THE STATE WILL NOT BE LIABLE TO THE VENDOR ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.

(b) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS DIR, ALL CUSTOMERS, THE STATE AND/OR EACH OF THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS IN THEIR PERFORMANCE UNDER THIS TEX-AN NG COMMUNICATIONS TECHNOLOGY SERVICES AGREEMENT. VENDOR WILL BE LIABLE TO PAY ALL REASONABLE COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES AND OUT OF POCKET EXPENSES. THE DEFENSE WILL BE COORDINATED BY THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCY CUSTOMERS AND BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS.

Section 9.11 Independent Contractor status.

Vendor will perform the Services under this CTSA as an independent contractor and not as an agent or as a representative of DIR.

Section 9.12 No additional consideration.

Vendor, its agents and its Subcontractors will not be entitled to nor receive from DIR any additional consideration, compensation, salary, wages, or any other type of remuneration for Services rendered under this CTSA, except as set forth in *Exhibit C*. Specifically, Ven-

dor will not be entitled by virtue of this CTSA to any consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever. In addition, all costs associated with transportation, delivery, and insurance relating to the Vendor's, agents' or Subcontractors' performance of this CTSA will be paid for by the Vendor.

Section 9.13 Additional Terms of Payment.

(a) Payments due by DIR or Customers under this CTSA, or a TEX-AN NG Customer Services Agreement will be made as follows:

(1) Customers who are Government Entities will make payments in accordance with the Texas Prompt Payment law, Texas Government Code, Chapter 2251.

(2) Customers who are either private institutions of higher education or assistance organizations (as both are described in the definition of "Customer" in Section 21 to Exhibit A ("Definitions")) will make payment within 30 days after the date of the invoice. Such Customers will reimburse Vendor for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees. In addition, Vendor may charge such Customers with late payment fees (a) for Services contained in a Tariff or Guidebook, at the rate specified therein, or (b) for all other Services, at the lower of 1.5% per month (18% per annum) or the maximum rate allowed by law for overdue payments.

(b) All checks remitted in payment of amounts due hereunder will refer to the invoice number. Restrictive endorsements or other statements on checks are void.

Section 9.14 Payments for Services.

During the term of this CTSA, Vendor will receive funds in consideration for the Services, calculated in accordance with *Exhibit C*. Payment for Disentanglement Services will be in accordance with the Disentanglement Plan agreed to between the Parties, in accordance with *Section 11.06 Payment and other provisions at CTSA termination, subsection (d)*.

Section 9.15 Reporting of direct sales transactions and payment to DIR of CRFs.

(a) Reporting Responsibility.

(1) Vendor shall be responsible for reporting all direct sales transaction Services purchased under the CTSA. Vendor shall file the monthly reports, subcontract reports, and pay the CRFs in accordance with the due dates specified in this *Section 9.15.*

(2) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this Section, including but not limited to, compliance checks of Vendor's applicable CTSA books and records in accordance with terms and conditions of *Article 8*.

(b) Detailed Monthly Report.

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR, upon mutual agreement, showing the dollar volume of any and all direct sales transaction Services sold under the CTSA for the previous month period. The Parties have agreed to data and formats, to include detailed data for quotes, orders, trouble tickets, billing, Service Level Agreements and network monitoring and formats to include email, delimited flat file and web services XML. Reports shall be submitted to the DIR E-Mail Box at ict.sales@dir.texas.gov. Reports are due on the thirtieth (30th) calendar day of the month after the close of the previous month period.

The monthly report shall include, per direct sales transaction: the detailed direct transaction sales for the period, Customer name, Invoice date, Invoice number, Description, quantity, unit Price, extended Price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each report must contain all information listed above per direct sales transaction or the report will be rejected and returned to the Vendor for correction in accordance with this *Section 9.15.*

(c) Historically Underutilized Businesses Subcontract Reports.

(1) Vendor shall electronically provide each direct sales transaction Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to the CTSA, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

(2) Reports shall be due in accordance with the CPA rules governing the HUB program.

(d) CRFs.

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

(2) Vendor shall reference the CTSA contract number on any remittance instruments.

(e) Accurate and Timely Submission of direct sales transaction sales Reports.

(1) The direct sales transaction sales reports and CRFs paid shall be accurate and timely and submitted in accordance with the due dates specified in this Section. Vendor shall correct any inaccurate reports or CRF payments within five (5) Business Days upon written notification by DIR. Vendor shall deliver any late reports or late CRF payments within five (5) Business Days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or CRF payments or deliver late reports and CRF payments within five (5) Business Days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval, in its sole and absolute discretion.

(2) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and CRF payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in *Section 8.04* of this *Exhibit B*, at Vendor's expense.

Article 10. Disclosure and Confidentiality of Information.

Section 10.01 Confidentiality.

(a) Vendor shall, and Vendor shall cause its agents and its Subcontractors to, treat all information that is obtained through performance of the Services under this CTSA, including, information relating to DIR, Customers and Authorized End Users of the TEX-AN NG Program as Confidential Information to the extent that confidential treatment is provided under State and Federal law, regulations, or administrative rules.

(b) Vendor is responsible for understanding the degree to which information obtained through performance of this CTSA is confidential under State and Federal law, regu-

lations, or administrative rules. Vendor is responsible for causing its agents and Subcontractors to understand the degree to which information obtained through performance of the CTSA is confidential under State and Federal law, regulations, or administrative rules.

(c) Vendor shall, and cause its employees, agents and Subcontractors to, not use any information obtained through performance of this CTSA in any manner except as is necessary to the proper discharge of obligations and securing of rights under this CTSA. In addition, Vendor will only disclose that information to its employees, agents, and Subcontractors on a need-to-know basis.

(d) Vendor must have systems in effect to protect all records and all other documents deemed Confidential Information that are maintained in connection with the Services. Any disclosure or transfer of Confidential Information by Vendor, including information required by DIR, will be in accordance with applicable State and Federal law, regulations, or administrative rules. If the Vendor receives a request for information deemed to be Confidential Information, the Vendor will immediately notify DIR of such request, and will make best efforts to protect such information from public disclosure.

(e) In addition to the requirements expressly stated in this *Section 10.01*, Vendor must comply with any policy, rule, or requirement of DIR that relates to the safeguarding or disclosure of information relating to the TEX-AN NG Program recipients, Vendor's operations, or Vendor performance of this CTSA. A copy of such policy, rule or requirement will be provided to Vendor upon request.

(f) In the event of the expiration or termination of this CTSA for any reason all Confidential Information of a Party, disclosed to, and all copies thereof made by, the other Party will be returned to the disclosing Party or, and to the extent authorized by applicable record retention laws and policies, at the disclosing Party's option, erased or destroyed. The recipient of the Confidential Information will provide the disclosing Party certificates evidencing such erasure or destruction. Notwithstanding anything in this CTSA to the contrary, the Vendor may retain safeguarded (and encrypted if Sensitive Personal Information as defined under the laws of the State is included) copies of the following records and data it receives or prepares during or in connection with the TEX-AN NG Program and CTSA, to comply with the record keeping requirements of *Section 8.01* and for archival and defense purposes:

(1) Supporting financial information and documents that are adequate to ensure CTSA compliance and are sufficient to ensure the accuracy and validity of Vendor Invoices;

(2) Financial information, records and reports;

(3) Transaction logs;

(4) Vendor's customer database data files;

(5) Human resources documentation;

(6) Audit reports;

(7) Operational reporting (e.g. security logs, security metrics reporting/audits, and relevant network reports/logs); and

(8) Data for the TEX-AN NG Program and CTSA and its applications, including maintenance log files, uptime log files, relevant network access log files, and other required analytics.

(g) The obligations in this Section will not restrict any disclosure by a Party pursuant to any order of a court or government agency, including the Public Information Division of the Office of the Texas Attorney General, or as otherwise authorized to be re-

vealed by law provided that the disclosing Party will give prompt written notice to the non-disclosing Party of such order or other authorization to the extent practicable and not prohibited by law, governmental authority or legal process.

(h) With the exception of Confidential Information of Customers, Confidential Information of a Party will not be afforded the protection of this CTSA if such data was:

(1) Already known to the receiving Party without restrictions at the time of its disclosure by the furnishing Party;

(2) Independently developed by the receiving Party without reference to the furnishing Party's Confidential Information;

(3) Rightfully obtained by the other Party without restriction from a third party after its disclosure by the furnishing Party;

(4) Publicly available other than through the fault or negligence of the other Party; or

(5) Released without restriction to anyone.

(i) DIR will require its agents and Subcontractors to comply with the terms of this *Section 10.01* as it relates to Vendor Confidential Information. Subject in all cases to *Section 10.01(g)*, DIR will not disclose Vendor Confidential Information to its agents or contractors who are direct competitors of Vendor. Prior to disclosing Vendor Confidential Information to other Vendors, DIR will obtain approval from Vendor, whose consent to use will not be unreasonably withheld or delayed, and an executed confidentiality agreement from the anticipated recipient of such Vendor Confidential Information in a form acceptable to Vendor.

Section 10.02 Disclosure of DIR's and Customers' Confidential Information.

(a) The Parties will report any and all unauthorized disclosures or uses of either Party's Confidential Information that may have been disclosed in an unauthorized manner. The Parties acknowledge that any publication or disclosure of either Party's Confidential Information to another party may cause immediate and irreparable harm to either Party and may constitute a violation of State or Federal laws. If the Parties should publish or disclose such Confidential Information to another party without authorization, the affected Party will immediately be entitled to seek injunctive relief or any other remedies to which it is, or they are, entitled under law or equity without requiring a cure period as described in *Article 11*.

(b) Vendor will require its agent(s) and/or its Subcontractor(s), to comply with the terms of this *Article 10*.

Section 10.03 Requests for public information.

(a) Vendor acknowledges that DIR and some of the Customers are subject to the Public Information Act (Chapter 552, Texas Government Code). Vendor also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Office of the Texas Attorney General concerning the Public Information Act. DIR agrees that it will promptly notify Vendor of each request for disclosure of public information filed in accordance with the Public Information Act that requests any of the Vendor's Confidential Information, including data to which Vendor has a proprietary or commercial interest. DIR will deliver all copies of such requests for public information to Vendor in accordance with Chapter 552, Texas Government Code.

(b) With respect to any information that is the subject of a request for disclosure, Vendor is solely responsible for and required to demonstrate to the Office of Texas Attorney General the specific reasons why the requested information is confidential or other-

wise exempted from required public disclosure under the Public Information Act. Vendor will provide DIR with copies of all such communications.

(c) To the extent authorized under the Public Information Act, DIR agrees to safeguard from disclosure information received from Vendor that the Vendor believes to be Confidential Information. Vendor must clearly mark all information for which it believes an exception from public disclosure exists under the Public Information Act as Confidential Information or provide written notice to DIR that it considers the information to be Confidential Information.

(d) Under the terms of the CTSA, DIR may provide Vendor with information related to Customers, Authorized End Users and/or the TEX-AN NG Program. Vendor will not re-sell or otherwise distribute or release any such information to any party in any manner without DIR's, the Customer's or the Authorized End User's, as appropriate, express written consent (which consent shall be in their sole and absolute discretion), unless such disclosure is required by law or pursuant to *Section 10.01(g)* herein.

Section 10.04 Unauthorized acts.

Each Party agrees to:

(a) Notify the other Party promptly of any unauthorized possession, use, or knowledge, or any unauthorized attempt to possess, use or gain knowledge, of any Confidential Information by any person or entity that may become known to it;

(b) Promptly furnish to the other Party full details of the unauthorized possession, use, or knowledge, or any unauthorized attempt to possess, use or gain knowledge, and use reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information. For DIR the reasonable efforts to assist Vendor shall be subject to and limited by the Texas Public Information Act and any other applicable laws; and

(c) Cooperate with the other Party in any litigation and investigation against third parties deemed necessary by such Party to protect its proprietary rights. For DIR the reasonable efforts to assist the Vendor shall be subject to and limited by the Texas Public Information Act and any other applicable laws.

Section 10.05 Legal action.

Vendor shall provide prompt written notice to DIR and/or Customer of Vendor's intent to file any legal action with respect to any unauthorized possession, use or of any attempt to possess, use or gain knowledge of DIR and/or Customers' Confidential Information and DIR (and/or Customers, as applicable) shall have the right to participate in any such action.

Article 11. Remedies and Disputes.

Section 11.01 Understanding and expectations.

The remedies described in this *Article 11* contemplate Vendor's timely and responsive performance of the Services in accordance with all the terms of this CTSA, and to the creation of a flexible and responsive relationship between the Parties. Notwithstanding the foregoing, DIR reserves the right to proceed with all remedies available to it when such action would be in the best interest of the State. Billing Disputes are governed by Section 9 of these Terms and Conditions.

Section 11.02 Tailored remedies.

(a) Understanding of the Parties.

Vendor agrees and understands that DIR may pursue tailored contractual remedies for noncompliance with this Contract in the event Vendor does not comply with the non-operational, contract management obligations. At any time and at its sole and absolute discretion, except as agreed upon by the Parties in Exhibit D ("Performance Management") and as otherwise expressly provided in this *Article 11*, DIR may impose or pursue one remedy for each item of noncompliance and will determine remedies on a case-by-case basis. DIR's pursuit or non-pursuit of a tailored remedy does not constitute a waiver of any other remedy that DIR may have at law or equity, including, but not limited to, the remedies set forth in *Section 11.03* below. Except as agreed upon by the Parties in Exhibit D ("Performance Management") and as otherwise expressly provided in this Article 11, prior to imposing any remedy, DIR will provide notice to the Vendor of the Deficiency, and such notice shall include a reasonable cure period in accordance with *Section 11.02 (b),* or as specified elsewhere in this CTSA.

(b) Notice and opportunity to cure for Deficiencies.

(1) Within ten calendar days (or another date approved by DIR) of Vendor's receipt of written notice of a Deficiency, Vendor shall provide DIR a written response that:

(A) Explains the reasons for the Deficiency, Vendor's plan to address or cure the Deficiency, and the date and time by which the Deficiency will be cured; or

(B) If Vendor disagrees with DIR's findings, its reasons for disagreeing with DIR's findings.

(2) Vendor's proposed cure of a Deficiency is subject to the approval of DIR, in its sole and absolute discretion. Vendor's repeated commission of Deficiencies or repeated failure to resolve any such Deficiencies may be regarded by DIR as a Material Breach and entitle DIR to pursue any other remedy provided in this CTSA or any other appropriate remedy DIR may have at law or equity.

(c) Notice and opportunity to cure for Material Breach.

(1) DIR will notify Vendor in writing of any Material Breach.

(2) Vendor will, within ten calendar days (or another date approved by DIR) of receipt of written notice of a Material Breach, provide DIR a detailed written corrective action plan to correct or resolve such Material Breach (a Corrective Action Plan).

The Corrective Action Plan must provide:

(A) A detailed explanation of the reasons for the cited Material Breach;

(B) Vendor's assessment or diagnosis of the cause of the Material Breach; and,

(C) A specific proposal to cure or resolve the Material Breach promptly and completely.

(3) Vendor shall submit the Corrective Action Plan by the deadline set forth in DIR's notice of Material Breach. The Corrective Action Plan is subject to approval or modification by DIR, in its sole and absolute discretion.

(4) DIR will notify Vendor in writing of DIR's final disposition of the Corrective Action Plan. If DIR accepts Vendor's proposed Corrective Action Plan, DIR may:

(A) Condition such approval on completion of tasks in the order or priority that DIR may prescribe;

(B) Disapprove portions of Vendor's proposed Corrective Action Plan; or

(C) Require additional or different Corrective Action Plan(s).

(5) At any time during this process, DIR reserves the right, in its sole and absolute discretion, to:

(A) Suspend all, or part of, this CTSA; or

(B) Issue a written Stop Marketing Order which prohibits Vendor from further marketing the Services during investigation of the alleged Material Breach and pending corrective action, if necessary, by Vendor, or a decision by DIR to terminate the CTSA for Cause. DIR may delay the implementation of the Stop Marketing Order if it affects the completion of any of the Services in accordance with a Customer's and/or Authorized End Users' approved schedule under a TEX-AN NG Customer Services Agreement.

(6) DIR's acceptance of a Corrective Action Plan under this *Section 11.02* will not:

(A) Excuse Vendor's prior Material Breach(es) and/or Deficiencies;

(B) Relieve Vendor of its duty to comply with performance standards; or

(C) Prohibit DIR from assessing additional tailored remedies or pursuing other appropriate remedies for continued Deficiencies or Material Breaches.

(d) Administrative remedies.

(1) At its sole and absolute discretion, DIR may impose one of the following remedies for each Deficiency and/or Material Breach, and will determine the scope and severity of the remedy on a case-by-case basis:

(A) Assess Credits in accordance with the terms of this CTSA;

(B) Conduct accelerated monitoring of Vendor including more frequent or more extensive monitoring by DIR or its agents;

(C) Require additional, more detailed, marketing and/or performance reports to be submitted by Vendor;

(D) Decline to extend this CTSA and/or approve any or all new TEX-AN NG Customer Service Agreements or renew of any or all TEX-AN NG Customer Service Agreements; and/or

(E) Terminate this CTSA in accordance with *Section 11.03*, provided, however, that the right to terminate hereunder shall be limited to those instances where:

1) The Deficiency constitutes a Material Breach;

2) DIR gives Vendor written notice of such Material Breach and specifies a reasonable cure period; and

3) Vendor does not cure the Material Breach within the applicable cure period.

(2) DIR will provide notice to Vendor of the imposition of an administrative remedy in accordance with this *Section 11.02*, with the exception of accelerated monitoring, which may be unannounced. DIR may require Vendor to file a written response in accordance with this *Section 11.02*.

(e) DIR Credits.

(1) Vendor acknowledges that with respect to matters covered by Exhibit D ("Performance Management"), DIR shall be entitled to assess Credits for such Deficiencies. DIR reserves the right, in its sole and absolute discretion, to waive all of part of any Credits, provided that all such waivers must be in writing, contain the reasons for the waiver, and must be signed by an authorized executive of DIR.

(2) The Credits prescribed in Exhibit D ("Performance Management") are not intended to be in the nature of a penalty, but are intended to be reasonable estimates of DIR's projected Damages resulting from Deficiencies.

(3) In accordance with *Exhibit D Performance Management*, DIR may elect, in its sole and absolute discretion, to collect Credits:

(A) through direct assessment and demand for payment delivered to Vendor; or

(B) by deduction of amounts assessed as Credits as set-off against payments then due to Vendor for the Services or that become due at any time after assessment of the Credits. DIR will make deductions until the full amount payable by the Vendor is received by the State.

(f) Equitable Remedies.

(1) Vendor acknowledges that DIR, the Customers and the State would be irreparably harmed by any Material Breach and that money Damages alone will not provide an adequate remedy therefor. Upon occurrence of a Material Breach or a threatened Material Breach, DIR, for and on behalf of the Customers and the State, shall be entitled to seek immediate injunctive or other equitable relief, without the necessity of proving actual Damages. Such remedy shall not be deemed to be DIR's exclusive remedy for a Material Breach, but shall be in addition to all other remedies available to DIR at law or in equity.

(2) If a court of competent jurisdiction finds that Vendor has committed an uncured Material Breach (or attempted or threatened to commit a Material Breach), Vendor agrees that, without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an appropriate injunctive order compelling performance by Vendor and restraining it from committing any further Material Breaches (or attempted or threatened Material Breaches).

(g) Suspension of CTSA by DIR.

(1) In addition to its rights under *Section 11.02 (c) (5)* and in Exhibit D ("Performance Management"), DIR may suspend performance of all or any part of this CTSA if DIR has reason to believe that Vendor, its agents and/or its Subcontractors, have committed, assisted in the commission of, or failed to take appropriate action concerning fraud, malfeasance or misfeasance concerning this CTSA and, if DIR, in its sole and absolute discretion, believes that the suspension is necessary to prevent material loss or material damages to the State, and the portion of the CTSA being suspended

(A) has a direct relationship to the alleged fraud, malfeasance or misfeasance concerning this CTSA; or

(B) DIR determines that suspension of this CTSA in whole or in part is convenient or in the best interests of the State or the TEX-AN NG Program.

(2) DIR will notify Vendor in writing of its intention to suspend this CTSA in whole or in part and of the facts or matter leading to such decision.

(h) Suspension of Customer Service or Service Component by Vendor.

DIR and/or Customer, as appropriate will ensure that the Site at which Vendor installs, maintains or provides Services is a suitable and safe working environment, free of Hazardous Materials. "Hazardous Materials" means any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal, or release is regulated by any law related to pollution, protection of air, water, or soil, or health and safety. In the event Vendor encounters Hazardous Materials at the Site where Vendor is to install, maintain or provide Services and determines that such Materials present an unsuitable and unsafe working environment at the Site, Vendor will immediately notify DIR and the affected Customer in writing of that determination along with detail sufficient to enable DIR and the affected Customer to be fully informed as to the basis for Vendor's determination. In addition, Vendor may, at its sole option after provision of such notification, suspend performance of affected Services at that Site until the Hazardous Materials have been removed and remediated, at DIR's or the affected Customer's expense in accordance with applicable law.

Section 11.03 Termination of CTSA.

Prior to the Expiration Date, this CTSA may be terminated in whole or in part for any of the following reasons:

(a) Termination by mutual agreement of the Parties.

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

(b) Termination in the best interest of the State.

DIR may terminate this CTSA on 30 days prior written notice to Vendor, without penalty to or other liability on DIR, at any time when, in its sole discretion, DIR determines that termination is in the best interests of the State. The termination will be effective on the date specified in DIR's notice of termination. Notwithstanding the foregoing, Purchase Orders for products and services that either include a term commitment or minimum purchase commitment, issued by Customer prior to the termination of the CTSA, shall survive such termination.

(c) Termination for non-appropriation of funds.

(1) DIR, in its capacity as a direct Customer to Vendor.

This CTSA is subject to termination, either in whole or in part, without penalty to DIR or the State, as a result of non-appropriation of State funds allocated to DIR. DIR is a State agency whose authority and appropriations are subject to actions of the Texas Legislature and appropriate State executive officers, and whose lack of funds from State sources is subject to governmental action. If DIR becomes subject to a legislative, executive or other appropriate governmental body change, revocation of statutory authority, lack of appropriated funds which ceases to fund DIR's participation under the CTSA beyond the then-current budget period, this CTSA will be terminated by DIR, either in whole or in part, under this *Section 11.03 (c)(1),* without penalty to, or other liability of DIR and the State. DIR will make a commercially reasonable effort to provide at least thirty (30) Business Days prior notice to Vendor of any non-appropriation of State funds that would entitle DIR to terminate pursuant to this *Section 11.03 (c)(1)*.

(2) DIR, on behalf of Customers, in its capacity pursuant to Chapter 2170, Texas Government Code.

Vendor and DIR agree that when DIR is acting in its capacity pursuant to Chapter 2170, Texas Government Code, it acts and issues Purchase Orders under this CTSA on behalf of Customers. This CTSA is subject to termination, in

whole or in part, without penalty to DIR, the State or any affected Customer, as a result of non-appropriation of Customer funds. Customers under this CTSA are state agencies and local governmental entities whose appropriations are subject to actions of the respective governing bodies for such government Customers. If a Customer(s) becomes subject to an act of non-appropriation of funds which ceases to fund Customer(s) participation under this CTSA beyond the then-current budget period, the Customer(s) participation under this CTSA will be terminated by DIR, on behalf of such Customer(s), either in whole or in part, under this *section 11.03 (c)(2),* without penalty to, or other liability of DIR, the State or the Customer(s)subject to the act of non-appropriation of funds. DIR will make a commercially reasonable effort to provide written notice to Vendor within ten (10) Business Days of DIR's receipt of notice of non-appropriation from a Customer that would entitle DIR to terminate pursuant to this *Section 11.03 (c)(2).* Customers that are assistance organizations under Section 2170.004 (6), Texas Government Code and private institutions of higher education under Section 2170.004 (5), Texas Government Code do not have the authority to terminate their respective participation under the CTSA by reason of an act of non-appropriation.

(d) Termination for Cause by DIR.

Subject to the applicable notice and cure provisions in *Section 11.02 (c)*, DIR reserves the right to terminate this CTSA, in whole or in part, without recourse, upon Vendor's Material Breach including but not limited to the following conditions (each a Cause):

(1) Failure to adhere to laws, rules, ordinances, or orders.

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

(B) DIR may terminate this CTSA if a court of competent jurisdiction finds Vendor failed to adhere to any laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Vendor's duties under this CTSA.

(2) Breach of confidentiality.

DIR may terminate this CTSA if Vendor breaches *Article 10* or confidentiality laws with respect to the Services provided under this CTSA.

(3) Termination for gifts and gratuities.

(A) DIR may terminate this CTSA following its determination that Vendor, its employees, agents or Subcontractors have either offered or given any Thing of Value to an officer or employee of DIR, a Customer or the State in violation of State law. DIR may terminate this CTSA following a determination by a competent judicial or quasi-judicial authority and Vendor's exhaustion of all legal remedies that Vendor, its employees, agents or Subcontractors have either offered or given a Thing of Value to an officer or employee of DIR, a Customer or the State in violation of State law.

(B) Vendor must include a similar provision to that in *Section 11.03(d)(3)(A)* above, in each TEX-AN NG Customer Service Agreement and all Subcontracts and will enforce this provision against an agent or a Subcontractor who has offered or given any Thing of Value to any of the persons

or entities described in this *Section 11.03(d*), whether or not the offer or gift was in Vendor's behalf.

(C) Termination of a Subcontract by Vendor pursuant to this provision will not be a cause for termination of this CTSA unless:

(1) Vendor fails to replace such terminated Subcontractor within a reasonable time; and

(2) Such failure constitutes Cause as described in this *Section 11.03.*

(D) For purposes of this Section, a Thing of Value means any item of tangible or intangible property that has a monetary value of more than fifty dollars ($50.00) and includes, but is not limited to, cash, food, lodging, entertainment, and charitable contributions. The term does not include contributions to holders of public office or candidates for public office who are paid and who reports such payments in accordance with State or Federal law.

(4) Termination for insolvency.

(A) DIR may terminate this CTSA if Vendor:

(1) Files for bankruptcy;

(2) Becomes or is declared insolvent, or is the subject of any proceedings related to its liquidation, insolvency, or the appointment of a receiver or similar officer for it which are not dismissed within 90 calendar days from the date of filing;

(3) Makes an assignment for the benefit of all or substantially all of its creditors; or

(4) Enters into an agreement for the composition, extension, or readjustment of substantially all of its obligations.

(B) Vendor agrees to pay for all expenses of DIR including the cost of counsel, incident to:

(1) The enforcement of payment of all obligations of the Vendor by any action or participation in, or in connection with a case or proceeding under Chapters 7, 11, or 13 of the United States Bankruptcy Code, or any successor statute;

(2) A case or proceeding involving a receiver or other similar officer duly appointed to handle the Vendor's business; or

(3) A case or proceeding in a State court initiated by DIR when previous collection attempts have been unsuccessful.

(5) Prohibited Vendor's List.

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

(A) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control, or

(B) Vendor becomes suspended or debarred from doing business with the Federal government as listed in the Excluded Parties List System (EPLS) maintained by the General Services Administration, or

(C) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code.

Vendor will be provided written notice in accordance with *Article 11,* of intent to terminate.

(e) Termination for Cause by Vendor.

Vendor has the right to terminate or suspend provision of an affected Service or Service component with respect to a Customer that is either a private institution of higher education or an assistance organization (as both are described in the definition of "Customer" in Section 21 to Exhibit A ("Definitions")) upon thirty (30) days prior written notice (or such other timeframe as is reasonably practicable under the circumstances) to DIR and the affected Customer (i) if such Customer (A) commits a fraud upon Vendor; (B) utilizes the Service to commit a fraud upon another party; (C) unlawfully uses the Services; (D) abuses or misuses Vendor's network of Service; or (E) materially interferes with another customer's use of Vendor's network of Service; or (ii) if such Customer fails to pay undisputed charges due for the affected Service or Service component, provided such failure continues unremedied for 30 days after receipt of notice.

Section 11.04 Effective date of termination.

Termination pursuant to *Section 11.03* will be effective as of the date specified in the notice of termination.

Section 11.05 Extension of termination effective date.

Any termination date pursuant to Section 11.03 may be extended upon mutual agreement of the Parties.

Section 11.06 Payment and other provisions at CTSA termination.

(a) If DIR terminates this CTSA, DIR will pay Vendor within 30 Business Days of the effective date of termination (or as soon as practical thereafter taking into account appropriation and fund accounting requirements) any undisputed amounts due and third party costs associated with all completed, approved, and accepted Services as of the effective date of termination.

(b) DIR further agrees to negotiate in good faith with Vendor to equitably adjust and settle any accrued or outstanding liabilities and third party costs associated with a Service which:

(1) Is due or delivered prior to or upon termination of this CTSA; and

(2) Has been provisioned and is capable of use by DIR, a Customer and/or Authorized End User or the State, notwithstanding its status as not having been Accepted.

(c) Vendor must provide DIR all reasonable access to records, facilities, and documentation as is required to efficiently and expeditiously close out the Services under this CTSA.

(d) Vendor must prepare a Disentanglement Plan, which is acceptable to and approved by DIR, in its sole and absolute discretion. Implementation of such Disentanglement Plan will begin upon final approval by DIR.

(e) *Sections 11.06 (a) and (b)* shall only be applicable to Services, time and materials, and third party costs associated with work performed under the CTSA and/or TEX-AN NG Customer Service Agreements, if otherwise allowed hereunder.

(f) For all other Rates To DIR and Prices for direct sales transaction Services as set forth in *Exhibit C,* DIR or direct sales transaction Customers, as appropriate, will pay for all Services provided as of the effective termination date. *Article 9 Terms and Conditions of Vendor Billing and DIR and Customer Payment,* shall govern the billing and payment for Services under this *Section 11.06*.

(g) If DIR and/or Customer terminates a Service or Service Component prior to the date DIR and/or Customer's obligation to pay for Services begins, then DIR or Customer (whichever is the recipient of the Services) will reimburse Vendor for time and materials incurred prior to the effective date of termination, plus any third party charges resulting from the termination.

(h) If DIR terminates this CTSA or Service Component for a material breach, or if Vendor terminates a Service pursuant to Section 14.01(b) Infringement Indemnification provision, or if Vendor withdraws a Service for any reason other than for cause, or if DIR terminates due to non-appropriations or funding, then DIR will not be liable for the termination charges set forth in subsection (j)(i) below.

(i) If a direct sales transaction Customer terminates its relationship with Vendor under this CTSA, in whole or in part for material breach, or if Vendor terminates a Service pursuant to Section 14.01(b) Infringement Indemnification provision, or if Vendor withdraws a direct sales transaction Service for any reason other than cause, or if direct sales transaction Customer terminates due to non-appropriations or funding, then the direct sales transaction Customer will not be liable for the termination charges set forth in subsection (j)(ii) below.

(j) (i) If DIR terminates a Service or Service Component other than as set forth in subsection (h) above, or Vendor terminates an affected Service of Service Component for DIR 's Material Breach, DIR will pay termination charges as follows: (a) if termination occurs before the end of the Minimum Payment Period, DIR will pay 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service or Service Component multiplied by the months remaining in the Minimum Payment Period, plus any waived or unpaid non-recurring charges identified in the Pricing Schedule (including, but not limited to, any and all charges for failure to satisfy a Minimum Retention Period (MRP), plus any charges incurred by Vendor from a third party (e.g., not a Vendor Affiliate) due to the termination.

(ii) If a direct sales transaction Customer terminates a direct sales transaction Service or a direct sales transaction Service Component other than as set forth in subsection (i) above, or Vendor terminates as affected direct sales transaction Service or direct sales transaction Service Component for direct sales transaction Customer 's Material Breach, the direct sales transaction Customer will pay termination charges as follows: (a) if termination occurs before the end of the Minimum Payment Period, the direct sales transaction Customer will pay 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated direct sales transaction Service or direct sales transaction Service Component multiplied by the months remaining in the Minimum Payment Period, plus any waived or unpaid non-recurring charges identified in the Pricing Schedule (including, but not limited to, any and all charges for failure to satisfy a Minimum Retention Period (MRP), plus any charges incurred by Vendor from a third party (e.g., not a Vendor Affiliate) due to the termination.

(k) The termination charges set forth in subsection (j) above will not apply if a terminated Service Component, either direct sales transaction or otherwise, is replaced with an upgraded Service Component at the same time, but only if (a) the Minimum Payment

Period and associated charge for the replacement Service Component are equal to or greater than the Minimum Payment Period and associated charge for the terminated Service Component, and (b) the upgrade is not restricted in the applicable Service Publication.

Section 11.07 Amendment of CTSA in the event of remedies.

DIR may propose an amendment of this CTSA in connection with the imposition of a remedy under this *Article 11*. Any amendments offered pursuant to this *Section 11.07* must be reasonable, limited to the matters causing the exercise of a remedy, and in writing. Vendor must negotiate such proposed amendments in good faith.

Section 11.08 Disentanglement assistance.

Upon receipt of notice of full or partial termination of this CTSA by DIR, Vendor will use commercially reasonable efforts to provide all Disentanglement assistance reasonably necessary to enable DIR and/or its designee to effectively close out this CTSA and transition the Services and Customers to another TEX-AN NG Vendor as provided in the Disentanglement Plan.

Section 11.09 Reserved.

Section 11.10 Dispute resolution.

(a) General agreement of the Parties.

The Parties mutually agree that the interests of fairness, efficiency, and good business practices are best served when the Parties employ all reasonable and informal means to resolve any Dispute under this CTSA. The Parties express their mutual commitment to using all reasonable and informal means of resolving Disputes prior to invoking a remedy provided elsewhere in this *Article 11.*

(b) Duty to negotiate in good faith.

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

(c) Claims for breach of CTSA.

(1) *General requirement.* As required by and in accordance with Chapter 2260, Texas Government Code, Vendor's claim for breach of this CTSA must be resolved in accordance with the dispute resolution process established by DIR.

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

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

(3) *Contested case proceedings*. The contested case process provided in Chapter 2260, Subchapter C, Texas Government Code, will be Vendor's sole and ex-

clusive process for seeking a remedy for any and all alleged breaches of the CTSA by DIR if the Parties are unable to resolve their disputes under *Subsection (c)(2)* of this Section. The Parties expressly agree that compliance with the contested case process provided in Chapter 2260, Subchapter C, Texas Government Code, is a condition precedent to seeking consent to sue from the Texas Legislature under Chapter 107, Texas Civil Practices & Remedies Code. Neither the execution of this CTSA by DIR nor any other conduct of any representative of DIR relating to this CTSA shall be construed as or be considered a waiver of the State's sovereign immunity.

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

(5) *Vendor's duty to perform.* Neither the occurrence of an event constituting an alleged breach of contract nor the pending status of any claim for breach of contract is grounds for the suspension of performance, in whole or in part, by Vendor of any duty or obligation with respect to the performance of Services under this CTSA and all TEX-AN NG Customer Service Agreements. Any changes to this CTSA as a result of a Dispute Resolution will be implemented in accordance with *Exhibit B, Article 7, Amendments and modifications.*

Section 11.11 Liability of Vendor.

(a) Subject to Section 15.03, Exhibit B of the CTSA, Vendor bears all risk of loss or damage due to:

(1) Defects in Services;

(2) Unfitness or obsolescence of Services; and

(3) The negligence or intentional misconduct of Vendor or its employees, agents, or Subcontractors;

(b) In addition to its obligations of indemnification under Sections 4.02 ("Responsibility for Vendor Personnel"), 5.02(e) ("Vendor Responsibility for Compliance with Laws and Regulations"), 9.10(a) ("Liability for Taxes, Insurance and Indemnification"), and 14.01 ("Infringement Indemnification"), Vendor shall indemnify and hold harmless the State, DIR and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, Subcontractors, or suppliers of Subcontractors in the execution or performance of the CTSA, a TEX-AN NG Customer Services Agreement and any Purchase Orders issued under the Contract; provided, however, that with respect to Vendor's failure (including the failure of Vendor's agents, employees, Subcontractors, or suppliers of Subcontractors) to deliver Services per the SLA specified in Exhibit D which result in a Credit being paid by Vendor as specified in that Exhibit, such Credits (and not the indemnification set forth in this Section 11.11(b)) will apply. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS FEES. THE DEFENSE SHALL BE COORDINATED (I) BY THE OFFICE OF THE TEXAS ATTORNEY GENERAL FOR DIR AND FOR TEXAS STATE AGENCY CUSTOMERS, (II) BY CUSTOMER'S LOCAL COUNSEL FOR CUSTOMERS THAT ARE POLITICAL SUBDIVISIONS (INCLUDING COUNTIES, MUNICIPALITIES, OR DISTRICTS) AND (III) BY VENDOR'S LEGAL COUNSEL FOR CUSTOMERS THAT ARE EITHER PRIVATE INSTITUTIONS OF HIGHER EDUCATION OR ASSISTANCE ORGANIZATIONS (AS BOTH ARE DESCRIBED IN THE DEFINITION OF "CUSTOMER" IN SECTION 21 TO EXHIBIT A ("DEFINITIONS")). IN ADDITION, IN CASES WHERE EITHER THE OFFICE OF

THE TEXAS ATTORNEY GENERAL IS COORDINATING THE DEFENSE (UNDER SECTION 11.11(B)(I)) OR LOCAL COUNSEL IS COORDINATING THE DEFENSE (UNDER SECTION 11.11(B)(II)), VENDOR WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT VENDOR'S EXPENSE, BUT VENDOR AGREES NOT TO INTERFERE WITH EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL'S OR LOCAL COUNSEL'S (AS THE CASE MAY BE) MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. IN CASES WHERE VENDOR IS COORDINATING THE DEFENSE, THE AFFECTED CUSTOMER WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT CUSTOMER'S EXPENSE, BUT CUSTOMER AGREES NOT TO INTERFERE WITH VENDOR'S MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. NOTWITHSTANDING THE FOREGOING, VENDOR DOES NOT WAIVE ANY DEFENSES UNDER TEXAS LAW.

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

Article 12. Assurances and Certifications

Section 12.01 Conflicts of interest.

(a) Representation.

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

(b) General duty regarding conflicts of interest.

Vendor will establish safeguards to prohibit employees, agents, and Subcontractors from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Vendor will, and Vendor shall cause its agents and Subcontractors, to operate with complete independence and objectivity without actual, potential or apparent conflict of interest with respect to the activities conducted under this CTSA. Vendor has disclosed, in its Response to the RFO, any existing conflicts of interest, including any situations that create an appearance of a conflict of interest. Vendor has also disclosed the current or past employment of former state employees within 12 years of the date of its Response to the RFO, under the terms of the disclosure requirement contained in the RFO.

Section 12.02 Organizational conflicts of interest.

(a) Definition.

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

(1) Impairs or diminishes Vendor's, agent's or Subcontractor's ability to render impartial or non-discriminatory Services to DIR and the Customers; or

(2) Provides the Vendor, agent or Subcontractor an unfair competitive advantage in the Procurement and future DIR procurements.

(b) Warranty.

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

(c) Continuing duty to disclose.

(1) Vendor agrees that, if after the Effective Date, Vendor discovers or is made aware of an organizational conflict of interest, Vendor will immediately and fully disclose such interest in writing to DIR. In addition, Vendor must promptly disclose any relationship that might be perceived or represented as a conflict after its discovery by Vendor or by DIR as a potential conflict. DIR reserves the right, in its sole and absolute discretion, to make a final determination regarding the existence of conflicts of interest, and Vendor agrees to abide by DIR's decision.

(2) The disclosure will include a description of the action(s) that Vendor has taken or proposes to take to avoid or mitigate such organizational conflicts of interest.

(d) Remedy.

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

(e) Flow down obligation.

Vendor must include the provisions of this *Section 12.02* in all agent agreements and Subcontracts for work to be performed similar to the Services provided by Vendor under this CTSA, and the terms CTSA, Vendor, and project manager modified appropriately to preserve the State's rights against such agents and Subcontractors.

Section 12.03 DIR personnel recruitment prohibition.

Vendor has not retained or promised to retain any agent, Subcontractor, person, or company, or utilized or promised to utilize an agent, or a Subcontractor that participated in DIR's development of specific criteria of this CTSA or who participated in the Procurement that resulted in the selection of the Vendor for this CTSA.

Vendor will not recruit or employ any DIR professional or technical personnel who have worked on Projects relating to the subject matter of this CTSA, or who have had any influence on decisions affecting the subject matter of this CTSA, for two (2) years following the expiration and/or termination of this CTSA.

Section 12.04 Anti-kickback provision.

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

Section 12.05 Debt or back taxes owed to the State.

In accordance with Section 403.055,Texas Government Code, Vendor agrees that any payments due to Vendor under this TEX-AN NG Communications Technology Services Agreement will be first applied toward any debt and/or back taxes Vendor owes the State. Vendor further agrees that payments will be so applied until such debts and back taxes are paid in full.

Section 12.06 Outstanding debts and judgments.

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

Section 12.07 Antitrust.

In submitting a Response, and in executing this CTSA, Vendor certifies to the best of its knowledge and belief and agrees as follows:

(a) Neither Vendor, nor agent, nor Subcontractor, nor the person represented by the Vendor, nor any person acting for the represented person has:

(1) violated the antitrust laws codified by Sections 15.01, *et seq*., Texas Business & Commerce Code or the Federal antitrust laws; or

(2) directly or indirectly communicated the Response associated with this CTSA to a competitor or other person engaged in the same line of business.

(b) Vendor hereby assigns to DIR any and all claims for overcharges associated with products and services provided to DIR and Customers under this Contract, against its suppliers arising under the antitrust laws of the United States, 15 U.S.C. Section 1, *et seq*. (1973), as amended, and the antitrust laws of the State, Sections 15.01, *et seq*., Texas Business & Commerce Code.

Section 12.08 Agency Executive.

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

Section 12.09 Deceptive Trade Practices; Unfair Business Practices.

Vendor to the best of its knowledge represents and warrants that neither Vendor nor any of its Subcontractors has been the subject of allegations of Deceptive Trade Practices violations under Chapter 17, Texas Business & Commerce Code, or allegations of any unfair business practice in any administrative hearing or litigation and that Vendor has not been found to be liable for such practices in such proceedings. Vendor to the best of its knowledge, represents and warrants that it has no officers who have served as officers of other entities who have been the subject allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit.

Article 13. Representations, Warranties and Covenants.

Section 13.01 Authorization.

Vendor hereby represents and warrants the following:

(a) The execution, delivery and performance of this CTSA has been duly authorized by Vendor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Vendor to enter into this Contract and perform its obligations under this CTSA.

(b) Vendor has obtained all licenses, assignments, certifications, permits, and authorizations necessary to perform the Services under this CTSA and currently is in good standing with all regulatory agencies that regulate any or all aspects of Vendor's performance of Services under this CTSA. Vendor will maintain all required certifications, licenses, permits, and authorizations during the term of this CTSA.

Section 13.02 Ability to perform.

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

Section 13.03 Workmanship and performance.

(a) All Services provided under this CTSA will be provided in a manner consistent with the standards of quality as outlined in this CTSA.

(b) All Services must meet or exceed the required levels of performance specified in or pursuant to this CTSA, and will meet or exceed DIR's Goals and Objectives, as set forth in the RFO, Section 1.3.

(c) Vendor shall, and shall cause its agents and Subcontractors to, perform the Services in a workmanlike manner, in accordance with best practices and high professional standards consistent with applicable industry standards used in well-managed operations performing Services similar to the Services awarded in this CTSA.

Section 13.04 Compliance with agreement.

Vendor agrees to provide written notice to DIR of any action substantially or materially inconsistent with any of the terms and conditions set forth in this CTSA.

Section 13.05 Infringement and misappropriation.

Vendor represents, warrants and covenants that the Services provided by Vendor will not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on copyright, patent, trade secret, or other Intellectual Property rights. DIR agrees that the sole remedy for any breach of the foregoing is the indemnification set forth

in *Section 14.01* ("Infringement Indemnification") below. Vendor agrees that it shall take reasonable efforts to include the indemnity provision or substantially similar language as provided for in *Section 14.01(a)* into its Subcontracts, in which Subcontractors participate in the development or delivery of the Services or Software.

Section 13.06 Limited Warranty Disclaimer.

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

Article 14. Intellectual Property.

Section 14.01 Infringement Indemnification.

(a) VENDOR WILL, AT ITS EXPENSE, INDEMNIFY, AND HOLD HARMLESS DIR AND THE CUSTOMERS, THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, CONTRACTORS, AND AGENTS FROM AND AGAINST ANY LOSSES, LIABILITIES, DAMAGES, PENALTIES, COSTS, FEES, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEYS' FEES AND EXPENSES, FROM ANY CLAIM OR ACTION AGAINST DIR AND/OR CUSTOMERS THAT IS BASED ON A CLAIM OF BREACH OF THE WARRANTY SET FORTH IN *SECTION 13.05* OF THE CONTRACT, DIR AND/OR CUSTOMERS WILL PROMPTLY NOTIFY VENDOR IN WRITING OF THE CLAIM, PROVIDE VENDOR A COPY OF ALL INFORMATION RECEIVED BY DIR AND/OR CUSTOMERS WITH RESPECT TO THE CLAIM, AND COOPERATE WITH VENDOR IN DEFENDING OR SETTLING THE CLAIM. THE DEFENSE WILL BE COORDINATED (i) BY THE OFFICE OF THE TEXAS ATTORNEY GENERAL FOR DIR AND TEXAS STATE AGENCY CUSTOMERS, (II) BY CUSTOMER'S LOCAL COUNSEL FOR CUSTOMERS THAT ARE POLITICAL SUBDIVISIONS (INCLUDING COUNTIES, MUNICIPALITIES, OR DISTRICTS), AND (III) BY VENDOR'S LEGAL COUNSEL FOR CUSTOMERS THAT ARE EITHER PRIVATE INSTITUTIONS OF HIGHER EDUCATION OR ASSISTANCE ORGANIZATIONS (AS BOTH ARE DESCRIBED IN THE DEFINITION OF "CUSTOMER" IN SECTION 21 TO EXHIBIT A ("DEFINITIONS")). IN ADDITION, IN CASES WHERE EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL IS COORDINATING THE DEFENSE (UNDER SECTION 14.01(A)(I)) OR LOCAL COUNSEL IS COORDINATING THE DEFENSE (UNDER SECTION 14.01(A)(II)), VENDOR WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT VENDOR'S EXPENSE, BUT VENDOR AGREES NOT TO INTERFERE WITH EITHER THE OFFICE OF THE TEXAS ATTORNEY GENERAL'S OR LOCAL COUNSEL'S (AS THE CASE MAY BE) MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT. IN CASES WHERE VENDOR IS COORDINATING THE DEFENSE, THE AFFECTED CUSTOMER WILL HAVE THE RIGHT TO PARTICIPATE IN THE DEFENSE AT CUSTOMER'S EXPENSE, BUT CUSTOMER AGREES NOT TO INTERFERE WITH VENDOR'S MANAGEMENT AND CONTROL OF THE DEFENSE AND SETTLEMENT.

(b) If any Service, or part thereof, that is the subject of an action described in *Section 14.01(a)*, is held to constitute an infringement or misappropriation, or the use thereof

is enjoined or restricted or if a proceeding appears to Vendor to be likely to be brought with respect there to, Vendor will, at its own expense, either:

(1) Procure for DIR and/or the affected Customer the right to continue using the Services; or

(2) Modify or replace the Services to comply with the specifications in the CTSA, if any, and to not violate any Intellectual Property rights.

If Vendor does not believe that either of the foregoing alternatives is commercially reasonable, Vendor will provide DIR with written notice regarding same in which event Vendor and DIR will agree upon an alternative approach which may include termination of the affected Service.

Section 14.02 Exceptions.

Vendor is not responsible for any claimed breaches of the warranties set forth in *Section 14.01* to the extent caused by:

(a) Content submitted to the Service by DIR or a Customer (or their respective Affiliates or End Users); or

(b) Modifications made to the Service in question by any party other than Vendor or its agents or Subcontractors, or by Vendor working at the direction of DIR and/or Customer and/or their agents and in accordance with another vendors' specifications; or

(c) The combination, operation, or use of the Service with other items if Vendor did not supply or approve for use with the item; or

(d) Vendor's adherence to to written specifications provided by DIR and/or Customers (or their respective Affiliates); or

(e) use of the Service in violation of this CTSA; or

(f) DIR's and/or Customer's failure to use any new or corrected versions of the Service made available or provided by Vendor.

Section 14.03 Rights in data.

(a) DIR, Customers or Vendor will be and remain the owner of all data made available by DIR, Customers or Vendor pursuant to the CTSA. Vendor will not use DIR or Customer data for any purpose other than providing the Services, nor will any part of DIR or Customer data be disclosed, sold, assigned, leased or otherwise disposed of to the general public or to specific third parties (other than with respect to providing the Services) or commercially exploited by or on behalf of Vendor, nor will any employee of Vendor other than those on a strictly need to know basis have access to DIR or Customer data. DIR or Customer will not disclose Vendors data to any third party nor will any employee of DIR or Customer, other than those on a strictly need to know basis, have access to Vendor's data. Vendor will not possess or assert any lien or other right against DIR or Customer data. Without limiting the generality of this *Section 14.03*, Vendor will only use personally identifiable information as strictly necessary to provide the Services and will disclose such information only to its employees who have a strict need to know such information, provided Vendor obtains such employees' written agreement to keep such information confidential and to use it only as required in the performance of Services. Vendor will comply at all times with all State and Federal laws and regulations applicable to such personally identifiable information. Additionally, Vendor may disclose such information to its Subcontractors who have a need to know in connection with the performance of Services, provided Vendor obtains such Subcontractors' written agreement to keep such information confidential and to use it only as required in the performance of Services.

(b) DIR or Customer is and will remain the owner of all DIR or Customer-specific data pursuant to the CTSA. Except as otherwise provided in this CTSA, or as otherwise restricted by law, and excluding Vendor Confidential Information and Proprietary Information, DIR and Customer may use the data provided by the Vendor for any purpose relating to the operation and enhancement of TEX-AN NG Program. DIR or Customer will not possess or assert any lien or other right against the Vendor's data.

Section 14.04 Ownership of pre-existing materials.

DIR or Customers and Vendor will continue to own their respective proprietary technologies and information developed before entering into the CTSA. Any software licensed through the Vendor and sold to DIR or Customers as a part of a Service, will be licensed directly to DIR or Customers, as appropriate. Any software used with the Services will be governed by the written terms and conditions applicable to such software. Title to software remains with Vendor or its supplier. DIR and Customer must comply with all such terms and conditions and they take precedence over this CTSA as to such software.

Section 14.05 Third-party commercial Software.

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

Section 14.06 Pre-existing materials for custom Software Deliverables related to Services.

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

(a) Such pre-existing materials and their owners are identified to DIR or Customer in writing, and

(b) Such pre-existing materials are either readily commercially available products for which Vendor or its Subcontractor, as the case may be, has obtained a license (in form and substance approved by DIR, in its sole and absolute discretion) in the name of DIR or Customer, or are materials that Vendor or its Subcontractor, as the case may be, has the right to license to DIR or Customer and has agreed to license to DIR or Customer on terms and conditions approved by DIR, in its sole and absolute discretion, prior to using such pre-existing materials to perform the Services. Vendor represents, warrants and covenants that it shall not, during the term of the CTSA or any time afterwards, assert any ownership rights, in any DIR-owned or Customer-owned software, source code, and other materials. Notwithstanding the foregoing Vendor does not grant ownership or licensing/marketing rights in or pertaining to Vendor's Intellectual Property assets (including ownership of custom developments).

Section 14.07 Ownership of work product by DIR or Customer.

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

Section 14.08 License to Intellectual Property.

(a) If necessary to the performance of Services hereunder, upon notice from Vendor, DIR and/or Customers shall enter into good faith negotiations to license to Vendor any Intellectual Property owned by DIR and/or Customers.

(b) In the event the Vendor makes or has made any Modifications to any software owned by DIR and /or a Customer under this CTSA, DIR and/or the Customer, as appropriate, shall own the modifications, and Vendor hereby assigns all of its rights, titles and interests (including Intellectual Property rights) to such modifications to the appropriate party, either DIR or the Customer. Upon the request of DIR or the Customer, Vendor will give a written assignment of the modifications to the requesting party. During the Term, Vendor retains a terminable, non-transferable, non-exclusive and paid-up license to use the modifications in performing Services under this CTSA, and to use the modifications to provide Services to other Customers, including the right to sub-license or further license those modifications only to Customers.

(c) The Vendor shall own all modifications to the Vendor owned Software made by the Vendor and any modifications to the Vendor Proprietary software made on behalf of DIR and/or a Customer. DIR and /or the affected Customer hereby assign its rights, titlkes and interests (including Intellectual Property rights) to such modifications to the Vendor. Vendor's license to DIR and /or the affected Customer to use Vendor Proprietary Software shall extend to such modifications; provided, however, Vendor's warranties and indemnities with respect to Vendor Proprietary Software do not extend to any modifications made on behalf of DIR and/or a Customer by contractors other than Vendor and its Subcontractors. Notwithstanding the foregoing Vendor does not grant ownership or licensing/marketing rights in or pertaining to Vendor Intellectual Property assets (including ownership of custom developments).

Article 15. Liability.

Section 15.01 Property damage.

(a) Vendor will protect State's, DIR's and Customers' real and personal property from damage arising from Vendor's, its agents', and its Subcontractors' performance of this CTSA, and Vendor will be responsible for any loss, destruction, or damage to State's, DIR's and Customers' property that results from or is caused by Vendor's, its agents', or its Subcontractors' negligent or wrongful acts or omissions. Upon the loss of, destruction of, or damage to any property of the State, DIR and Customers, Vendor will notify DIR and the applicable Customer thereof and, subject to direction from DIR and the applicable Customer, will take all steps to protect that property from further damage.

(b) Vendor agrees to observe and require its employees, agents, and Subcontractors to observe no less than industry standard safety measures and proper operating procedures at the State's, DIR's and Customers' sites at all times and otherwise to comply with the procedures and safety standards imposed by DIR and Customers, whichever is the more rigorous standard.

(c) Vendor will distribute a policy statement to all of its employees, agents, and Subcontractors that directs the employee, agent, or Subcontractor to immediately report to DIR and the applicable Customer and Vendor the existence of any special defect or unsafe condition encountered while on the State's, DIR's or Customers' premises. Vendor will immediately report to DIR and the applicable Customer the existence of any special defect or an unsafe condition it encounters or otherwise learns about.

Section 15.02 Risk of Loss.

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

Section 15.03 Limitation of Liability.

(a) For any claim or cause of action arising under or related to the CTSA, neither Party will be liable to the other Party for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages.

(b) EACH PARTY'S LIABILITY TO THE OTHER UNDER THE CTSA WILL NOT EXCEED THE TOTAL VALUE OF VENDOR'S INVOICES TO DIR IN THE TWELVE (12) MONTHS PRECEDING THE FILING OF A LAWSUIT(provided, however, that a Customer's liability to Vendor will not exceed amounts payable by Customer to Vendor during such twelve month period)..

(c) Exceptions to Limitations of Liability. This *Section 15.03* will not apply with respect to:

(1) Losses occasioned by the fraud(except as rendered inapplicable to the State, DIR and all state agency and local government Customers pursuant to *Section 11.03(e) of Exhibit B* to the CTSA), willful misconduct, or gross negligence of a Vendor.

(2) Losses that are the subject of indemnification under this CTSA.

(3) Losses occasioned by Vendor's refusal to provide Services under a Disentanglement Plan, which has been approved by DIR, as specified in Section 11.06(d) . For purposes of this provision, "refusal" means the intentional cessation by Vendor, in a manner impermissible under this CTSA, of the performance of all or a material portion of the Services then required to be provided by Vendor under the Disentanglement Plan.

(4) Losses occasioned by any breach of a Party's obligations under *Article 10.*

(d) Items Not Considered as Damages. The following will not be considered damages subject to, and will not be counted toward the liability exclusion or cap specified herein:

(1) Amounts payable by or assessed against Vendor pursuant to Exhibit D ("Performance Management") of this CTSA.

(2) Amounts withheld by DIR in accordance with this CTSA due to incorrect charges or Services not provided.

(3) Amounts paid by DIR but subsequently recovered from Vendor due to incorrect charges or services not provided.

(4) Vendor Invoiced Rates To DIR, Prices, telecommunications fees and surcharges and other amounts that are due and owing to Vendor for Services under this CTSA.

Article 16. Transition Plan for Expiration of the CTSA.

Section 16.01 Scope.

This Transition Plan for expiration of the CTSA addresses the orderly Transition to DIR, or the successor service provider, of all Services provided by Vendor to Customers and/or Authorized End Users pursuant to TEX-AN NG Customer Services Agreements through the CTSA, that have an expiration date beyond the Expiration Date (the Transition Effective Date), including planning activities which will be conducted prior to the Transition Effective Date. This transition plan does not apply to other contracts that Vendor may hold with DIR outside the scope of this CTSA. Vendor agrees that all references in this *Article 16* to DIR, includes all employees of the agency and all designated contractors or consultants that may assist DIR in the Transition. DIR and Vendor agree that the term "Transition" as used in this *Article 16* means disposition from Vendor to DIR, or the successor service

provider, by any lawful method, including by sale and purchase, assumption, transfer, assignment, early termination or other method.

Section 16.02 General Statement for Transition.

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

Section 16.03 Agreement for Transition Assistance Services.

Transition Assistance Services, as specified in this *Article 16*, shall be provided from the commencement of the Transition Period and for up to 12 months after the Expiration Date, unless further extended by the Parties. DIR will provide Vendor with written notice of its intent to have Transition Assistance Services, in whole or in part, provided by Vendor after the Transition Effective Date, by giving at least 60 calendar days advance notice. Such notice shall contain a list of the specific Transition Assistance Services required and the duration for each of the Transition Assistance Services sought. Vendor shall review the notice and provide a written proposal response for the specific services sought, as more particularly described in *Section 16.04(b)(5)* of this Article, within 30 calendar days of receipt of DIR's notice. The parties agree to negotiate in good faith to conclude a written agreement for the required Transition Assistance Services no later than 120 calendar days prior to the Transition Effective Date.

Section 16.04 Transition Assistance Services.

Transition Assistance Services shall include:

(a) Full cooperation and participation in the Transition planning process, as more particularly described in *Section 16.06*, which shall commence no later than the commencement of the Transition Period, at DIR's sole and absolute discretion, and shall involve a series of meetings among the representatives of DIR, Vendor, the successor service provider, if known, representatives of Vendor's current State agency Customers and other parties whose participation would enhance the planning process, which process is more fully described in Phase Four set forth in this *Section 16.04*; and

(b) Vendor providing to DIR, or the successor service provider, all of the items and matters called out for in this *Article 16*, and other items or information reasonably necessary to complete the transition of the Services under the CTSA. Without limiting the foregoing, the Transition Assistance Services shall occur in five phases:

(1) Phase 1 – Initial Reporting of Services Subject to Transition. On or by December 31st two years prior to the Transition Effective Date, Vendor shall provide a written report, in the form required by DIR, disclosing all Services, as of December 1st of the same year, that have expiration dates beyond the Expiration Date. Without limiting the foregoing, Vendor shall report on and include:

(A) All Software that Vendor uses to perform its Services with each Customer and/or Authorized End User under each of the Services, including complete source and machine readable data, associated manuals, procedures, processes, documentation, descriptions, data files and other such

items as available in accordance with existing third party licensing agreements. For each item of Software listed, Vendor shall provide a copy of the associated software license held by Vendor, the status of the transferability of the associated licenses to a successor entity under conditions similar to that of this Transition and the costs for Transition to DIR or the successor service provider, if any;

(B) All hardware and other equipment, including all hardware leases for Equipment used to perform each Service, including leases which have a term beyond the Expiration Date. Vendor shall provide a copy of the assignment/transfer and early termination clauses for each lease with a term beyond the Expiration Date and report on the status of transferability and any costs for transfer or early termination, if any. Vendor shall report all known costs for transfer or termination of such leases, including the existing leases or as the same may be amended prior to the Transition Effective Date;

(C) All maintenance agreements for software, hardware or other equipment and assets, including copies of their assignment/transfer and early termination clauses, a status report on transferability to DIR or its designee and the costs for transfer or early termination, if any;

(D) All third-party supplier agreements, which have an effective date beyond the Expiration Date, including copies of their assignment/transfer and early termination clauses, a status report on transferability to DIR or its designee and the costs for transfer or early termination, if any;

(E) A Software Upgrade Plan, detailing which products need to be purchased to maintain the Services through their respective expiration dates. Vendor shall comply with the Software Upgrade Plan during the Term. The Software Upgrade Plan shall include, at a minimum, an annual review requirement, with annual DIR approval of any changes to the Plan; and

(F) Copies of the TEX-AN NG Customer Services Agreements with the Customers and /or Authorized End Users for Services.

(2) Phase 2 – Ongoing Reports on Services through the Transition Effective Date. Phase 2 is composed of five (5) activities, as listed below:

(A) Follow up Reporting. For each item reported in Phase I, Vendor shall update DIR on a semi-annual basis up to the Transition Effective Date. The first such update after December 31st shall be due on or by June 30th of the following year.

(B) New TEX-AN NG Customer Services Agreements. For every TEX-AN NG Customer Services Agreement issued by Vendor to a Customer and /or Authorized End User between the initiation of the reporting period two years out from the Transition Effective Date and the Transition Effective Date, Vendor shall seek and receive DIR's approval prior to entering into any TEX-AN NG Customer Services Agreements. DIR shall be provided no less than five Business Days in which to review the documentation for each proposed TEX-AN NG Customer Services Agreement, in substantially final form. In each instance Vendor shall provide that the TEX-AN NG Customer Services Agreement contains: 1) a complete assignment or transfer to DIR, or its successor service provider, on or by the Expiration Date, preferably at no cost to DIR or its designee, and 2) a termination for convenience clause in favor of Vendor and DIR in all such TEX-AN NG Customer Services Agreement; in the event a cost-free assignment thereof is not available. Vendor shall use commercially reasonable efforts

to minimize the fee for assignment or transfer to DIR, or its successor service provider.

(C) Equipment Condition Report. Vendor will develop a checklist and conduct checks/reviews of the installed Equipment and produce a report on or by six months prior to the Transition Effective Date. Such report shall detail, at a minimum, the then-current condition of each piece of installed Equipment and the preventative maintenance needed within the next six months after the report is issued. For all items, Vendor shall provide details about existing maintenance contracts.

(D) Subcontractor Report. On or by January 1 two years prior to the Transition Effective Date, and semi-annually thereafter up to the Transition Effective Date, Vendor shall identify all then-current Subcontracts that provide Services under any TEX-AN NG Customer Services Agreements issued pursuant to the CTSA, in a form and level of detail mutually developed by the Parties.

(E) Notwithstanding any other provision in this *Article 16*, Vendor agrees to provide another updated report for all TEX-AN NG Customer Services Agreements on or by August 31st, one year prior to the Transition Effective Date, and six months prior to the Transition Effective Date.

(3) Phase 3 – Completion of all documentation for Transition. DIR, or the successor Service Provider and Vendor shall complete Transition associated documentation necessary to effect the Transition of all TEX-AN NG Customer Services Agreements under the Contract in a timely manner, including, at a minimum, the Transition of all Customer Service Agreements reported to DIR under Subsections (1) and (2) hereof. Vendor shall facilitate interactions and necessary documentation with third-party vendors, its Subcontractors, lessors and other providers, at the request of DIR, or at the request of the successor service provider. DIR reserves the right, in its sole and absolute discretion, to require that DIR, the successor Service Provider and Vendor conduct a formal closing for the Transition, in order to ensure the completion of all necessary documentation.

DIR, or the successor service provider, shall cause each Transition document to provide the complete transfer of all right, title and interest in and to the TEX-AN NG Customer Services Agreement, including any related lease or third party contract related to the underlying Equipment, from Vendor to DIR, or the successor Service Provider, effective as of the Transition Effective Date. Each Transition document shall also provide that from and after the Transition Effective Date, Vendor shall have no obligation or liability to any third party–vendor or lessor whatsoever related to the underlying equipment. In each instance of Transition of a third party-vendor or lessor contract, DIR, or the successor service provider shall be responsible to pay the third party-vendor or lessor the applicable transfer fee, if any, or to reimburse Vendor therefore, if Vendor tenders such payment. Vendor shall have no responsibility to pay any third party-vendor or lessor from and after the Transition Effective Date.

(4) Phase 4 – Planning Phase for Transition from the CTSA to a new TEX-AN Agreement with a successor service provider. Vendor shall fully and completely participate in all meetings called by DIR for the purpose of planning and implementing the transition of TEX-AN NG Customer Services Agreements from the CTSA to the new TEX-AN Agreement with a successor service provider. The goal of this planning phase is to provide an orderly transition of TEX-AN NG Customer Services Agreement operations under the CTSA to the operations under a new TEX-AN Agreement with a successor service provider. Such

planning activities shall commence no later than January 1 of the year of the Transition Effective Date, at DIR's direction and shall continue until all transition activities are complete. These Transition activities shall include, but not be limited to, the following:

(A) Pre-planning no later than January 1 to March 31 of the year of the Transition Effective Date. These DIR meetings will include the Vendor's current Customers and/or Authorized End Users, as determined by DIR, the successor service provider, Vendor and DIR. The scope of the pre-planning is to plan for the transfers of the current Customers' TEX-AN NG Customer Service Agreement operations, scheduling of all necessary activities, development of roles and responsibilities matrix related to Transition of the TEX-AN NG Customer Services Agreements and planning for all the other steps of the transition process, as listed below. The goal of this pre-planning phase is to produce a mutually acceptable Transition plan document that defines roles and responsibilities for accomplishing each step in the Transition among the participating parties.

(B) Turnover of TEX-AN NG Customer Service Agreement operations to the successor Service Provider. In each step in the Transition planning and execution process, Vendor is required to provide information as requested by DIR, the successor Service Provider and /or the current Vendor's Customers and/or End Users in accordance with the agreed upon Transition Plan. Such information shall include, but not be limited to the following tangible items and matters of inherent knowledge:

1) Assets Lists (hardware, software, schematics, maintenance agreements, 3rd party agreements)
2) Procedures
3) Policies
4) Practices
5) Protocols
6) Customer and/or End User biographies
7) organization charts
8) Customer and /or Authorized End User and service provider (including subcontractors) decision makers; authorized employees
9) Institutional knowledge (non-proprietary and non-confidential unwritten rules; operational personnel; client background information; authorization lists)
10) Operational details
11) Key individuals (operational and decision makers)
12) Quick reference manuals

(5) Phase 5 – Post-Transition Effective Date Services by Vendor. At DIR's option, DIR shall request and Vendor shall respond with a proposal for Vendor to provide assistance for continuing management and operation of the TEX-AN NG Customer Services Agreements as conducted under the Contract for a period beyond Transition Effective Date up to one year after the Transition Effective Date, but only upon the execution of an appropriate contract for such services, on terms and conditions as agreed by DIR, or the successor service provider, and Vendor. In the event that DIR, or the successor service provider, requires the services of Vendor during the Post-Transition Effective Date period, then

DIR shall execute a separate agreement with Vendor to provide services on a time and material basis.

Section 16.05 Covenant of cooperation.

During the period of time from the commencement of the Transition, as defined, to the completion of Transition Assistance Services, Vendor agrees to fully cooperate with DIR, and as appropriate, with the successor service provider, to fulfill the terms of the CTSA. DIR and Vendor agree to fulfill the terms of this *Article 16* in a manner that is least disruptive to the Customers and/or Authorized End Users under the TEX-AN NG Customer Services Agreements. DIR and Vendor agree to notify the other Party in the event either discovers a condition, contract or other matter that would benefit or adversely affect performance of the TEX-AN NG Customer Services Agreements, if generally known. In the event it is determined that amendment to this *Article 16* is in the best interest of the State, Vendor agrees to negotiate amendments to this *Article 16* in good faith with DIR. In all events, the Parties agree to cooperate in the negotiation and execution of such other and further documents as necessary to fulfill the terms of this *Article 16*.

Section 16.06 Other Vendor Agreements with Customers.

DIR and Vendor agree that this Article does not apply to any other contracts that Vendor has, or may have in the future, with Customer and/or End Users that are separate transactions from the TEX-AN NG Customer Services Agreements authorized under the CTSA.

Article 17. End of Contract-Life Assignment.

Section 17.01 Agreed Language.

This CTSA, DIR Contract No. DIR – TEX-AN NG CTSA – 007, is in effect from _08/24/2011_ until 12:00:00 p.m., _08/24/2016__, and for such further period as allowed by the CTSA (the Effective Expiration Date of the CTSA). In order to ensure the smooth Transition of Services from one Vendor to the successor service provider, the parties agree to the following assignment language for this CTSA:

Effective as of the expiration of one second after the expiration of the CTSA, without the necessity of execution of additional documents, and at no cost to DIR or the Customers, Vendor hereby agrees to the absolute and complete assignment of this CTSA to DIR or a successor service provider, provided that the following occurs on or by 5:00 p.m. of the Business Day of the final expiration date of the CTSA:

DIR or the successor service provider agrees to assume all CTSA obligations and liabilities that arise on and after one second after the final expiration of the CTSA, and is responsible to pay to Vendor the applicable Transition assignment fees, if any, as set forth in the Transition Assignment Liability Schedule, which shall be provided by the Vendor, upon request by DIR or its Customers and attached to this CTSA. In all events, Vendor remains responsible for all CTSA obligations and liabilities that arise prior to the final expiration date of the CTSA.

Section 17.02 No Cost.

Vendor is not authorized to charge the Customers/Authorized End Users, DIR or successor Service Provider, a fee or cost for the assignment.

— End of Exhibit B —

TEX-AN NG Communications Technology Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

Exhibit C. Descriptions, Rates To DIR, Prices for direct sales transactions and related telecommunications fees and surcharges for Awarded Services

Exhibit C. Descriptions, Rates To DIR, Prices for direct sales transactions and related telecommunications fees and surcharges for Awarded Services

Contents of *Exhibit C* follow:

Article 1. Introduction. C-3
Article 2. Contractual Principles. C-3
Article 3. Methodology for Updating Associated Attachments. C-3
Article 4. Documents Referenced in *Exhibit C* C-4
Attachment C-1. Tables for the Contents C-5

Article 1. Introduction.

The purpose of *Exhibit C* is to address the agreed-upon Descriptions, Rates To DIR, Prices for direct sales transactions and related telecommunications fees and surcharges for Awarded Services.

Article 2. Contractual Principles.

Exhibit C Descriptions, Rates To DIR, Prices for direct sales transactions and related telecommunications fees and surcharges for Awarded Services addresses the following principles:

The specifics for the Descriptions, Rates To DIR, Prices for direct sales transactions and related telecommunications fees and surcharges for Awarded Services within scope of this CTSA are contained in this Exhibit C, Attachment C-1. The Vendor's initial descriptions, rates, prices and fees are consistent with the terms of the CTSA. (derived from final negotiated Tables from Vendor's response to Section 5 of RFO (Pricing) plus final, negotiated service descriptions from Vendor's response to Section 3 of RFO)

The Marketing Plan is the Vendor's projection of the activities it will engage in to maximize the economic value of the CTSA during the Term of the CTSA. The Marketing Plan includes a statement of operations for the awarded Services and the narrative discussion including all key assumptions, risks, and risk mitigation strategies used to generate Orders from Customers (derived from Marketing Plan submitted with RFO response, attached at *Attachment F-8* to *Exhibit F*).

Article 3. Methodology for Updating Associated Attachments.

Section 3.01 Recommendations.

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

(a) Specifically identify the portion or portions of *Attachment C-1* to be changed,

(b) Include the specific Rates To DIR, Prices or telecommunications fees and surcharges to be changed and/or Descriptions to be altered in *Attachment C-1*, and

(c) Identify the reasons for the proposal and anticipated revenue impact from the change or repercussions for failure to adopt the change. A copy of the recommendation will be provided to DIR and the Vendor. The parties will use electronic communications to submit, review and implement changes to *Attachment C-1. Attachment C-1* changes shall be provided to Customers via the Vendor's webpage and the TEX-AN NG web page.

Section 3.02 Review and Input.

DIR will determine whether input on the recommendation from other Customers is appropriate, and will promptly circulate the recommendation to those identified. If DIR does request input from any Customer, DIR will require any input to be provided in writing and submitted within a specified period of time, not to exceed 10 Business Days from the date of the recommendation.

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

Section 3.03 Approval.

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

Section 3.04 Appeal.

If the DIR and Vendor cannot agree on a recommendation, the recommendation may be submitted to the Executive Steering Committee for resolution and such resolution shall include input and mutual agreement by Vendor.

Article 4. Documents Referenced in *Exhibit C Descriptions, Rates To DIR, Prices for direct sales transactions and related telecommunications fees and surcharges for Awarded Services.*

Section 4.01 Attachments to *Exhibit C.*

The following attachments are incorporated as part of *Exhibit C:*

Attachments to Exhibit C	Description and Contents
Attachment C-1 Descriptions, Rates To DIR, Prices for direct sales transactions and related telecommunications fees and surcharges for Awarded Services	*Attachment C-1*contains the initial Descriptions, Rates To DIR, Prices for direct sales transactions and the telecommunications fees and surcharges for the Awarded Services.

Section 4.02 *Exhibit C* Associated Plans and Timelines.

No plans and timelines are associated with *Exhibit C*.

Section 4.02 Other Referenced Documents in *Exhibit C.*

No other documents have been referenced in *Exhibit C.*

Attachment C-1.

DESCRIPTION OF SERVICES OFFERED

I. Internet Service

Level 3 is a recognized Tier 1 Internet provider leveraging BGP peering arrangements with all of the major carriers. Level 3 purchases no transit services and provides ubiquitous access to all internet destinations. Level 3 provides enterprises with high-speed dedicated Internet access with a global reach and high reliability in a flexible variety of speeds ranging from DS-1 to 10 Gigabit Ethernet ports.

Tier 1 Provider Status

As a Tier 1 Internet provider, Level 3 by definition does not purchase IP transit service from any other provider to reach an Internet destination on our Tier 1 IP backbone. Level 3 has a strategic mixture of public and private peering that allows us to manage our customers' traffic in the most effective manner.

Dedicated Internet Access

The Level 3 Dedicated Internet Access (DIA) service combines essential enterprise Internet features with global Internet reach and scalability. DIA service can be provided as a stand-alone service, as a complement to other Level 3 data communication services, or in conjunction with Enhanced Network Services. Available bandwidth speeds and access methods in the Continental United States range from DS-1 to OC-48 to Fast Ethernet and Gigabit Ethernet.
The Level 3 DIA service provides a full range of service features,

II. Metro Ethernet Service

Ethernet and the Level 3 Service Portfolio

Level 3 deliberately developed Ethernet solutions that support flexible connections for local, metro, national, and international networks. With Level 3 Ethernet technology, customers have access to a wide range of speeds, with extensive bandwidth configurations (1 Mbps to 10 Gbps). For those needing more granular bandwidth options, we offer VPN services supporting 10/100 Mbps and 1 GigE. We have connections with 37 fractional speeds and four class-of service (CoS) queues. Our Ethernet Private Line services support 10/100 Mbps and 1 GigE connections available in more than 15 fractional speeds.

Ethernet Service Options

Level 3 has leveraged Ethernet across many types of services, ranging from high-speed optical dedicated services to low-speed shared IP services. Level 3 Ethernet capabilities include extensive bandwidth and configuration options, and a portfolio of services with a range of technology choices and access to higher-level services:

- Level 3 Dedicated Internet Access (DIA) – DIA service offers a reliable, dedicated connection in a variety of speeds to one of the world's largest and most connected Internet backbones across North America and Europe.
- Level 3 High Speed IP (HSIP) – Our HSIP service delivers the bandwidth-intensive content demanded by broadband users such as video, gaming, e-commerce, music, and voice applications across the Level 3 IP backbone.
- Level 3 IP VPN – Our service provides the same flexibility as VPLS service at the IP layer, with both Ethernet and TDM interfaces and support for the creation of large IP VPNs.

- Level 3 Virtual Private Line Service (VPLS) – MPLS-based, fully meshed, any-to-any connectivity with flat-rate or usage based billing, and static or dynamic CoS. The Virtual Private LAN Service provides flexibility to support some of the most demanding applications.
- Level 3 Ethernet Virtual Private Line (EVPL) – Similar to Ethernet Private Line services but delivered from Level 3's MPLS network, our Ethernet Virtual Private Line offering support options like point-to-multipoint, flat-rate or usage-based billing and Class of Service (CoS) enforcement.
- Level 3 Intercity Ethernet Private Line and Level 3 Metro Ethernet Private Line – Provide end-to-end, protected, fully transparent, dedicated bandwidth with full-rate or fractional-rate Ethernet speeds to support the most vital communications applications.
- Level 3 Intercity Wavelengths and Level 3 Metro Wavelengths – Available at either 1 GigE or 10 GigE rates, an excellent solution for network backbones for content and service providers well as enterprises.

Ethernet Private Line Service
Ethernet private lines are secured and reliable data connections, which connect two unique points. They use a dedicated and always-connected point-to-point circuit to carry either voice traffic or data, or a combination of both.

The Level 3 Ethernet Private Line (EPL) service is an Ethernet over SONET (EoS) service that combines protection, reliability, consistency and deterministic service characteristics with the simplicity and affordability of an Ethernet interface. The Level 3 EPL service has dedicated point-to-point connectivity, while preserving high performance and throughput with a ring-protected architecture for customers' mission-critical or latency-sensitive applications.

With the Level 3 EPL service, customers can purchase the appropriate amount of required capacity from 3 Mbps to 100 Mbps for Fast Ethernet (FE) hand-offs and from 50 Mbps to 1000 Mbps for Gigabit Ethernet (GigE) hand-offs. Level 3's EPL service treats all connected local area networks (LANs), metro area networks (MANs), and wide area networks (WANs) as one large network, whether across a city or across multiple metropolitan market locations.

Optical FE Interfaces
For those same customers who need to extend their FE circuits, Level 3 supports fiber in addition to copper at speeds between 3 and 100 Mbps for metro connections, and speeds of 50 and 100 Mbps for intercity connections.

Ethernet Virtual Private Line
Ethernet Virtual Private Line (EVPL) is an end-to-end, Layer 2 switched Ethernet service delivered via Level 3's MPLS backbone. As a result, customers benefit from a congestion-free, secure and reliable service similar to that of a SONET/SDH Private Line, but without the dedicated bandwidth costs. EVPL provides a scalable, broad coverage platform for converging video, voice and data onto one network. Plus, it offers cost effective, flexible operational tools to service providers, who are already familiar with this easy-to-use, scalable and secure technology.

Ethernet Virtual Private Line service features FastE or GigE interfaces to the Level 3 Network and bandwidth granularity in 1/10/50 Mbps increments from 1.5 Mbps to a full GigE. To make the service accessible to almost any customer, Level 3 has developed one of the most innovative service offerings on the market – a premise-to-premise, Managed Ethernet Access option that provides native Ethernet handoffs to any place that SONET/TDM loops are available, thus extending native Ethernet connectivity to almost any customer site. By combining the Ethernet Virtual Private Line service with the Managed Ethernet Access solution, Level 3 is able to offer a an end-to-end fully managed Ethernet product anywhere in the U.S.

Class of Service Traffic Allocation and Quality of Service

All data traffic types and traffic flows are not equal. They must be classified in order to differentiate data based on its relative importance. Generally, data traffic is marked, or classified, by customer networks prior to entering the Level 3 MPLS network. This Class of Service (CoS) marking is performed at the packet level within the data traffic and enables Quality of Service (QoS) across the Level 3 backbone.

QoS is provided for EVPL using a static customer-provided CoS traffic allocation. With Static CoS allocation, all traffic on a Logical Interface is treated equally and allocated into a single Class regardless of any traffic markings in the packets. Traffic is separated at the port level and placed into a specific backbone queue defining how it will be treated relative to other traffic on the MPLS core network. Static assignment per interface can be based on either the Physical Port or the Logical Port.

The Level 3 EVPL Service supports four classes of service (CoS).

4 Class of Service	Typical Applications
4 Class of Service	Typical Applications
Voice/Video	Applications that require rigorous timing control and performance metrics such as streaming media, voice and circuit emulation
Critical Data	Mission critical business applications with lower delay sensitivity than Voice/Video applications: surveillance video, applications with flow-control capable transport layers
Preferred Data	Sporadic LAN-to-LAN traffic or applications that favor throughput over delay
Default	Lower-priority, sporadic applications such as email, web browsing, file transfers

The Level 3 MPLS backbone does treat all traffic based on the Quality, or Queue, of that traffic class. Additionally, Level 3 ensures the highest levels of performance for all VPN data by over-provisioning our circuits within the MPLS Backbone to account for normal, peak and single-link or node-failure conditions. Level 3 implements four classes of service in all elements of the MPLS Backbone for the purposes of Quality of Service. Level 3 will not overwrite a customer's CoS markings in either packets or frames within the CoS offering. Level 3's CoS to QoS mapping for EVPL service includes:

4 Class of Service	802.1p Marking	Backbone Queue	Backbone EXP
Voice/Video	5, 4	Gold	3
Critical Data	6, 3	Silver	2
Preferred Data	2	Bronze	1
Default	Match all	Best Effort	0

Virtual Private LAN Service

Level 3's unique Layer 2 MPLS-based Virtual Private LAN Service (VPLS) allows enterprise sites in geographically dispersed locations to easily interact as part of the same LAN. VPLS offers at Layer 2 what IP VPNs offer at Layer 3 – a private and secure VPN service with full mesh, multipoint capabilities.

These capabilities include:

- Allowing enterprises to maintain control and security of wide area network routing with no need to exchange routing information with Level 3
- Any-to-any connectivity for maximum performance and value
- Application-based Class of Service (CoS) with deterministic traffic handling
- Accommodating transport of any wide area network protocol, not solely IP

- Flexibility to utilize any customer premises equipment capable of bridged Ethernet
- Up to ten MAC addresses per attachment circuit

Access Circuits
The Access Circuit is the physical connection between the service location CPE and the VPN Edge device. The Access Circuit is defined by the physical access size and type as well as the encapsulation protocol used. Level 3 offers a wide range of supported port speeds and encapsulation types allowing Level 3 to cost-effectively address the networking needs of high-bandwidth host locations as well as small remote offices with varying access preferences all within a common network. Level 3's VPN solution provides for multiple types of network access to support various forms of Access Circuits.

Class of Service Traffic Allocation and Quality of Service
All data traffic types and traffic flows are not equal. They must be classified in order to differentiate data based on its relative importance. Generally, data traffic is marked, or classified, by customer networks prior to entering the Level 3 MPLS network. This Class of Service (CoS) marking is performed at the packet level within the data traffic and enables Quality of Service (QoS) across the Level 3 backbone. QoS is provided for VPLS via one of two customer-provided CoS traffic allocation methods: Static and Dynamic.

- **Static:** All traffic on a Logical Interface is treated equally and allocated into a single Class regardless of any traffic markings in the packets. Traffic is separated at the port level and placed into a specific backbone queue defining how it will be treated relative to other traffic on the MPLS core network. Static assignment per interface can be based on either the Physical Port or the Logical Port.

- **Dynamic:** Data traffic will have unequal treatment based on how the traffic is marked in the header packet. The unequal treatment behavior is defined by the QoS profile. Upon receiving the data traffic, the Level 3 network will inspect these markings and place the traffic into the proper backbone class for prioritization as defined by the QoS profile. Level 3 will not act on or overwrite IP Precedence/DSCP bits for VPLS service. Dynamic traffic class assignment per interface is inferred by the customer-defined 802.1p markings.

Since customers have the ability to classify their traffic based on relative importance, then Level 3 – via our Backbone capabilities – can ensure that high priority traffic receives better treatment, or service, than lower priority traffic. The Level 3 VPLS Service supports four classes of service (CoS) types.

4 Class of Service	Typical Applications
Voice/Video	Applications that require rigorous timing control and performance metrics such as streaming media, voice and circuit emulation
Critical Data	Mission critical business applications with lower delay sensitivity than Voice/Video applications: surveillance video, applications with flow-control capable transport layers
Preferred Data	Sporadic LAN-to-LAN traffic or applications that favor throughput over delay
Default	Lower-priority, sporadic applications such as email, web browsing, file transfers

The Level 3 MPLS backbone does treat all traffic based on the Quality, or Queue, of that traffic class. Additionally, Level 3 ensures the highest levels of performance for all VPN data by over-provisioning our circuits within the MPLS Backbone to account for normal, peak and single-link or node-failure conditions. Level 3 implements four classes of service in all elements of the MPLS Backbone for the purposes of Quality of Service. Level 3 will not overwrite a customer's CoS mark-

ings in either packets or frames within either the selected Static or Dynamic Mode CoS offering. Level 3's CoS to QoS mapping for VPLS service includes:

4 Class of Service	802.1p Marking	Backbone Queue	Backbone EXP
Voice/Video	5, 4	Gold	3
Critical Data	6, 3	Silver	2
Preferred Data	2	Bronze	1
Default	Match all	Best Effort	0

Profile-based QoS
Level 3 has defined four QoS profile options to simplify the implementation of QoS on customer networks. These profiles define the percentage allocation of bandwidth by class within a Logical Interface. Custom profiles can also be created for large network implementations on a stand-alone basis.

	Voice/ Video	Critical Data	Preferred Data	Default	Typical Network Application
Profile 1	35%	25%	15%	remainder	Good match for general corporate WANs; a mix of Voice / Video with bandwidth for bursting for other data classes
Profile 2	25%	25%	25%	remainder	An equal prioritization of traffic types across the WAN
Profile 3	52%	24%	12%	remainder	A network with large amounts of Voice / Video and data traffic
Profile 4	50%	2%	n/a	remainder	A network that values Voice / Video traffic over all other classes

Bursting
Bursting parameters by class include:

- **Realtime Voice/Video –** The Realtime Voice/Video class is not burstable due to the real-time nature of the applications it supports. Therefore, this class cannot use bandwidth allocated to another Class of Service in the event that the bandwidth is unused for a period of time.
- **Preferred and Critical Data –** The Preferred and Critical Data classes are burstable (2 to 1). These classes may use bandwidth allocated to another Class of Service in the event that the bandwidth is unused for a period of time.
- **Default Data –** The Default Data class is burstable to the limit of the logical port. This class may use bandwidth allocated to another Class of Service in the event that the bandwidth is unused for a period of time.

Level 3 defines only one Strict Priority Queue (SPQ) for outbound traffic. Specifically, Realtime is the only CoS that is configured to use the SPQ. All other queues use Deficit Weighted Round Robin (DWRR) to schedule outbound packets. When two, or more, DWRR queues have concurrently exceeded their guaranteed bandwidth, the remaining bandwidth is divided up proportionally to the transmit-rate defined for the queues that require additional bandwidth.

III. MPLS Service

IP Virtual Private Network
The Level 3 IP VPN service offering is a network-based IP VPN service built on the Level 3 MPLS backbone.

Layer 3 IP VPN service is a common application of MPLS WANs and are appropriate for supporting geographically dispersed application traffic and large dynamic VPNs. This service provides:

- Converged data, video and voice traffic on a single, dedicated platform

- Support for both existing and emerging IP applications
- Enabling of prioritization of network application traffic by Class of Service (CoS)
- Support for a wide range of interfaces, from T-1 through Gigabit Ethernet, including Multilink Point-to-Point Protocol (MLPPP)
- WAN routing managed by Level 3 for simplicity supports both public and private IP addressing
- Accommodation for multiple routing protocols including Static, BGP, OSPF and RIP
- Support for up to 500 routes per VPN.

Access Circuits
The Access Circuit is the physical connection between the service location CPE and the VPN Edge device. The Access Circuit is defined by the physical access size and type as well as the encapsulation protocol used. Level 3 offers a wide range of supported port speeds and encapsulation types allowing Level 3 to cost-effectively address the networking needs of high-bandwidth host locations as well as small remote offices with varying access preferences all within a common network. Level 3's VPN solution provides for multiple types of network access to support various forms of Access Circuits.

Class of Service Traffic Allocation and Quality of Service
All data traffic types and traffic flows are not equal. They must be classified in order to differentiate data based on its relative importance. Generally, data traffic is marked, or classified, by customer networks prior to entering the Level 3 MPLS network. This Class of Service (CoS) marking is performed at the packet level within the data traffic and enables Quality of Service (QoS) across the Level 3 backbone. QoS is provided for IP VPNs via one of two customer-provided CoS traffic allocation methods: Static and Dynamic.

- **Static:** All traffic on a Logical Interface is treated equally and allocated into a single Class regardless of any traffic markings in the packets. Traffic is separated at the port level and placed into a specific backbone queue defining how it will be treated relative to other traffic on the MPLS core network. Static assignment per interface can be based on either the Physical Port or the Logical Port.

- **Dynamic:** Data traffic will have unequal treatment based on how the traffic is marked in the header packet. The unequal treatment behavior is defined by the QoS profile. Upon receiving the data traffic, the Level 3 network will inspect these markings and place the traffic into the proper backbone class for prioritization as defined by the QoS profile. Dynamic traffic class assignment per interface is inferred by the customer-defined DSCP marking.

Since customers have the ability to classify their traffic based on relative importance, then Level 3 – via our Backbone capabilities – can ensure that high priority traffic receives better treatment, or service, than lower priority traffic. The Level 3 IP VPN Service supports either four or six classes of service (CoS) types.

4 Class of Service	6 Class of Service	Typical Applications
Voice/Video	**Voice/Video**	Applications that require rigorous timing control and performance metrics such as streaming media, voice and circuit emulation
	Interactive Voice/Video	
Critical Data	**Critical Data**	Mission critical business applications with lower delay sensitivity than Voice/Video applications: surveillance video, applications with flow-control capable transport layers
Preferred Data	**Preferred Data**	Sporadic LAN-to-LAN traffic or applications that favor throughput over delay
Default	**Bulk Data**	Lower-priority, sporadic applications such as email, web browsing, file transfers
	Default	

The Level 3 MPLS backbone does treat all traffic based on the Quality, or Queue, of that traffic class. Additionally, Level 3 ensures the highest levels of performance for all VPN data by over-provisioning our circuits within the MPLS Backbone to account for normal, peak and single-link or node-failure conditions. Level 3 implements four classes of service in all elements of the MPLS Backbone for the purposes of Quality of Service. Level 3 will not overwrite a customer's CoS markings in either packets or frames within either the selected Static or Dynamic Mode CoS offering. Level 3's CoS to QoS mapping for IP VPN service includes:

4 Class of Service	Customer IP DSCP	Backbone Queue	Backbone EXP
Voice/Video	CS5, EF, CS4, AF41	Gold	3
Critical Data	CS6, CS3, AF31	Silver	2
Preferred Data	CS2, AF21	Bronze	1
Default	Match all	Best Effort	0

6 Class of Service	Customer IP DSCP	Backbone Queue	Backbone EXP
Voice/Video	CS5, EF	Gold	3
Interactive Voice/Video	CS4, AF41	Gold	3
Critical Data	CS6, CS3, AF31	Silver	2
Preferred Data	CS2, AF21	Bronze	1
Bulk Data	CA1, AF11	Best Effort	0
Default	Match all	Best Effort	0

Profile-based QoS

Level 3 has defined four QoS profile options to simplify the implementation of QoS on customer networks. These profiles define the percentage allocation of bandwidth by class within a Logical Interface. Custom profiles can also be created for large network implementations on a stand-alone basis.

	Voice/ Video	Critical Data	Preferred Data	Default	Typical Network Application
Profile 1	35%	25%	15%	remainder	Good match for general corporate WANs; a mix of Voice / Video with bandwidth for bursting for other data classes
Profile 2	25%	25%	25%	remainder	An equal prioritization of traffic types across the WAN
Profile 3	52%	24%	12%	remainder	A network with large amounts of Voice / Video and data traffic
Profile 4	50%	2%	n/a	remainder	A network that values Voice / Video traffic over all other classes

Level 3's IP VPN six Class of Service option also provides standard profiles for customers seeking added capabilities for managing voice and video traffic queues separately from a single Realtime class.

	Voice	Video	Critical Data	Preferred Data	Bulk Data	Default
Profile 1	18%	15%	25%	12%	5%	remainder
Profile 2	18%	15%	25%	15%	n/a	remainder
Profile 3	35%	n/a	25%	15%	n/a	remainder
Profile 4	50%	n/a	2%	n/a	n/a	remainder

Bursting

Bursting parameters by CoS include:

- **Voice/Video –** The Voice/Video class is not burstable due to the real-time nature of the applications it supports. Therefore, this class cannot use bandwidth allocated to another Class of Service in the event that the bandwidth is unused for a period of time.
- **Preferred and Critical Data –** The Preferred and Critical Data classes are burstable (2 to 1). These classes may use bandwidth allocated to another Class of Service in the event that the bandwidth is unused for a period of time.
- **Default Data –** The Default Data class is burstable to the limit of the logical port. This class may use bandwidth allocated to another Class of Service in the event that the bandwidth is unused for a period of time.

Level 3 defines only one Strict Priority Queue (SPQ) for outbound traffic. Specifically, Realtime is the only CoS that is configured to use the SPQ. All other queues use Deficit Weighted Round Robin (DWRR) to schedule outbound packets. When two, or more, DWRR queues have concurrently exceeded their guaranteed bandwidth, the remaining bandwidth is divided up proportionally to the transmit-rate defined for the queues that require additional bandwidth.

IV. Private Line Service

Private Line Service
Private lines are secure and reliable data connections, which connect two unique points. The private line is a dedicated and an always-connected point-to-point circuit offered over copper and/or fiber optic transmission facilities. Private lines are used to carry voice traffic, data or a combination of both.

The Level 3 Private Line service is a protected, SONET-based transport service that provides customers dedicated bandwidth in a point-to-point, hub and end link or Private Dedicated Ring (PDR) configuration. “Dedicated” means that a customer can use the entire useable bandwidth of its circuit for its exclusive use 24 hours a day, 7 days a week. Level 3 offers Private Line service across our extensive metro and intercity networks.

In addition to standalone transport, Private Line service can be used as an access method to other Level 3 voice and data services. Private Line service is offered for standard TDM, SONET and SDH speeds. Level 3 Private Line service is protocol-agnostic and can support voice, data, video, imaging, and other related applications. Level 3 offers Private Line service at speeds DS-3, OC-3/3c, OC-12/12c, and OC-48/48c, depending on customer business and network needs.

Point-to-Point Configuration
The most common metropolitan and intercity Private Line architecture is a point-to-point configuration consisting of an ‘An’ origination end and a ‘Z’ termination end where the two locations reside within different buildings on the Level 3 network. All point-to-point circuits will home to or through a Level 3 Gateway, which serves as our major circuit aggregation and switching center as well as the location of most voice and data ports.

Hub and End link Configuration
Hub and End link is a point to multi-point solution where multiple low speed Private Lines (end links) are aggregated onto a single Private Line (hub) for one high-speed hand-off. End links are available at DS-1, DS-3, and OC-3 to OC-48. The figure below shows a variety of hub and end link architectures spanning the Level 3 metropolitan and intercity networks.

Private Dedicated Ring Configuration
The Level 3 Private Dedicated Ring (PDR) configuration is a complete solution for connecting multiple metro locations over a private fiber ring. More than just a network connectivity service, the PDR

provides a complete solution including collaborative network design, dedicated capacity, agile provisioning, and end-to-end management of customers' network facilities.

The Level 3 PDR configuration provides a high-bandwidth, protected SONET service offered at ring capacity speeds from OC-12 to OC-192. Level 3 offers a choice of dedicated fiber, where the fiber pair is dedicated to a specific customer, or dedicated bandwidth, where the ring is provisioned on a Wavelength channel.

With a PDR, customers can configure their own service channels, or the lower bandwidth circuit capacity, at each of the nodes on the ring to enter and exit the ring in increments ranging from DS-1 to OC-48 rates, or 50 Mbps, 150 Mbps, 300 Mbps, 600 Mbps and 1 Gbps for Ethernet interfaces. Bandwidth within a dedicated ring is installed much faster than with incremental circuit orders on traditional point-to-point services.

PRICING FOR SERVICES INCLUDED IN ATTACHED TABLES

— End of Exhibit C —

TEX-AN NG
Communications Technology Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

Exhibit D.
Performance Management

Exhibit D. Performance Management

Contents of *Exhibit D Performance Management* follow:

Article 1. Introduction. D-3
Article 2. Performance Management Contractual Principles. D-3
Article 3. Methodology for Updating Associated Attachment D-1. D-4
Article 4. Documents Referenced in *Exhibit D* D-5
Attachment D-1. Tables reflecting SLAs per Service Awarded. D-5

Article 1. Introduction.

The purpose of *Exhibit D* is to comprehensively address the agreed-upon Performance Management for delivery of awarded Services and non-operational contract management obligations.

Article 2. Performance Management Contractual Principles.

Exhibit D Performance Management addresses the following principles:

(a) Credit Assessments.

(1) The Vendor will perform its Services as specified in the CTSA. This expectation is reasonable, within normally acceptable business practices, and in the best interests of the State and the Customers.

(2) DIR has chosen to address a majority of the risks related to Vendor performance through the assessment of Credits against Rates To DIR and Prices for Services. The Credits provisions described below are negotiated based on Vendor's Response to the RFO. The following provisions form the basis for assessing Credits:

(A) If the Vendor does not fulfill its Services as specified under the CTSA, DIR and the Customers will be damaged;

(B) Establishing the precise amount or value of such damage would be difficult to quantify;

(C) Except as otherwise provided in the CTSA, Credits will start to accumulate immediately following the end of the Service billing period in which an applicable SLA was not met; notice of a Deficiency may be communicated in one of three ways: Vendor reports the Deficiency in its monthly SLA Non-compliance Report, *Exhibit E, Attachment E-5* hereto; DIR notifies the Vendor of such Deficiency based on its independent information; or, the affected Customer notifies DIR and the Vendor of such Deficiency based on its experience with the Service.

(3) In all instances in which the delay or failure to perform is caused by a *Force Majeure* Event or other event which excused performance under the terms of the CTSA, Credits will not be assessed, and the calculation of performance will be adjusted for the periods of delay caused by such *Force Majeure* Event or excused under the terms of the CTSA.

(b) Service Level Agreements.

(1) Vendor will comply with the performance criteria outlined in this *Exhibit D*.

(2) For each Service, Vendor and DIR have agreed on acceptable SLAs and acceptable Credits associated with failure to deliver on each SLA, as set forth in *Attachment D-1*. DIR and the Vendor will review all of the SLAs on an annual basis.

(4) All proposed plans and mechanisms to be used for reporting shall be subject to approval by DIR and all approved SLAs will be governed by the *Exhibit B Terms and Conditions*, as well as any special provisions agreed upon by DIR, Customer and the Vendor with respect to each SLA and/or TEX-AN NG Customer Services Agreement.

(c) DIR Credits.

(1) Each failure of the Vendor to comply with non-operational contract management obligations under the CTSA may be deemed a Deficiency by DIR. By way of example, and not as a limitation, the Parties agree that the following acts are Deficiencies: failure to timely submit Plans and Reports as required by the CTSA. For each Deficiency, after notice and an opportunity to cure, in accordance with *Exhibit B, Section 11.02 (b)* of the CTSA, DIR may assess a remedy as set forth in *Exhibit B, Section 11.02 (d)* of the CTSA, one of which is the assessment of a DIR Credit against the Vendor. The Parties agree that in every instance in which DIR chooses to assess a DIR Credit, the amount shall not exceed $500 per day per Deficiency.

(2) Due dates for the Initial Drafts and Final Drafts of the Management Plans are specified in *Exhibit F Plans.*

(d) Service Instance Performance.

The Vendor will measure SLAs per Service as defined below, and report on performance as described in *Exhibit E Reporting.*

Per Service, as applicable:

(1) Mean Time to Repair

(2) Service Availability

(3) Latency

(4) Packet Delivery rate

(5) Jitter

(6) Chronic Outage

(e) Reports.

Tailored remedies as described in *Exhibit B*, *Section 11.02,* may be used by DIR if the Vendor fails to produce and submit all required reports according to the schedule provided in *Attachment E-1 Reports Schedule*. Vendor will not be liable for any failure or delay in performing its obligations under this Section if such failure or delay is due to *Force Majeure* Events. Additional reporting may be required by DIR in accordance with *Exhibit E Reporting*.

(f) Reporting on Performance Management

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

Article 3. Methodology for Updating Associated Attachment D-1.

Attachment D-1 sets forth the actual SLAs per Service and as related to Vendor business functions.

(a) Recommendations.

Either DIR or Vendor may submit to the other Party a recommendation for changes to *Attachment D-1*. Such recommendation will be in writing and will

(1) Specifically identify the portion or portions of *Attachment D-1* to be changed,

(2) Include the specific information to be changed and/or descriptions to be altered in *Attachment D-1*, and

(3) Identify the reasons for the proposal and anticipated revenue impact from the change or repercussions for failure to adopt the change. A copy of the recom-

mendation will be provided to DIR and the Vendor. The parties will use electronic communications to submit, review and implement changes to *Attachment D-1*. *Attachment D-1* changes shall be provided to Customers via the Vendor's webpage and TEX-AN NG webpage.

(b) Review and Input.

(1) DIR will determine whether input on the recommendation from other Customers is appropriate, and will promptly circulate the recommendation to those identified. If DIR does request input from any Customer, DIR will require any input to be provided in writing and submitted within a specified period of time, not to exceed 10 Business Days from the date of the recommendation.

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

(c) Approval.

If DIR and Vendor agree upon the recommendation, the Parties will execute a revision to *Attachment D-1,* as applicable, which will be effective when signed by authorized representatives of both DIR and Vendor. The revised *Attachment D-1* will be posted in a location agreed to by Vendor and DIR. Revisions may be in the form of electronic records of the new SLAs for changes to *Attachment D-1*. Vendor shall update its webpage accessible to Customers immediately to have the revised portions of the Attachment available to Customers as soon as possible.

(d) Appeal.

If the DIR and Vendor cannot agree on a recommendation, the recommendation may be submitted to the Executive Steering Committee for resolution.

Article 4. Documents Referenced in *Exhibit D Performance Management.*

Section 4.01 Attachments to *Exhibit D.*

Attachment D-1 is associated with *Exhibit D Performance Management*.

Section 4.02 *Exhibit D* Associated Plans and Timelines.

No plans and timelines are associated with *Exhibit D Performance Management.*

Section 4.03 Other Referenced Documents in *Exhibit D*

The following documents have been referenced in *Exhibit D Performance Management:*

Other Referenced Documents in *Exhibit D*	Description and Contents
Exhibit E Reporting	Comprehensively addresses reporting requirements.
Exhibit F Plans	Comprehensively addresses Management Plans.

Attachment D-1. Tables reflecting SLAs per Service Awarded.

The tables in *Attachment D-1* set forth the actual SLAs per Service and as related to Vendor business functions.

— End of Exhibit D —

TEX-AN NG
Communications Technology Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

Exhibit E.
Reporting

Exhibit E. Reporting

Contents of *Exhibit E Reporting* follow:

Article 1. Introduction..... E-3
Article 2. Reporting Contractual Principles. E-3
Article 3. Frequency of Reports..... E-5
Article 4. Methodology for Updating Reporting Requirements. E-5
Article 5. Documents Referenced in *Exhibit E.* E-5
Attachment E-1. Reports Schedule..... E-6

Article 1. Introduction.

(a) The purpose of *Exhibit E Reporting* is to comprehensively address agreed-upon reporting requirements for the CTSA.

(b) *Exhibit E Reporting* provides the following:

(1) Reporting Contractual Principles

(A) General Reporting Principles

(B) Ad hoc Reporting

(2) Frequency of reports

(3) Methodology for Updating Reporting Requirements

Article 2. Reporting Contractual Principles.

Exhibit E Reporting addresses the following contractual principles:

Section 2.01 General Reporting.

(a) The Vendor will provide routine and ad hoc reporting as required in a form and format approved by DIR.

(b) DIR has the option of requesting special analyses, reports, and reviews from the Vendor. Examples include ad hoc system engineering analyses and project-specific reports. Such requests will be limited in number and scope through a process created by DIR and Vendor management so that they are not open-ended or an undue burden on the Vendor.

(c) DIR may use staff or contractors, including third-party auditing contractors and third-party Independent Verification and Validation contractors to review reports provided by the Vendor. DIR will ensure that any person or third-party company granted access to Vendor information handles such information securely and appropriately.

(d) The costs of assembling, reporting, and explaining data to DIR is on the Vendor. If practicable, reports will be designed with the flexibility to be readily modified as functional and reporting requirements change.

(e) The format and media type for each report will be determined in cooperation between DIR and the Vendor. Vendor will provide access to data in a raw format wherever possible and agreed to by both Parties.

(f) Vendor may disclose certain financial and confidential information to DIR and such information shall be subject to the Confidential provisions of the CTSA and in certain instances a Non Disclosure Agreement may be required.

(g) Vendor will provide a real-time, web accessible reporting dashboard. Vendor will consult with DIR to establish the final content of the dashboard. In addition to the Web-based reporting dashboard, the Vendor will provide regular, scheduled reports, as identified below and further described in the RFO, including:

(1) Infrastructure Change/Release Management Reports, RFO Section 4.3.2.1.B

(2) After Action Reports, RFO Sections 3.5.B.3.a and 4.3.2.1.D

(3) Trouble Ticket Report, RFO Section 3.5.B.3.b

(4) Trouble Ticket Aging Report by Customer, RFO Section 4.5.3.1.A

(5) SLA Non-Compliance Report, RFO Section 4.5.3.1.B

(6) ~~Local Services Sales Report, RFO Section 4.5.3.1.C~~ **NOT APPLICABLE TO THIS CONTRACT**

(7) ~~SOHO Sales Report, RFO Section 4.5.3.1.D~~ **NOT APPLICABLE TO THIS CONTRACT**

(8) Number not assigned

(9) Marketing Report, RFO Section 4.5.3.1.F

(10) Weekly Electronic Status Report, RFO Section 4.7.3.1

(11) Status for Projects by Customer Report, RFO Section 4.7.3.2

(12) HUB Subcontractor Report, Contract *Exhibit I, HUB Subcontracting Plan* and RFO Section 2.2.1.4.

(13) ~~Direct Sales Transactions Reports, Contract Front End, *Article 5*~~ **NOT APPLICABLE TO THIS CONTRACT**

(14) ~~Security Monthly Progress and Performance Report (RFO Section 3.6.D)~~ **NOT APPLICABLE TO THIS CONTRACT**

(15) ~~Security Incident reports (RFO Section 3.6.1.B.9)~~ **NOT APPLICABLE TO THIS CONTRACT**

(16) ~~Network Topology Maps and Discovery Reports (RFO Section 3.6.2.B.4.a)~~ **NOT APPLICABLE TO THIS CONTRACT**

(17) ~~Network Discovery Executive Summary Reports (RFO Section 3.6.2.B.4.b)~~ **NOT APPLICABLE TO THIS CONTRACT**

(18) ~~Network Discovery Anomaly Risk Analysis Reports (RFO Section 3.6.2.B.4.c)~~ **NOT APPLICABLE TO THIS CONTRACT**

(19) ~~Network Discovery Address Space Analysis (RFO Section 3.6.2.B.4.d)~~ **NOT APPLICABLE TO THIS CONTRACT**

(20) ~~Network Discovery Perimeter Reports (RFO Section 3.6.2.B.4.e)~~ **NOT APPLICABLE TO THIS CONTRACT**

(21) ~~Network Discovery Device Fingerprinting Reports (RFO Section 3.6.2.B.4.f)~~ **NOT APPLICABLE TO THIS CONTRACT**

(22) ~~Ad hoc reports/network maps (RFO Section 3.6.2.B.5)~~ **NOT APPLICABLE TO THIS CONTRACT**

(23) ~~CPT Progress & Status Report (RFO Section 3.6.4.B.7)~~ **NOT APPLICABLE TO THIS CONTRACT**

(24) ~~CPT Exploitation Report (RFO Section 3.6.4.B.11)~~ **NOT APPLICABLE TO THIS CONTRACT**

(25) ~~CPT Findings Report (RFO Section 3.6.4.B.18), and~~ **NOT APPLICABLE TO THIS CONTRACT**

(26) ~~Exceptions and Outstanding Vulnerabilities Report (RFO Section 3.6.5.B.10.c).~~ **NOT APPLICABLE TO THIS CONTRACT**

Section 2.02 Ad Hoc Reporting.

(a) DIR may examine any work, process, procedure, and/or Service produced by the Vendor under the CTSA.

(b) DIR will observe and gather data from all governance processes that determine Services to be performed by the Vendor. This includes:

(1) Visibility into governance processes in which DIR does not directly participate; and/or

(2) Governance processes internal to the Vendor and governance processes through which Services are negotiated with, approved by, and monitored by Customers shall be reasonably provided by the Vendor.

(3) The Vendor will catalog and maintain all mutually agreed to documentation that is associated with performing Services under the CTSA in an electronic document repository. This does not include access to notes of individual Vendor staff members, such as meeting notes or status reports to Vendor management.

(4) Vendor will provide upon DIR request an electronic copy of any document developed as part of performing Services under the CTSA, including documents that are considered working papers, drafts, or non-deliverable products. Examples include architecture documents, Project notes, and Project artifacts.

Section 2.03 Reporting Timelines.

(a) The Vendor will provide regular, scheduled reports according to *Attachment E-1 Reports Schedule.*

(b) DIR may assess tailored remedies, as allowed under *Exhibit B, Terms and Conditions, Section 11.02* if the Vendor fails to produce and submit all required reports according to the schedule provided in this Exhibit.

Article 3. Frequency of Reports.

Vendor will provide specific, regular reports as identified in this Exhibit.

Article 4. Methodology for Updating Reporting Requirements.

The parties shall use the contract amendment process described in *Section 7.01 Amendments and Modifications*, of *Exhibit B Terms and Conditions,* to document changes to this Exhibit.

Article 5. Documents Referenced in *Exhibit E Reporting.*

Section 5.01 Attachments to *Exhibit E.*

Attachment E-1 Reports Schedule is associated with *Exhibit E Reporting*.

Section 5.02 *Exhibit E* Associated Plans and Timelines.

No plans and timelines are associated with *Exhibit E Reporting*.

Section 5.03 Other Referenced Documents in *Exhibit E.*

The following documents have been referenced in *Exhibit E Reporting*:

Other Referenced Documents in *Appendix E*	Description and Contents
Exhibit F Plans	Comprehensively addresses Management Plans for CTSA.

Attachment E-1. Reports Schedule.

Reports are required as circumstances warrant as more particularly described in the RFO, unless the frequency is indicated below:

E-1 Infrastructure Change/Release Management Reports, RFO Section 4.3.2.1.B

E-2 After Action Reports, RFO Sections 3.5.B.3.a and 4.3.2.1.D

E-3 Trouble Ticket Report, RFO Section 3.5.B.3.b

E-4 Trouble Ticket Aging Report by Customer, RFO Section 4.5.3.1.A

E-5 SLA Non-Compliance Report, RFO Section 4.5.3.1.B

E-6 ~~Local services Sales Report, RFO Section 4.5.3.1.C~~ **NOT APPLICABLE TO THIS CONTRACT**

E-7 ~~SOHO Sales Report, RFO Section 4.5.3.1.D~~ **NOT APPLICABLE TO THIS CONTRACT**

E-8 Number not assigned

E-9 Marketing Report, RFO Section 4.5.3.1.F

E-10 Weekly Electronic Status Report, RFO Section 4.7.3.1

E-11 Status for Projects by Customer Report, RFO Section 4.7.3.2

E-12 HUB Subcontractor Report, CTSA *Exhibit I, HUB Subcontracting Plan* and RFO Section 2.2.1.4.

E-13 ~~Direct Sales Transactions Reports, Contract Front End, *Article 5*~~ **NOT APPLICABLE TO THIS CONTRACT**

E-14 ~~Security Monthly Progress and Performance Report (RFO Section 3.6.D)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-15 ~~Security Incident Reports (RFO Section 3.6.1.B.9)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-16 ~~Network Topology Maps and Discovery Reports (RFO Section 3.6.2.B.4.a)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-17 ~~Network Discovery Executive Summary Reports (RFO Section 3.6.2.B.4.b)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-18 ~~Network Discovery Anomaly Risk Analysis Reports (RFO Section 3.6.2.B.4.c)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-19 ~~Network Discovery Address Space Analysis (RFO Section 3.6.2.B.4.d)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-20 ~~Network Discovery Perimeter Reports (RFO Section 3.6.2.B.4.e)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-21 ~~Network Discovery Device Fingerprinting Reports (RFO Section 3.6.2.B.4.f)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-22 ~~*Ad hoc* reports/network maps (RFO Section 3.6.2.B.5)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-23 ~~CPT Progress & Status Report (RFO Section 3.6.4.B.7)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-24 ~~CPT Exploitation Report (RFO Section 3.6.4.B.11)~~ **NOT APPLICABLE TO THIS CONTRACT**

E-25 ~~CPT Findings Report (RFO Section 3.6.4.B.18), and~~ **NOT APPLICABLE TO THIS CONTRACT**

E-26 ~~Exceptions and Outstanding Vulnerabilities Report (RFO Section 3.6.5.B.10.c).~~ **NOT APPLICABLE TO THIS CONTRACT**

— End of Exhibit E —

TEX-AN NG
Communications Technology Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

Exhibit F.
Plans

Exhibit F. Plans

Contents of *Exhibit F Plans* follow:

Article 1. Introduction. F-3
Article 2. Contractual Principles. F-3
Article 3. Methodology for Updating Associated Plans. F-4
Article 4. Documents Referenced in *Exhibit F.* F-4
Attachments F-1 through F-21. ..... F-8

Article 1. Introduction.

The purpose of *Exhibit F Plans* is to comprehensively address agreed-upon CTSA Management Plans.

Article 2. Contractual Principles.

Exhibit F Plans addresses the following principles:

(a) The Vendor is responsible for Services delivered under the CTSA.

(b) The Vendor shall demonstrate strong project management practices.

(c) The Vendor shall create, maintain, implement, and update management plans in accordance with this Exhibit.

(d) Initial and final drafts of the management plans are to be submitted to DIR for approval within the timeframes specified in Table 2 of *Section 4.02*, Plans and Timelines Associated with *Exhibit F*.

(e) The Vendor will provide updated management plans annually or as requested by DIR.

(f) The Management Plans, which were included in Vendor's Response to the RFO and have been negotiated for incorporation into the CTSA, include:

(1) Network to Network Interface (NNI) Plan, RFO Section 3.1.1.1.C

(2) Capacity Management Plan, RFO Section 3.1.1.1.D

(3) Security Disaster Recovery/Business Continuity Plan, RFO Section 3.6.C

(4) ~~NOC Implementation Plan, RFO Section 3.7.B.1~~ **NOT APPLICABLE TO THIS CONTRACT**

(5) ~~NOC Management Plan, RFO Section 3.7.B.2~~ **NOT APPLICABLE TO THIS CONTRACT**

(6) ~~Controlled Penetration Testing (CPT) Management Plan, RFO Section 3.6.4.B.3~~ **NOT APPLICABLE TO THIS CONTRACT**

(7) Service Delivery Implementation Plan, RFO Section 4.1.1.1

(8) Marketing Plan, RFO Section 4.1.1.1.I

(9) Service Delivery Management Plan, RFO Section 4.1.2.1

(10) Order Process Implementation Plan, RFO Section 4.2.1.1

(11) Order Process Management Plan, RFO Section 4.2.2.1

(12) Change Management Implementation Plan, RFO Section 4.3.1.2

(13) Change Management Plan, RFO Section 4.3.2.1

(14) Inventory Management Implementation Plan, RFO Section 4.4.1.1

(15) Ongoing Inventory Management Plan, RFO Section 4.4.2.1

(16) Help Desk Implementation Plan, RFO Section 4.5.1.1

(17) Ongoing Help Desk Management Plan, RFO Section 4.5.2.1

(18) Billing Plan, RFO Section 4.6.2

(19) Program Management Plan, RFO Section 4.7.1.

(20) Ongoing Program Management Plan, RFO Section 4.7.2., and

(21) Disentanglement Plan, *Exhibit B Terms and Conditions, Section 11.06.*

Article 3. Methodology for Updating Associated Plans.

Section 3.01 Recommendations.

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

(a) Specifically identify the portion or portions of the Plan to be changed,

(b) Include the specific language to accomplish the proposed change, and

(c) Identify the reasons for the proposal and anticipated improvements from the change or repercussions for failure to adopt the change. A copy of the recommendation will be provided to DIR and the Vendor.

Section 3.02 Review and Input.

DIR will determine whether input on the recommendation from any other Customers is appropriate, and will promptly circulate the recommendation to those identified. If DIR does request input from any other Customers, DIR will require any input to be provided in writing and submitted within a specified period of time, not to exceed 60 Business Days from the date of the recommendation.

DIR and Vendor will each receive a copy of the written input from the other Customers, if applicable. The Party making the recommendation may propose adjustments to the recommendation to address any input of the other Customers.

Section 3.03 Approval.

If DIR and Vendor agree upon the recommendation, the Parties will execute a revision to the Plan, as applicable, which will be effective when signed by authorized representatives of both DIR and Vendor and the revised Plan will be posted in a location agreed to by Vendor and DIR.

An approved Plan revision resulting in a substantial change to CTSA operations may trigger a formal amendment process.

Section 3.04 Appeal.

If the DIR and Vendor cannot agree on a recommendation, the recommendation may be submitted to the Executive Steering Committee for resolution.

Article 4. Documents Referenced in *Exhibit F Plans.*

Section 4.01 Attachments to *Exhibit F*.

Once accepted by DIR, the final version of the following attachments will be incorporated as part of *Exhibit F Plans*:

Attachments to *Exhibit F*	Description and Contents
Attachment F-1 Network to Network Interface Plan	Per Section 3.1.1.1.C of the RFO and as negotiated between the Parties.
Attachment F-2 Capacity Management Plan	Per Section 3.1.1.1.D of the RFO as negotiated between the Parties.

Attachments to *Exhibit F*	Description and Contents
Attachment F-3 Security Disaster Recovery/Business Continuity Plan	Per Section 3.6.C of the RFO, as negotiated between the Parties
~~*Attachment F-4 NOC Implementation Plan*~~ **NOT APPLICABLE TO THIS CONTRACT**	~~Per Section 3.7.B.1 of the RFO as negotiated between the Parties.~~
~~*Attachment F-5 NOC Management Plan*~~ **NOT APPLICABLE TO THIS CONTRACT**	~~Per Section 3.7.B.2 of the RFO as negotiated between the Parties~~
~~*Attachment F-6 Controlled Penetration Testing (CPT) Management Plan*~~ **NOT APPLICABLE TO THIS CONTRACT**	~~Per Section 3.6.4.B.3 of the RFO as negotiated between the Parties.~~
Attachment F-7 Service Delivery Implementation Plan	Per Section 4.1.1.1 of the RFO as negotiated between the Parties.
Attachment F-8 Marketing Plan	Per Section 4.1.1.1.I of the RFO as negotiated between the Parties.
Attachment F-9 Service Delivery Management Plan	Per Section 4.1.2.1 of the RFO as negotiated between the Parties.
Attachment F-10 Order Process Implementation Plan	Per Section 4.2.1.1 of the RFO as negotiated between the Parties.
Attachment F-11 Order Process Management Plan	Per Section 4.2.2.1 of the RFO as negotiated between the Parties.
Attachment F-12 Change Management Implementation Plan	Per Section 4.3.1.2 of the RFO as negotiated between the Parties.
Attachment F-13 Change Management Plan	Per Section 4.3.2.1 of the RFO as negotiated between the Parties.
Attachment F-14 Inventory Management Implementation Plan	Per Section 4.4.1.1. of the RFO as negotiated between the Parties.
Attachment F-15 Ongoing Inventory Management Plan	Per Section 4.4.2.1 of the RFO as negotiated between the Parties.
Attachment F-16 Help Desk Management Plan	Per Section 4.5.1.1 of the RFO as negotiated between the Parties.
Attachment F-17 Ongoing Help Desk Management Plan	Per Section 4.5.2.1 of the RFO as negotiated between the Parties.
Attachment F-18 Billing Plan	Per Section 4.6.2 of the RFO as negotiated bwtween the Parties.
Attachment F-19 Program Management Plan	Per Section 4.7.1. of the RFO as negotiated between the Parties.
Attachment F-20 Ongoing Program Management Plan	Per Section 4.7.2. of the RFO as negotiated between the Parties.
Attachment F-21 Disentanglement Plan	Per *Section 11.06, Exhibit B, Terms and Conditions* of the Contract.

Section 4.02 *Exhibit F* Associated Plans and Timelines.

The following plans and timelines are associated with *Exhibit F Plans*:

Table 1: *Exhibit F Plans* Associated Plans and Timelines

Exhibit F Associated Plans and Timelines	Initial Draft Due	Final Draft Due	Updates
Attachment F-1 Network to Network Interface Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR.
Attachment F-2 Capacity Management Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR.
Attachment F-3 Security Disaster Recovery/Business Continuity Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR.
~~*Attachment F-4 NOC Implementation Plan*~~ **NOT APPLICABLE TO THIS CONTRACT**	~~Submitted with the Response.~~	~~No later than 30 days after Effective Date.~~	~~Annually, by Contract Anniversary Date, or as requested by DIR.~~
~~*Attachment F-5 NOC Management Plan*~~ **NOT APPLICABLE TO THIS CONTRACT**	~~Submitted with the Response.~~	~~No later than 30 days after Effective Date.~~	~~Annually, by Contract Anniversary Date, or as requested by DIR.~~
~~*Attachment F-6 Controlled Penetration Testing (CPT) Management Plan*~~ **NOT APPLICABLE TO THIS CONTRACT**	~~Submitted with the Response.~~	~~No later than 30 days after Effective Date.~~	~~Semi - annually, by Contract Anniversary Date, or as requested by DIR.~~
Attachment F-7 Service Delivery Implementation Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR.
Attachment F-8 Marketing Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR.
Attachment F-9 Service Delivery Management Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR.
Attachment F-10 Order Process Implementation Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-11 Order Process Management Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-12 Change Management Implementation Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-13 Change Management Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR

Exhibit F Associated Plans and Timelines	Initial Draft Due	Final Draft Due	Updates
Attachment F-14 Inventory Management Implementation Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-15 Ongoing Inventory Management Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-16 Help Desk Management Plan	Submitted with the Response	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-17 Ongoing Help Desk Management Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-18 Billing Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-19 Program Management Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-20 Ongoing Program Management Plan	Submitted with the Response.	No later than 30 days after Effective Date.	Annually, by Contract Anniversary Date, or as requested by DIR
Attachment F-21 Disentanglement Plan	As required by *Section 11.06* of the Contract.	N/A	N/A

Section 4.03 Other Referenced Documents in *Exhibit F.*

No other documents are referenced in *Exhibit F Plans.*

Attachments F-1 through F-21.

— End of Exhibit F —

TEX-AN NG
Communications Technology Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

Exhibit G.
Insurance

Exhibit G. Insurance

Contents of *Exhibit G Insurance* follow:

Article 1. Introduction.....G-3
Article 2. Insurance Contractual Principles. G-3
Article 3. Methodology for Updating Associated *Exhibit G* Attachments and Plans. G-4
Article 4. Documents Referenced in *Exhibit G.*.....G-4
Attachment G-1. Vendor's Certificate of Insurance. G-5

Article 1. Introduction.

The purpose of *Exhibit G Insurance* is to address the Vendor Insurance requirements for the CTSA.

Article 2. Insurance Contractual Principles.

(a) Vendor agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance with the specified minimum limits of liability during the term of this Contract and shall provide proof of such insurance coverage to DIR within five (5) Business Days following the execution of the CTSA. Vendor may not begin performance under the CTSA until such proof of insurance coverage is provided to, and approved by, DIR, in its sole and absolute discretion. All required insurance must be issued by companies whose A.M. Best Company Financial Strength Ratings are at least A – financially rated and duly licensed, admitted, and authorized to do business in the State. DIR will be named as Additional Insured on all required coverage (except for Worker's Compensation coverage). Notwithstanding the foregoing, the parties agree that Vendor's carrier(s) for non-Worker's Compensation and non-Business Automobile Liability coverages may be a company other than one admitted in the State, so long as the company has a minimum A.M. Best Company Financial Strength Rating of A- and complies with all other requirements stated herein. The minimum acceptable insurance provisions are as follows:

(1) Commercial General Liability: Commercial General Liability must include a combined single limit of $500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of $500,000. The policy shall contain the following provisions:

(A) Blanket contractual liability coverage for liability assumed under the Contract;

(B) Independent Contractor coverage;

(C) State, DIR and Customer listed as an additional insured;

(D) 30-day Notice of Termination in favor of DIR and/or Customer; and

(E) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

(2) Workers' Compensation Insurance: Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of $250,000 bodily injury per accident, $500,000 bodily injury disease policy limit, and $250,000 per disease per employee.

(3) Business Automobile Liability Insurance: Business Automobile Liability Insurance must cover all owned, non-owned, and hired vehicles with a minimum combined single limit of $500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

(A) Waiver of Subrogation;

(B) 30-day Notice of Termination; and

(C) Additional Insured.

(b) Similar coverage as described above shall be required from Vendor in each instance in which it agrees to perform work related to Services at a Customer's premises. A certificate of insurance demonstrating compliance with these coverages and listing the Customer as the additional Insured shall be provided to the Customer prior to Vendor commencing work at a Customer's premises.

Article 3. Methodology for Updating Associated *Exhibit G* Attachments and Plans.

There is no need to update *Attachment G-1 Vendor's Certificate of Insurance.* Any changes to insurance will be made at the exhibit level.

Article 4. Documents Referenced in *Exhibit G Insurance.*

Section 4.01 *Exhibit G Insurance* Attachments.

In *Attachment G-1 Vendor's Certificate of Insurance,* Vendor has included its Certificate of Insurance, which sets forth the Vendor's insurance coverage.

Attachments to *Exhibit G*	Description
Attachment G-1 Vendor's Certificate of Insurance	Vendor's Certificate of Insurance

Section 4.02 Plans Associated with *Exhibit G Insurance.*

There are no plans referenced in *Exhibit* G *Insurance.*

Section 4.03 Other Referenced Documents in *Exhibit G Insurance.*

There are no other documents referenced in *Exhibit G Insurance*

Attachment G-1. Vendor’s Certificate of Insurance.

— End of Exhibit G —

TEX-AN NG
Communications Technology
Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

Exhibit H.
Form of TEX-AN NG
Customer Services Agreement

Exhibit H. Form of TEX-AN NG Customer Services Agreement

Contents of *Exhibit H Form of TEX-AN NG Customer Services Agreement* follow:

Article 1. Introduction. H-3
Article 2. Contractual Principles. H-3
Article 3. Methodology for Updating Associated Exhibit Attachment. H-3
Article 4. Documents Referenced in *Exhibit H.* H-4
Attachment H-1. TEX-AN NG Customer Services Agreement. H-5
Attachment H-2. TEX-AN NG Customer Services Agreement – Standard Terms and Conditions. H-8

Article 1. Introduction.

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

Article 2. Contractual Principles.

(a) *Attachment H-1 TEX-AN NG Customer Service Agreement* and *Attachment H-2 TEX-AN NG Customer Service Agreement – Standard Terms and Conditions* are the templates for the Form of TEX-AN NG Customer Service Agreement among Vendor, DIR, and Customer.

(b) *Attachment H-1 TEX-AN NG Customer Service Agreement* is a template which will be the basis of negotiations with Customers. *Attachment H-2 TEX-AN NG Customer Service Agreement – Standard Terms and Conditions* template contains the terms and conditions between and among the Parties, but is contemplated by the Parties that this template might be adjusted as needed to accommodate the requirements of all Parties to such agreement. The terms and conditions of a TEX-AN NG Customer Service Agreement may be negotiated to meet Customer business needs, so long as the TEX-AN NG Customer Service Agreement terms and conditions do not conflict with or weaken the terms of the CTSA.

Article 3. Methodology for Updating Associated Exhibit Attachment.

Section 3.01 Recommendations.

In addition to negotiations with Customers to reach an acceptable TEX-AN NG Customer Services Agreement, either DIR or Vendor may submit to the other Party a recommendation for changes or additions to *Attachment H-1 TEX-AN NG Customer Service Agreement* and *Attachment H-2 TEX-AN NG Customer Service Agreement – Standard Terms and Conditions.* Such recommendation will be in writing and will:

(a) Specifically identify the portion or portions of the Attachment to be changed,

(b) Include the specific language to accomplish the proposed change, and

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

Section 3.02 Review and Input.

(a) DIR will determine whether input on the recommendation from any other Customers is appropriate, and will promptly circulate the recommendation to those identified. If DIR does request input from any other Customers, DIR will require any input to be provided in writing and submitted within a specified period of time, not to exceed 10 Business Days from the date of the recommendation.

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

Section 3.03 Approval.

If DIR and Vendor agree upon the recommendation, the Parties will execute a revision to the Attachment(s), as applicable, which will be effective when signed by authorized representatives of both DIR and Vendor and the revised Attachment(s) will be posted in a location agreed to by Vendor and DIR.

Section 3.04 Appeal.

If the DIR and Vendor cannot agree on a recommendation, the recommendation may be submitted to the Executive Steering Committee for resolution.

Article 4. Documents Referenced in *Exhibit H Form of TEX-AN NG Customer Services Agreement.*

Section 4.01 Attachments to *Exhibit H.*

The following attachments are incorporated as part of *Exhibit H Form of TEX-AN NG Customer Services Agreement*:

Attachments to *Exhibit H*	Description and Contents
Attachment H-1 Form of TEX-AN NG Customer Services Agreement	*Attachment H-1 Form of TEX-AN NG Customer Services Agreement* and *Attachment H-2 Form of TEX-AN NG Customer Services Agreement – Standard Terms and Conditions* provide the agreement to be executed by authorized representatives of the Vendor, Customer, and DIR to maximize standardization of the terms and conditions and provide DIR the opportunity for oversight of the contractual relationship between Customer and Vendor.
Attachment H-2 Form of TEX-AN NG Customer Services Agreement – Standard Terms and Conditions	

Section 4.02 *Exhibit H* Associated Plans and Timelines.

No plans and timelines are associated with *Exhibit H Form of TEX-AN NG Customer Services Agreement.*

Section 4.03 Other Referenced Documents in *Exhibit H.*

No documents are referenced in *Exhibit H Form of TEX-AN NG Customer Services Agreement.*

Attachment H-1. TEX-AN NG Customer Services Agreement.

TEX-AN NG
Customer Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

DIR Contract No. DIR-TEX-AN NG - CSA-ICXXX

TEX-AN NG Customer Services Agreement

This TEX-AN NG Customer Services Agreement is effective as of the date of the last party to sign, (Effective Date), by and between the Texas Department of Information Resources (DIR), Level 3 Communications, LLC. (Vendor), and _____ (Customer). DIR, Vendor, and Customer may each be referred to as Party, and collectively DIR, Vendor, and Customer may be referred to as the Parties herein.

Capitalized terms not defined herein shall have the meaning set forth in the CTSA, *Exhibit A*.

BACKGROUND

The TEX-AN NG Program is authorized by Chapter 2170, Texas Government Code, and Services have been procured by compliance with the applicable public procurement laws of the State of Texas. This TEX-AN NG Customer Services Agreement is based on, and subject to, the CTSA between DIR and Vendor dated _08/24/2011_, DIR Contract Number DIR-TEX-AN NG CTSA-007, including the TEX-AN NG Customer Services Agreement Standard Terms and Conditions.

AGREEMENT

IN CONSIDERATION of mutual covenants and agreements contained in this TEX-AN NG Customer Services Agreement, DIR, Vendor, and Customer agree as follows:

1. Customer may receive Services provided by Vendor by agreeing to abide by this TEX-AN NG Customer Services Agreement, including the TEX-AN NG Customer Services Agreement Standard Terms and Conditions. The CTSA and this TEX-AN NG Customer Services Agreement represent the entire agreement for access to, and use of, certain Services by Customer. The term of this CSA is from the Effective Date through _____. The Parties understand and agree that notwithstanding any other provision in this TEX-AN-NG-CSA or the CTSA, this CSA shall terminate and expire simultaneously with the expiration and/or termination of the CTSA.

2. Except as provided herein, all Services are provided to Customers through DIR. Certain Services require the execution of this TEX-AN NG Customer Services Agreement. The Services and the related Rates therefore that are subject to the execution of the TEX-AN NG Customer Services Agreement are attached as *Exhibit B*. Specifications and additional terms for these certain Services shall be described in *Exhibit D* to this TEX-AN NG Customer Services Agreement, if ordered by Customer. The Services actually ordered by Customer will be listed in *Exhibit C* and attached hereto, and is incorporated by reference for all purposes into this TEX-AN NG Customer Services Agreement.

3. Authorized Exceptions to *Attachment H-2 TEX-AN NG Customer Services Agreement – Standard Terms and Conditions:*

   List, if any, or “None”

4. All notices permitted or required under this TEX-AN NG Customer Services Agreement will be in writing and will be by personal delivery, a nationally recognized overnight courier service, e-mail, or certified mail, return receipt requested. Notices will be deemed given upon the earlier of actual receipt or one calendar day after deposit with the courier service, receipt by sender of confirmation of electronic transmission or five calendar days after deposit with the U.S. Postal Service. Notices will be sent to the addresses listed below, or to such other address as each Party may specify in writing.

   If to DIR: Texas Department of Information Resources
   Attn: Grace Windbigler, Contract Manager for TEX-AN NG

	300 W. 15th Street, Suite 1300, Austin, TX 78701
With a copy to:	Texas Department of Information Resources, Communications Technology Services Division
	Attn: Carl Marsh, Division Director or his designee 300. W 15th Street, Suite 1300, Austin, Texas 78701
If to Vendor:	Level 3 Communications, LLC. 1122 South Capital of Texas Highway Austin, TX 78746
With a copy to:	General Counsel for Vendor (Legal Notice)
If to Customer:	Customer Address
With a copy to:	General Counsel for Customer (Legal Notice)

AGREED AND ACCEPTED:

Level 3 Communications, LLC.

By: _____

Print Name:_____

Title: _____

Texas Department of Information Resources

By: _____

Print Name: _____

Title:_____

Office of General Counsel: _____

Customer:

By: _____

Print Name:_____

Title: _____

Attachment H-2. TEX-AN NG Customer Services Agreement – Standard Terms and Conditions.

These standard terms and conditions apply to each TEX-AN NG Customer Services Agreement, to which they are incorporated, by and between the Texas Department of Information Resources (DIR), Vendor (Vendor) and Customer. DIR, Vendor, and Customer may each be referred to herein as Party, and collectively DIR, Vendor, and Customer may be referred to as the Parties herein.

STANDARD TERMS AND CONDITIONS

1. TEX-AN NG Customer Services Agreement Elements.

1.1 The Parties acknowledge and agree that the terms of the CTSA will apply to the TEX-AN NG Customer Services Agreement, and will remain in full force and effect except as may be expressly modified by the terms of a TEX-AN NG Customer Services Agreement or any amendment to the CTSA made in accordance with specific provisions of the CTSA, *Article 7 Contract Amendments*. In the event of any conflict between the terms and conditions of a TEX-AN NG Customer Services Agreement and those of the CTSA, the terms and conditions in the CTSA will govern with respect to the Parties and the Services delivered, unless the TEX-AN NG Customer Services Agreement specifically identifies by section number a clause of the CTSA and indicates that the TEX-AN NG Customer Services Agreement will be controlling.

1.2. Notwithstanding the foregoing, the Parties agree that as between Vendor and DIR on the one hand, and Customer on the other, *Sections 7.1 and 7.2* in the TEX-AN NG Customer Services Agreement Terms and Conditions (this document) will control over any expressly conflicting statement contained in the CTSA, if any. The Parties acknowledge the CTSA is subject to subsequent amendment by Vendor and DIR pursuant to its terms and agree that, to the extent any such amendments impact any TEX-AN NG Customer Services Agreement terms and conditions, such amendments will automatically apply to the TEX-AN NG Customer Services Agreement with no further action by the Parties.

1.3 TEX-AN NG Customer Services Agreements will continue until terminated as specified therein, and subject to the terms of the CTSA, and Vendor will provide the Services described in the agreed Exhibits to the TEX-AN NG Customer Services Agreement.

2. DIR's Role as Billing Agent.

Customer acknowledges that in order for Vendor to provide Services pursuant to a TEX-AN NG Customer Services Agreement, DIR must be a Party to the TEX-AN NG Customer Services Agreement in order to fulfill its role as billing agent on behalf of Vendor.

3. Certain Services Available to Customer.

Vendor offers a variety of Services which are available to Customer; some of those Services may only be obtained by execution of a TEX-AN NG Customer Services Agreement. The specific list of Services that Vendor is authorized to offer to Customer under this TEX-AN NG Customer Services Agreement are found in *Appendix B* hereto. The specific Services Customer is ordering is contained in *Appendix C* hereto. Additional terms and conditions required by Vendor to provide the ordered Services are contained in *Appendix D* hereto.

4. Rates.

4.1 For the Services provided by Vendor, Vendor is entitled to its portion of the Rates set out in *Appendix B* to this TEX-AN NG Customer Services Agreement. A TEX-AN NG Customer Services Agreement shall be modified for the addition of Rates as new Services are included in the TEX-AN NG Customer Services Agreement based on mutual agreement of DIR, Vendor, and Customer.

4.2 In its role as billing agent for Vendor, DIR shall bill to Customer the "Rates To DIR," plus an additional percentage as DIR's CRF, as authorized by Chapter 2170, Texas Government Code and any applicable telecommunications fees and surcharges. Vendor and Customer acknowledge and agree that DIR shall retain its CRF from the amounts it collects from Customer, prior to paying the net amount to Vendor.

5. Criminal History Background Checks.

Prior to commencement of any Services under this TEX-AN NG Customer Services Agreement, certain Customers may require background and/or criminal history investigation of certain of the Vendor's employees, agents and Subcontractors who will be providing Services to Customer, per Section 411.1405 of the Texas Government Code, if it possesses legislative authority to require such investigations. Should any employee, agent, or Subcontractor of the Vendor who will be providing Services to Customer under the TEX-AN NG Customer Services Agreement not be acceptable to the Customer, in its sole and absolute discretion, as a result of the background and/or criminal history check, then the Customer may immediately request replacement of the Vendor's employee, agent or Subcontractor in question.

6. Customer Obligations.

In addition to any other Customer obligations set out in the Appendices to this TEX-AN NG Customer Services Agreement and the CTSA, Customer will have the obligations herein.

6.1 Customer will pay, when due, all invoices received from DIR pursuant to this TEX-AN NG Customer Services Agreement and the CTSA

6.2 Customer will issue a Purchase Order to DIR for the Services listed on *Appendix C*, and shall maintain the currency of such Purchase Order as the ordering of Services changes over the life of the TEX-AN NG Customer Services Agreement.

6.3 Customer will provide a billing contact to DIR and keep such information current at all times during the life of the TEX-AN NG Customer Services Agreement.

6.4 Customer will cooperate with Vendor in Vendor's performance of its obligations and the Services under this Agreement. Customer will make its internal systems and Equipment available if required by Vendor. Customer retains full responsibility for the physical security of its internal systems and Equipment.

6.5 Customer will comply with the terms of use statement, which is displayed on the Vendor TEX-AN NG Website, and with all applicable laws related to communications received from or distributed to individuals using the TEX-AN NG system and Services.

6.6 Customer will provide access to its information and systems as necessary to assist Vendor in performing its obligations and the Services hereunder and under the CTSA.

6.7 Customer will follow reasonable security standards regarding physical security, data, and systems, and will not knowingly or negligently take actions to, or by omissions

put, the Vendor Network or the Consolidated State Network or Customer Network at risk of loss, damage, or breach of security.

6.8 Customer will at all times be responsible for the security of its physical premises.

6.9 Customer retains full responsibility for the conduct of its Authorized End Users in the use of the Services.

6.10 Customer will notify Vendor in writing of all laws, rules and regulations, and changes thereto, that affect Services offered pursuant to this TEX-AN NG Customer Services Agreement.

7. Representations and Warranties by Vendor.

7.1 Vendor represents, warrants and covenants that the Services provided by Vendor will not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on copyright, patent, trade secret, or other Intellectual Property rights. Customer agrees that the sole remedy for any breach of the foregoing is the indemnification set forth in *Section 14.01* ("Infringement Indemnification") of the CTSA. Vendor agrees that it shall take reasonable efforts to include the indemnity provision or substantially similar language as provided for in *Section 14.01(a)* of the CTSA into its Subcontracts, in which Subcontractors participate in the development or delivery of the Services or Software.

7.2 (a) For any claim or cause of action arising under or related to the TEX-AN NG Customer Services Agreement, neither Party will be liable to the other Party for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages.

(b) EACH PARTY'S LIABILITY TO THE OTHER UNDER THE TEX-AN NG CUSTOMER SERVICES AGREEMENT WILL NOT EXCEED THE TOTAL VALUE OF VENDOR'S INVOICES TO CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE FILING OF A LAWSUIT.

(c) Exceptions to Limitations of Liability. This *Section* 7.2 will not apply with respect to:

(1) Losses occasioned by the fraud (except as rendered inapplicable to the State, DIR and all state agency and local government Customers pursuant to Section 11.03(e) of Exhibit B to the CTSA), willful misconduct, or gross negligence of a Vendor.

(2) Losses that are the subject of indemnification under this TEX-AN NG Customer Services Agreement.

(3) Losses occasioned by any breach of Vendor's or Customer's obligations under *Article 10, Exhibit B to the CTSA.*

(d) Items Not Considered as Damages. The following will not be considered damages subject to, and will not be counted toward the liability exclusion or cap specified herein:

(1) Amounts payable by or assessed against Vendor pursuant to Exhibit D ("Performance Management") of the CTSA.

(2) Amounts withheld by DIR in accordance with this TEX-AN NG Customer Services Agreement due to incorrect charges or Services not provided.

(3) Amounts paid by Customer but subsequently recovered from Vendor due to incorrect charges or services not provided.

(4) Vendor Invoiced Rates To DIR, Prices, telecommunications fees and surcharges and other amounts that are due and owing to Vendor for Services under this TEX-AN NG Customer Services Agreement.

7.3 Vendor represents and warrants that Vendor, to the best of its knowledge, has no actual or potential conflicts of interest in providing Services to Customer under the TEX-AN NG Customer Services Agreement and that Vendor's provision of Services under the TEX-AN NG Customer Services Agreement to the best of its knowledge would not reasonably create an appearance of impropriety.

7.4 Vendor represents and warrants that neither Vendor nor any person or entity, which will participate financially in the TEX-AN NG Customer Services Agreement, has received compensation from Customer for participation in preparation of specifications for the TEX-AN NG Customer Services Agreement. Vendor represents and warrants that it 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 any public servant or employee in connection with the TEX-AN NG Customer Services Agreement.

8. General Terms.

8.1 Customer agrees and acknowledges that the terms of the CTSA related to *Force Majeure*, Confidential Information, and any additional limitations on damages will apply to the TEX-AN NG Customer Services Agreement. This section only applies to the extent authorized by law.

8.2 Except as expressly provided herein, no provision of the TEX-AN NG Customer Services Agreement will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies or immunities available to Customer. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Customer by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Except as expressly provided herein, Customer does not waive any privileges, rights, defenses, remedies or immunities available to Customer by execution of this TEX-AN NG Customer Services Agreement.

8.3 This TEX-AN NG Customer Services Agreement will be construed and governed by the laws of the State of Texas and is performable in Travis County, Texas. Venue for any action relating to a TEX-AN NG Customer Services Agreement is in State courts in Austin, Travis County, Texas, or, with respect to any matter in which the federal courts have exclusive jurisdiction, the federal courts for Travis County, Texas.

8.4 If one or more provisions of this TEX-AN NG Customer Services Agreement, or the application of any provision to any Party or circumstance, is held invalid, unenforceable, or illegal in any respect, the remainder of the TEX-AN NG Customer Services Agreement and the application of the provision to other Parties or circumstances will remain valid and in full force and effect.

8.5 Except as provided in *Section 1.2* above, the TEX-AN NG Customer Services Agreement may be amended only upon written agreement between DIR, Vendor, and Customer, but in no case will the TEX-AN NG Customer Services Agreement be amended so as to make it conflict with the laws of the State.

8.6 Neither DIR, nor Vendor, nor Customer may assign or transfer this TEX-AN NG Customer Services Agreement without the written consent of the other Parties, which consent will not be unreasonably withheld, except that upon written notice to DIR and Customer, Vendor may assign the TEX-AN NG Customer Services Agreement with-

out DIR's and Customer's consent to any Affiliate that Vendor controls, is controlled by, or is under common control with, (provided such entity is adequately capitalized) or to any entity which acquires or succeeds to all or substantially all of the business or assets of Vendor whether by consolidation, merger, sale or otherwise (such as a spin-off of Vendor); and provided further, that upon written notice to Vendor, either DIR and /or Customer may assign the TEX-AN NG Customer Services Agreement without the Vendor's consent to any State entity designated by the Texas Legislature as being the successor to all contracts of either DIR and/or the Customer. The Parties covenant to fully cooperate in executing such instruments as necessary to keep accurate records of the names of all Parties hereto. Notwithstanding the foregoing, Vendor may, without DIR's consent, assign or delegate in whole or relevant part, its rights and obligations under this TEX-AN NG Customer Service Agreement to a third party work to be performed under this TEX-AN NG Customer Service Agreement, but Vendor will in each such case remain financially responsible for the performance of such obligations.

8.7 *Exhibit B Terms and Conditions*, *Sections 14.01 Infringement Indemnification and 14.02 Exceptions* of the CTSA is incorporated herein by reference and will apply to work product created by Vendor pursuant to the TEX-AN NG Customer Services Agreement.

8.8 Vendor will serve as an independent contractor in providing Services under this TEX-AN NG Customer Services Agreement. Vendor's employees are not and will not be construed as employees of Customer.

8.9 Vendor will have no authority to act for or on behalf of Customer except as provided for in the TEX-AN NG Customer Services Agreement and the CTSA; no other authority, power, or use is granted or implied. Vendor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of Customer other than those incurred in performance of the TEX-AN NG Customer Services Agreement.

8.10 In addition to the requirements of *Exhibit B Terms and Conditions*, *Section 8.01 Financial record retention and audit* of the CTSA, Vendor will maintain and retain supporting fiscal documents adequate to ensure that claims for TEX-AN NG Customer Services Agreement funds associated with the TEX-AN NG Customer Services Agreement are in accordance with applicable State requirements. These supporting fiscal documents will be retained by Vendor for a period of four (4) years after the date of submission of the final invoices.

8.11 *Exhibit D Performance Management* of the CTSA addresses the agreed upon performance criteria for Vendor's Services available to Customer. Customer may notify DIR in writing of alleged performance failures and DIR may, in its sole and absolute discretion, as between DIR and Customer, determine that a performance Deficiency may have occurred.

8.12 The Parties understand and agree that certain personal and/or sensitive information may be transmitted and/or received in connection with this TEX-AN NG Customer Services Agreement. The Parties agree to apply reasonable and prudent management controls and methods to protect sensitive information in its possession in a manner that complies with all applicable State and Federal laws, rules and regulations.

9. Termination.

9.1 The TEX-AN NG Customer Services Agreement is effective upon execution by representatives of DIR, Vendor, and Customer and expires upon termination or expira-

tion of the CTSA (as renewed or extended), unless the TEX-AN NG Customer Services Agreement is earlier terminated as set forth below, or extended in accordance with *Section 9.4* below.

9.2 In the event that any Party fails to carry out or comply with any of the material terms and conditions of the TEX-AN NG Customer Services Agreement, another Party may notify the breaching Party of such failure or default in writing and demand that the failure or default be remedied within 30 calendar days. In the event that the breaching Party fails to remedy such failure or default within 30 calendar days of receiving written notice, each other Party will have the right to cancel the TEX-AN NG Customer Services Agreement effective immediately.

Notwithstanding the foregoing, Customer will not have the right to cancel the TEX-AN NG Customer Services Agreement if Vendor's failure or inability to comply with the terms and conditions of the TEX-AN NG Customer Services Agreement is caused by or arises from, in whole or in part, the refusal or inability, for whatever reason, of Customer to provide the support and assistance that Vendor requires from Customer to perform its obligations under the TEX-AN NG Customer Services Agreement, and which Customer previously agreed to provide to Vendor. If Customer does not provide Vendor with the requisite level or amount of support, for whatever reason, Vendor will seek input and advice from DIR by providing DIR with no less than a two business days notice to enable DIR to intervene, in DIR's sole and absolute discretion, with such Customer after which Vendor will be entitled (but not obligated) to suspend or cancel any further work on the particular Service for which adequate support is not available, and focus its efforts on other Services within scope for the Customer.

9.3 Except as otherwise provided in the CTSA, or as provided below, DIR or Vendor may terminate the TEX-AN NG Customer Services Agreement for convenience and without cost or penalty upon 90 days' prior written notice.

9.4 Upon written amendment signed by all Parties, Customer and Vendor may continue Vendor's Services under the TEX-AN NG Customer Services Agreement, notwithstanding the expiration or termination of the CTSA only for such period of time as necessary to transition the Customer and Services to a successor service provider.

9.5 Unless otherwise provided in *Appendix A* hereto, pursuant to the provisions of CTSA, the Customer will pay any unrecovered costs associated with Vendor providing Services to it through the CTSA, if the Customer terminates the TEX-AN NG Customer Services Agreement for convenience.

9.6 DIR may terminate this TEX-AN NG Customer Services Agreement without recourse following the determination by a competent judicial or quasi-judicial authority and Vendor's exhaustion of all legal remedies that Vendor, its employees, agents or Subcontractors have either offered or given any Thing of Value to an officer or employee of Customer or the State in violation of State law.

10. Dispute Resolution.

If a dispute seeking money damages is identified by DIR, Vendor, or Customer, dispute resolution will follow the procedures outlined in *Exhibit B Terms and Conditions*, *Section 11.10 Dispute Resolution* of the CTSA, which references Chapter 2260,Texas Government Code. Any pursuit of equitable relief will not constitute a waiver by DIR or Customer of any immunity from suit or liability. Notwithstanding the foregoing, DIR and Customer are not precluded from initiating a lawsuit for damages against Vendor in a court of competent ju-

risdiction and may do so without engaging in the process provided by Chapter 2260, Texas Government Code.

11. End of Agreement-Life Transition.

11.1 Agreed Language. This TEX-AN NG Customer Services Agreement, DIR Contract No. DIR–TEX-AN NG–CSA – IC XXX, is in effect from _____ until 12:00:00 p.m., _____, and for such further period as allowed by the TEX-AN NG Customer Services Agreement (the "Effective Expiration Date of the TEX-AN NG Customer Services Agreement"). In order to ensure the smooth transition of Services from Vendor to a successor service provider, the Parties agree to the following assignment language for this TEX-AN NG Customer Services Agreement:

Notwithstanding any other provision of this TEX-AN NG Customer Services Agreement, the following assignment provision applies:

Effective as of one second after the expiration of the CTSA, without the necessity of execution of additional documents, and at no cost to DIR or the Customer, Vendor hereby agrees to the absolute and complete assignment of this TEX-AN NG Customer Services Agreement to DIR or a successor service provider, provided that the following occurs on or by 5:00 p.m. of the Business Day of the final expiration date of the CTSA:

DIR or the successor service provider agrees to assume all TEX-AN NG Customer Services Agreement obligations and liabilities that arise on and after one second after the final expiration of the CTSA, and is responsible to pay to Vendor the applicable transition assignment fees, if any, as set forth in the Transition Assignment Liability Schedule attached to this TEX-AN NG Customer Services Agreement. In all events, Vendor remains responsible for all TEX-AN NG Customer Services Agreement obligations and liabilities that arise prior to the final expiration date of the CTSA.

11.2 No Cost. Vendor is not authorized to charge the Customer, DIR or successor service provider, a fee or cost for the assignment.

Appendix A. Form of Transition Assignment Liability Schedule.

Customer Name: _____

Appendix B: Service Descriptions and Rates.

Customer Name: _____

List of Services and applicable Rates Available Under this TEX-AN NG Customer Service Agreement
1. 2. … x.

Rate Schedule to Customer (includes DIR Cost Recovery Fee)
1. 2. … x.

_____ _____

Customer Initials & Date Vendor Initials & Date

Appendix C: Ordered Services Description.

Customer Name: _____

The Vendor offers a variety of Services to Customers. The specific list of Services that are eligible to be ordered under the TEX-AN NG Customer Services Agreement and that Customer has ordered from Vendor under this Agreement are set forth in this *Appendix C.* The Parties agree to fully cooperate to amend the TEX-AN NG Customer Services Agreement to keep this Exhibit accurate and current in a timely manner.

Service	Description

Appendix D. Specifications and Additional Terms.

Customer Name: _____

Specifications and additional terms that apply to the *Exhibit C Ordered Services Description*.

Specification or Terms	Description

— End of Exhibit H —

TEX-AN NG
Communications Technology Services Agreement

Between

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

and

Level 3 Communications, LLC. (Vendor)

Exhibit I.
HUB Subcontracting Plan

Attach current and completed HUB Form.

— End of Exhibit I —