



Texas Open Data Portal Master Services Agreement

DIR Contract No. DIR-ESS-ODP-428

Between

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

and

Socrata, Inc.

June 26, 2018

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MASTER SERVICES AGREEMENT

This Master Services Agreement (the "**MSA**" or "**Agreement**") is entered into as of the Effective Date by and between the State of Texas, acting by and through the Texas Department of Information Resources ("**DIR**"), with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Socrata, Inc., a wholly owned subsidiary of Tyler Technologies, Inc. ("**Successful Respondent**"), with offices at 705 5th Avenue South, Suite 600, Seattle, WA 98104.

WHEREAS, in accordance with the Laws of the State, DIR issued the "Request for Offers (RFO) for "Texas Open Data Portal" on the Texas Comptroller of Public Accounts' "Electronic State Business Daily (ESBD)" Web site, agency requisition number DIR-TSO-TMP-428 (the "**RFO**");

WHEREAS, in response to the RFO, the Successful Respondent submitted Successful Respondent's Response, dated April 25, 2018, as amended and supplemented thereafter (the "**Response**");

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

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

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

1 INTRODUCTION

1.1 Service Provision by the Successful Respondent.

DIR desires certain services presently provided, performed and managed by or for DIR and the DIR Customers or otherwise required by the DIR Customers, including a configurable Commercial, Off-the-Shelf (COTS) Open Data Portal solution. A custom-built solution will not be considered.

1.2 Successful Respondent's Experience and Qualifications.

Successful Respondent represents and warrants that it is an established provider of the Services (as defined in **Article 4** below) as awarded under this Agreement and has the skills, qualifications, expertise, financial resources and experience necessary to provide the Services (including the plans, reports, and other deliverables) described in this Agreement.

1.3 Other Terms.

The terms defined in this Agreement include the plural as well as the singular and the derivatives of such terms. Unless otherwise expressly stated, the words "**herein**," "**hereof**," and "**hereunder**" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, Exhibit, Attachment, or other subdivision. Article, Section, Subsection, Exhibit and Attachment references refer to articles, sections and subsections of, and exhibits and attachments to, this Agreement. The words "**include**" and "**including**" shall not be construed as terms of limitation. Unless otherwise modified, the words "**day**," "**month**," and "**year**" mean, respectively, calendar day, calendar month and calendar year. As stated in **Section 18**, the word "**notice**" and "**notification**" and their derivatives mean notice or notification in writing. References in this Agreement to any law shall be to such law in changed or amended form or to a newly adopted law replacing a prior law. All references to this Agreement shall include the Exhibits and Attachments to this Agreement unless otherwise provided. Other terms used in this Agreement are defined in the context in which they are used and have the meanings there indicated.

1.4 Compliance with Procurement Laws.

This Agreement is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Texas Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-428, on March 28, 2018, for the Texas Open Data Portal Services. The Successful Respondent responded and DIR after evaluation and a determination that Successful Respondent should be invited into negotiations, DIR and Successful Respondent have engaged in extensive negotiations, discussions and due diligence that have culminated in the formation of the contractual relationship described in this Agreement. Upon execution of all agreements arising from the RFO, a notice of award for RFO DIR-TSO-TMP-428 shall be posted by DIR on the ESBD.

DIR is authorized to enter into this Agreement under Chapter 2054, specifically including Subchapters F, I and L, Texas Government Code. Successful Respondent is authorized to enter into this Agreement pursuant to the authorization of its governing board or controlling owner or officer.

1.5 Eligible Entities

Collectively, any of the following entities that are designated by DIR to receive Services under the Agreement: 1. DIR in its capacity as a recipient of Services; 2. any State agency or institution of higher education as defined in Section 2054.003, Texas Government Code, 3. any local government or licensing entity as defined in Section 2054.251, Texas Government Code, and 4. any other entity permitted under law to purchase Services from or through DIR. The Parties acknowledge and agree that the definition of eligible DIR Customers is subject to modification by the State Legislature, and that the then-current definition of DIR Customers shall control for all purposes. For the avoidance of doubt, only those DIR Customers that are actually receiving Services under this Agreement have rights under this Agreement.

2 CONTRACT DOCUMENTS

This Agreement includes each of the Exhibits, Attachments, and other documents attached to this Agreement which are hereby incorporated into and deemed part of this Agreement, and unless otherwise expressly stated all references to this Agreement shall include the Exhibits, Attachments and other documents attached to this Agreement. A listing of Exhibits and certain of the Attachments is included in the table of contents. Unless otherwise expressly stated, references to specific Exhibits and Attachments include all numbered subsidiary Exhibits and Attachments (e.g., references to **Exhibit 3.0** include not only **Exhibit 3.0**, but also all sub-exhibits in that series (i.e., 3.1, 3.2, etc.).

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

1. Article 1 through Article 18 of this Agreement (including **Attachment A: Insurance and Risk of Loss**);
2. Exhibits 1.0 through 4.0 (Socrata Response to Desired Functionality, Pricing Structure, Subscription Services Agreement, and Implementation Plan, respectively);
3. Request for Offer # DIR-TSO-TMP-428 and any Revisions of Addenda thereto;
4. The Response submitted by Successful Respondent to DIR dated April 23, 2018.

3 TERM

3.1 Term.

The term of this Agreement shall commence as of 12:00:00 a.m., Central Time on the Effective Date and continue until 11:59:59 p.m., Central Time on August 31, 2022, unless this Agreement is terminated earlier as provided herein, in which case the initial term of this Agreement shall end at 11:59:59 p.m., Central Time, on the effective date of such termination (the "**Term**").

4 SERVICES

4.1 Overview.

Successful respondent shall provide a configurable, Commercial Off the Shelf (COTS) Open Data Portal solution that materially conforms to Successful Respondent's affirmative responses to the desired functionality set forth in **Exhibit 1**. The Successful Respondent shall deliver that solution by providing the services itemized in **Exhibit 2** and described in **Exhibit 4** (collectively, the "Services").

4.2 Solution and Implementation Requirements.

The Successful Respondent shall deliver a solution that meets the following DIR requirements, to the extent provided in **Exhibits 1, 2, 3 and 4**:

- (a) The Successful Respondent shall provide a robust Open Data Portal that is intuitive and easy to use with limited steps or clicks in the system to upload data and view datasets.
- (b) The Successful Respondent shall provide an Open Data Portal solution with the ability to accommodate a range of structured dataset sizes and copies of previously published Texas reports and maps.
- (c) The Successful Respondent shall provide project management of the project implementation. Project Management requirements include:
- (d) Development of a project plan;
- (e) Facilitation of the requirements definition, including providing guidance, and sharing best practices in setting up and configuring an Open Data Portal;
- (f) Management of the Open Data Portal implementation effort including data conversion or upload as required;
- (g) Training of users; and
- (h) Support for DIR and state staff during and after the project implementation and throughout the life of the Contract.
- (i) The Successful Respondent shall assign a client representative to interface with DIR and state staff.
- (j) The Successful Respondent shall institute a support process to log issues, track status, and request system enhancements.

4.3 Security.

The following security requirements for data protection shall apply to the Open Data Portal hosted as set forth in **Section 4.4**:

The Open Data Portal shall host and protect sensitive data which is governed by CJIS, HIPAA, PCI or other regulatory agencies to the extent provided for under Successful Respondent's then-current security certifications. As of the Effective Date, Successful Respondent is certified under FedRAMP, and is compliant with applicable controls under FISM and NIST 800-53.

The Open Data Portal shall provide multiple level security, including encryption of data in transit and at rest, flexible authentication controls for internal and external users, controls that provide assurance of availability, and well-rounded collection of supporting controls.

The Open Data Portal encryption services include Transport Layer Security at the latest version, in compliance with FIPS-140-2.

4.4 Hosting.

Successful Respondent will host the Open Data Portal on AWS. Any and all data not maintained in a DIR Data Center shall be stored within the continental United States at all times.

4.5 Integration with DIR's Shared Services Operating Model.

It is anticipated that the Successful Respondent will be required to coordinate services with DIR's Multi-

sourcing Services Integrator (MSI). The MSI's primary role is to integrate and manage the services of the Service Component Providers (SCPs) in the State of Texas' Statewide Technology Center (STC) program. Among other functions, the MSI provides service level management, service desk support, constituent help desk support, program management, marketplace functionality, performance analytics and financial management.

4.6 Transition/Implementation.

- (a) The Successful Respondent shall implement the solution as set forth in the Implementation Plan provided at **Exhibit 4**.
- (b) **Implementation Plan.** Exhibit 4 reflects an implementation plan with a Gantt chart. Within five (5) DIR Business Days of the award of the Agreement, the Successful Respondent may request a meeting with the Designated DIR Representative, as defined in **Section 8.1**, to confirm the scope of the implementation plan. For purposes of this Agreement, a "DIR Business Day" is a weekday, except for those weekdays on which DIR observes a holiday. DIR will provide Successful Respondent with a list of DIR-observed holidays.

4.7 Transition Status Meetings.

As directed by DIR, the Successful Respondent shall attend and lead status meetings at DIR offices, which the Successful Respondent may participate in remotely or in person, to provide updates progress made, seek input from DIR, and to ensure that work is proceeding in the desired direction. The Successful Respondent shall address any issues affecting this project at these meetings. Initially, DIR intends these meetings will occur at least weekly. DIR, in its sole discretion, may alter the frequency of these meetings. At a minimum, the Successful Respondent shall:

- (a) Provide a written agenda to the DIR Project Manager at least twenty-four (24) hours prior to meeting. The DIR Project Manager may add additional topics as necessary.
- (b) Keep minutes of each meeting and provide a written copy to DIR Project Manager within five (5) business days of the meeting. At a minimum, minutes shall address topics discussed, issues raised, and intended resolution of those issues.
- (c) Provide weekly written status reports to the DIR Project Manager. The written status reports shall address Tasks Completed, Tasks in Progress, Work to be Initiated During the Next Period, identified Risks with Risk Management approach, and Issues Requiring Management Attention. Issues Requiring Management Attention shall include, but not be limited to, any problems that may delay performance along with proposed corrective action, any failure of Successful Respondent or DIR to perform, any delay of Successful Respondent or DIR in performing, and any inadequacy in the performance of Successful Respondent or DIR.

In the event the Successful Respondent fails to timely specify in writing, within the applicable weekly reporting period, an Issue Requiring Management Attention for the Weekly Status Report, Successful Respondent shall not be entitled to rely upon such Issue as a purported justification for either (1) claiming Successful Respondent is entitled to receive any amount (including, without limitation, damages or additional charges arising out of a breach by DIR) with respect to Successful Respondent's obligations hereunder in excess of those previously agreed to; (2) failing to complete any of Successful Respondent's obligations hereunder or (3) requesting any reduction in or avoidance of damages or penalties. Submission of the above referenced status reports shall not alter, amend or modify Successful Respondent's or DIR's rights or obligations pursuant to any provision of the Contract.

5 RESERVED.

6 SUCCESSFUL RESPONDENT PERSONNEL

6.1 Key Personnel.

- (a) Successful Respondent shall designate Key Personnel for the Open Data Portal implementation. Key Personnel are not required to be solely dedicated. At a minimum, Key Personnel shall include:

- (b) Account Manager;
- (c) Project Manager (PM); and
- (d) Technical Subject Matter Experts or Leads.
- (e) The Account Manager shall be immediately available to provide services as required. The PM and Technical SME(s) will be available within a commercially reasonable timeframe based on the timing of the award and DIR's availability for project kick-off. Key Successful Respondent Personnel may not be removed from the project without DIR's written permission.

6.2 Successful Respondent Personnel Are Not State, DIR or DIR Customer Employees.

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

6.3 Responsibility for Successful Respondent Personnel.

- (a) Successful Respondent's employees, agents or Subcontractors shall be paid exclusively by Successful Respondent for all Services performed. Successful Respondent is responsible for and must comply with all requirements and obligations related to such 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.
- (b) Successful Respondent assumes sole and full responsibility for its acts and the acts of its employees, agents and Subcontractors relating to the performance of this Agreement.
- (c) Successful Respondent agrees that any claim on behalf of any person arising out of employment, alleged employment, agency or subcontracts by or with Successful Respondent (including, but not limited to, claims of discrimination against Successful Respondent, its officers, or its agents or its Subcontractors) are the sole responsibility of Successful Respondent and are not the responsibility of DIR, and that Successful Respondent will indemnify and hold harmless the State from any and all such claims asserted against the State or DIR. Successful Respondent understands that any person who alleges a claim arising out of employment, alleged employment, agency, or Subcontract with or by Successful Respondent (including, but not limited to, claims of discrimination against Successful Respondent, its officers, or its agents or its Subcontractors) will not be entitled to any compensation, rights, or benefits from DIR (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

6.4 Replacement, Qualifications, and Retention of Successful Respondent Personnel.

- (a) **Sufficiency and Suitability of Personnel.** As a material obligation hereunder, Successful Respondent shall assign (or cause to be assigned) sufficient numbers of Successful Respondent personnel to perform the Services in accordance with this Agreement (including applicable Service Levels), and such Successful Respondent personnel shall possess suitable competence, ability and qualifications and shall be properly educated and trained for the Services they are to perform. Successful Respondent will maintain the organizational and administrative capacity and capabilities to carry out all Successful Respondent duties and responsibilities, including providing and supporting the Services, under this Agreement.

Notwithstanding transfer or turnover of its personnel, or of its agents' or Subcontractors' personnel, Successful Respondent remains obligated to perform all duties and responsibilities, including providing and supporting the Services, without degradation and in accordance with the terms of this Agreement. For purposes of this Agreement, "Service Levels" shall mean those response, resolution, and uptime commitments Successful Respondent has documented in these Articles 1 through 18 and/or in Exhibits 1 through 4, if any.

- (b) **Responsibility for Successful Respondent Personnel.** Successful Respondent agrees that anyone used by Successful Respondent to fulfill the terms of this Agreement is an employee, agent or Subcontractor of Successful Respondent and remains under Successful Respondent's sole direction and control. In addition, Successful Respondent hereby agrees to be responsible for the following with respect to its employees, agents or Subcontractors: (i) damages incurred by Successful Respondent personnel or Subcontractors within the scope of their duties under this Agreement; and (ii) determination of the hours to be worked and the duties to be performed by Successful Respondent personnel or Subcontractors. Successful Respondent agrees and will inform its employees, agents, and Subcontractors that there is no right of action against DIR for any duty owed by Successful Respondent pursuant to this Agreement. Successful Respondent expressly agrees that neither DIR nor any DIR Customer assumes any liability for the actions of, or judgments rendered against, the Successful Respondent, its employees, agents, or Subcontractors. DIR's liability to the Successful Respondent's employees, agents, and Subcontractors, if any, will be governed by Chapter 101, Texas Civil Practice & Remedies Code.
- (c) **Requested Replacement.** In the event that DIR determines lawfully and in good faith that the continued assignment of any individual Successful Respondent personnel (including Key Personnel) to the performance of the Services does not conform to the Services warranted under this Agreement, then DIR may give Successful Respondent notice to that effect requesting that such Successful Respondent personnel be replaced. Successful Respondent shall have ten (10) DIR Business Days following DIR's request for removal of such Successful Respondent personnel in which to investigate the matters forming the basis of such request, correct any deficient performance, and provide DIR with assurances that such deficient performance shall not recur (provided that, if requested to do so by DIR, Successful Respondent shall immediately remove (or cause to be removed) the individual in question from all DIR Facilities pending completion of Successful Respondent's investigation and discussions with DIR). If, following such ten (10) DIR Business Day period, DIR is not reasonably satisfied with the results of Successful Respondent's efforts to correct the deficient performance and/or to prevent its recurrence, Successful Respondent shall, as soon as possible, remove and replace such Successful Respondent personnel with an individual of suitable ability and qualifications, at no additional cost to DIR. Nothing in this provision shall operate or be construed to limit Successful Respondent's responsibility for the acts or omissions of Successful Respondent personnel, or be construed as joint employment of the Successful Respondent personnel.
- (d) **Successful Respondent Personnel.** Successful Respondent shall be responsible for verifying (i) that Successful Respondent personnel are authorized to work in any location in which they are assigned to perform Services and (ii) that it has performed pre-hire background investigations verifying that Successful Respondent personnel had not been convicted of or accepted responsibility for a felony or a misdemeanor involving a dishonest act. Successful Respondent shall maintain policies prohibiting the use of illegal drugs. Successful Respondent represents that the Successful Respondent personnel are not disqualified from performing their assigned work under applicable laws.
- (e) **Background and/or Criminal History Investigations.** Prior to the date any Successful Respondent personnel are assigned to DIR's account, and at DIR's request from time to time thereafter, background checks (including national fingerprint record checks and drug testing) and/or criminal history investigations of such Successful Respondent personnel specified in the Implementation Plan may be performed by DIR and/or DIR Customers having the authority to require such investigations under applicable laws. Should any Successful Respondent personnel not be acceptable to DIR as a result of a background check and/or criminal history investigation, then Successful Respondent shall promptly replace the individual(s) in question. Successful Respondent personnel who do not meet criteria acceptable to DIR shall not be assigned to work hereunder.

6.5 Conduct of Successful Respondent Personnel.

- (a) **Conduct and Compliance.** Successful Respondent personnel shall (i) comply with applicable DIR Rules and other rules and regulations, (ii) comply with reasonable requests of DIR pertaining to personal and professional conduct, (iii) attend workplace training offered by DIR at DIR's request, and (iv) otherwise conduct themselves in a businesslike manner. For purposes of this Agreement, "DIR Rules" shall mean those rules or policies governing DIR employee conduct that are generated by DIR and made available in writing to Successful Respondent.
- (b) **Identification of Successful Respondent Personnel.** Except as specifically authorized by DIR, all Successful Respondent personnel shall clearly identify themselves as Successful Respondent personnel and not as employees or representatives of the State, DIR or any DIR Customer. This shall include any and all communications, whether oral, written or electronic, unless and to the extent authorized by DIR in connection with the performance of specific Services. Each Successful Respondent personnel shall wear a badge issued by DIR indicating that he or she is a "contractor" when at a DIR Facility.
- (c) **Restriction on Marketing Activity.** Except for marketing representatives designated in writing by Successful Respondent to DIR, none of the Successful Respondent's personnel shall conduct any marketing activities with respect to any services specifically outside the scope of this Agreement to the State DIR, or any DIR Customer at DIR Facilities (including marketing of any services outside the scope of this Agreement), other than, subject to Section 11.1, reporting potential marketing opportunities to Successful Respondent's designated marketing representatives.

6.6 Substance Abuse.

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

6.7 Union Agreements.

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

7 SUCCESSFUL RESPONDENT RESPONSIBILITIES

7.1 Reports, Data Correction, Re-Performance.

- (a) **Reports.** Successful Respondent shall provide DIR with (i) status reports and hours reports pertaining to the performance of the Services, (ii) those additional reports, if any, in the form and format and at the frequencies as mutually determined and documented, and (iii) those reports required elsewhere under the terms of this Agreement, if any (all such reports, the "**Reports**").
- (b) **Back-Up Documentation.** As part of the Services, Successful Respondent shall provide DIR with such documentation and other information available to Successful Respondent (including original source documentation and data in its native format or in an alternative industry-standard format as requested by DIR) as may be reasonably requested by DIR from time to time in order to verify the accuracy of the Reports provided by Successful Respondent.
- (c) **Correction of Errors.** Successful Respondent shall promptly correct any errors or inaccuracies in or with

respect to the Reports as part of the Services and at no additional cost.

7.2 Meetings.

- (a) **Meetings.** During the term of this Agreement, representatives of the Parties shall meet periodically or as requested by DIR to discuss matters arising under this Agreement, including any such meetings provided for in the Implementation Plan and this Agreement. During the implementation period, this may include meetings with DIR, the incumbent vendor, and other DIR Service Component Providers. Each Party shall bear its own costs in connection with the attendance and participation of such Party's representatives in such meetings.

7.3 Audit Rights.

- (a) **Contract Records.** Successful Respondent shall maintain complete and accurate records of, and supporting documentation for, all Charges, all DIR Data and all transactions, authorizations, changes, implementations, soft document accesses, reports, filings, returns, analyses, procedures, controls, records, data or information created, generated, collected, processed, or stored by Successful Respondent in the performance of its obligations under this Agreement ("**Contract Records**"). Successful Respondent shall maintain such Contract Records in accordance with applicable Laws and the terms of this Agreement. Successful Respondent shall retain Contract Records in accordance with the applicable DIR Customer's record retention policy (as such policies may be modified from time to time and provided to Successful Respondent in writing) during the Term and thereafter through the end of the seventh (7th) full year after the year in which Successful Respondent stopped performing any Services (the "**Audit Period**"). For purposes of this Agreement, "Charges" means those fees invoiced by Successful Respondent to DIR under the Agreement, and "DIR Data" means information about DIR's payment of Charges.
- (b) **Operational Audits.** During the Audit Period, Successful Respondent shall provide to DIR (and internal and external auditors, inspectors, regulators, and other representatives that DIR may designate from time to time, including customers, vendors, licensees, and other third parties to the extent DIR or the DIR Customers are legally or contractually obligated to submit to audits by such Entities), and the State Auditor's Office and any successor governmental authorities) (collectively, "**DIR Auditors**"), provided any such external customers, vendors, licensees and other third parties agree to protect Successful Respondent's Confidential Information subject to applicable public information laws, access at reasonable hours and upon reasonable notice to Successful Respondent personnel, to the facilities at or from which Services are then being provided and to Successful Respondent records and other pertinent information, all to the extent relevant to the Services and Successful Respondent's obligations under this Agreement. Such access shall be provided for the purpose of performing audits and inspections to (i) verify the integrity of DIR Data, (ii) examine the systems that process, store, support, and transmit that data (including system capacity, performance, and utilization), (iii) examine the internal controls (e.g., financial controls, human resources controls, organizational controls, input/output controls, system modification controls, processing controls, system design controls, and access controls) and the security, disaster recovery, and back-up practices and procedures, (iv) examine Successful Respondent's performance of the Services, (v) verify Successful Respondent's reported performance against the applicable Service Levels, (vi) examine Successful Respondent's measurement, monitoring, and management tools, and (vii) enable DIR and the DIR Customers to meet applicable legal, regulatory and contractual requirements. Successful Respondent shall (1) provide any assistance reasonably requested by DIR Auditors in conducting any such audit, including installing and operating audit software, (2) make requested Successful Respondent personnel, records and information available to DIR Auditors, and (3) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If an audit reveals a non-trivial breach of this Agreement, Successful Respondent shall, upon DIR's request, promptly reimburse DIR for reasonable auditors' fees including any follow-up audit to verify that such breach has been corrected.
- (c) **Financial Audits.** During the Audit Period, Successful Respondent shall provide to DIR Auditors access at reasonable hours to Successful Respondent personnel and to Contract Records and other pertinent information to conduct financial audits, including the audit work papers of Successful Respondent's auditor to the extent applicable to the Services and obtainable by Successful Respondent, all to the extent relevant to the performance of Successful Respondent's obligations under this Agreement. Such access shall be

provided for the purpose of performing audits and inspections to (i) verify the accuracy and completeness of Contract Records, (ii) verify the accuracy and completeness of Charges and any Pass-Through Expenses and Out-of-Pocket Expenses, (iii) examine the financial controls, processes, and procedures utilized by Successful Respondent in connection with the Services, (iv) examine Successful Respondent's performance of its other financial and accounting obligations to DIR under this Agreement, and (v) enable DIR and DIR Customers to meet applicable legal, regulatory, and contractual requirements, in each case to the extent applicable to the Services and/or the Charges for such Services. Successful Respondent shall (1) provide any assistance reasonably requested by DIR Auditors in conducting any such audit, (2) make requested Successful Respondent personnel, records, and information available to DIR Auditors, and (3) in all cases, provide such assistance, personnel, records and information in an expeditious manner to facilitate the timely completion of such audit. If any such audit reveals an overcharge by Successful Respondent, and Successful Respondent does not successfully dispute the amount questioned by such audit in accordance with **Article 16**, Successful Respondent shall promptly pay to DIR the amount of such overcharge, together with interest at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, from the date of receipt by Successful Respondent of the overcharged amount until the date of payment to DIR. In addition, if any such audit reveals an overcharge of more than five percent (5%) of the audited Charges in any Charges category, Successful Respondent shall, upon DIR's request, promptly reimburse DIR for reasonable auditors' fees. For purposes of this Agreement, "Pass-Through Expenses" are third-party expenses that Successful Respondent invoices to DIR, and "Out-of-Pocket Expenses" are expenses Successful Respondent incurs directly and invoices to DIR.

- (d) **Audits by Governmental Authorities.** Acceptance of funds under this Agreement by Successful Respondent acts as acceptance of the authority of the State Auditor's Office, the State Comptroller Claims Division and any successor governmental authorities to conduct audits and investigations in connection with those funds. The State Auditor's Office and the State Comptroller Claims Division shall at any time have access to and rights to examine, audit, excerpt and transcribe any pertinent books, documents, working papers and records of Successful Respondent relating to this Agreement, notwithstanding any other provision of this Agreement. Successful Respondent shall fully cooperate with and provide all assistance requested by the State Auditor's Office or the State Comptroller Claims Division in the conduct of such audits or investigations, including providing all records requested. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Tex. Government Code, the State Auditor may conduct an audit or investigation of Successful Respondent or any other entity or person receiving funds from the State directly through this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Successful Respondent or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. This Agreement may be unilaterally amended by DIR upon notice to Successful Respondent to bring this Agreement into compliance with any rules and procedures of the State Auditor's Office in the implementation and enforcement of Section 2262.003.
- (e) **General Procedures.**
- (i) Successful Respondent shall obtain audit rights equivalent to those specified in this **Section (i)** from all Subcontractors (and in all events shall obtain such audit rights from all Subcontractors as required under the Texas Government Code, including Texas Government Code 2262.003, or other applicable Law), and shall cause such rights to extend to DIR Auditors.
 - (ii) In performing audits, DIR Auditors shall endeavor to avoid unnecessary disruption of Successful Respondent's operations and unnecessary interference with Successful Respondent's ability to perform the Services in accordance with the Service Levels.
 - (iii) DIR Auditors shall be given adequate private workspace in which to perform an audit, plus access to photocopiers, telephones, facsimile machines, computer hook-ups, and any other facilities or equipment needed for the performance of the audit.
 - (iv) Successful Respondent recognizes that DIR must comply with applicable laws respecting

procurement of services in connection with any engagement of an audit firm or other consultant for conducting the audits contemplated in this **Section (e)(i)**. To the extent permissible under such laws and the reasonable practice of DIR, DIR shall consult with Successful Respondent respecting the audit firm or other consultant and appropriate criteria related thereto (including general terms of engagement) in making its selection; provided, however, DIR reserves the right to determine, in its sole discretion, the appropriate audit firm or consultant to be engaged and the arrangement for such engagement.

- (v) DIR shall provide Successful Respondent with notice at least three (3) DIR Business Days prior to any operational or financial audit by a DIR Auditor; provided that no such notice shall be required with respect to audits conducted pursuant to **Section 7.4(d)** or to the extent limited due to extenuating circumstances. To the extent DIR has advance notice of an audit to be conducted pursuant to **Section 7.4(d)**, it shall provide reasonable notice to Successful Respondent.
- (f) **Successful Respondent Internal Audit.** If Successful Respondent determines as a result of its own internal audit that it has overcharged DIR, then Successful Respondent shall promptly pay to DIR the amount of such overcharge, together with interest at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, from the date of receipt by Successful Respondent of the overcharged amount until the date of payment to DIR. In the event such an audit results in a determination that Successful Respondent has undercharged DIR, then, subject to **Section 10.1(d)** and DIR's right to dispute the amount of such undercharge, Successful Respondent shall promptly report such undercharge to DIR and may invoice DIR for such undercharged amounts.
- (g) **Successful Respondent Response.** Successful Respondent and DIR shall meet promptly upon the completion of an audit conducted pursuant to this **Section (e)0** (i.e., an exit interview) and/or issuance of an interim or final report to Successful Respondent and DIR following such an audit. Successful Respondent shall respond to each exit interview and/or audit report in writing within thirty (30) days, unless a shorter response time is specified in such report. Successful Respondent and DIR shall develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations identified in such exit interview and/or audit report and Successful Respondent, at its own expense, shall undertake remedial action in accordance with such action plan and the dates specified therein to the extent necessary to comply with Successful Respondent's obligations under this Agreement.
- (h) **Successful Respondent Response to External Audits.** If an audit by a governmental body, standards organization, or regulatory authority having jurisdiction over DIR, a DIR Customer or Successful Respondent results in a finding that Successful Respondent is not in compliance with any applicable law or standard, including any generally accepted accounting principle or other audit requirement relating to the performance of its obligations under this Agreement, Successful Respondent shall, if and to the extent such audit deficiency or finding of non-compliance results from Successful Respondent's failure to comply with its obligations under this Agreement, at its own expense and within the time period specified by such auditor, address and resolve the deficiency(ies) identified by such audit governmental body, standards organization or regulatory authority in the manner approved by DIR to the extent necessary to comply with Successful Respondent's obligations under this Agreement.
- (i) **SOC 2 Reports.**

In addition to its other obligations under this **Section 7.3**, DIR may access System and Organization Controls (SOC) Reports for the AWS hosting environment at <https://aws.amazon.com/compliance/soc-faqs/>.

7.4 Subcontractors.

- (a) **Use of Subcontractors.** Except as already provided for in this Agreement, Successful Respondent shall not subcontract any of its responsibilities under this Agreement without DIR's prior written approval, which may be withheld in DIR's sole discretion. Prior to entering into a subcontract with a third party for the Services, Successful Respondent shall (i) deliver to DIR a copy of the proposed subcontract (other than charges thereunder, except to the extent such charges are the basis on which Charges are based), or (in DIR's reasonable discretion) a detailed description of the scope and material terms (other than pricing terms) of the proposed subcontract, (ii) obtain for DIR the licenses required to engage the Subcontractor, if

any, (iii) give DIR reasonable prior notice of the subcontract, specifying the components of the Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed Subcontractor and the reasons for subcontracting the work in question, the location of the Subcontractor facilities from which the Services shall be provided, the extent to which the subcontract shall be dedicated and the Subcontractor's willingness to grant the rights and (iv) obtain DIR's prior written approval of such Subcontractor.

- (b) **Right to Revoke Approval.** DIR may revoke its prior approval of a Subcontractor and direct Successful Respondent to replace any Subcontractor as soon as possible at no additional cost to DIR, if the Subcontractor's performance is materially deficient or if there are other reasonable grounds for removal. Successful Respondent shall have a reasonable opportunity to investigate DIR's concerns, correct the Subcontractor's deficient performance and provide DIR with a written action plan to assure that such deficient performance shall not recur. If DIR is not reasonably satisfied with Successful Respondent's efforts to correct the Subcontractor's deficient performance and/or to prevent its recurrence, Successful Respondent shall, as soon as possible, remove and replace such Subcontractor. Successful Respondent shall continue to perform its obligations under this Agreement, notwithstanding the removal of the Subcontractor. DIR shall have no responsibility for any termination charges or cancellation fees that Successful Respondent may be obligated to pay to a Subcontractor as a result of the removal of such Subcontractor at DIR's request or the withdrawal or cancellation of the Services then performed by such Subcontractor as permitted under this Agreement.
- (c) **Performance by Successful Respondent Affiliates.** Successful Respondent may subcontract certain Successful Respondent obligations under this Agreement to Successful Respondent's Affiliates and, without limiting the provisions of **Sections 17.3** and **18.1**, DIR hereby approves such subcontracts, provided that Successful Respondent shall provide DIR with prior notice of any such performance. For purposes of this Agreement, an "Affiliate" is a corporate entity or agency under common ownership or control as a Party to this Agreement.
- (d) **Successful Respondent Responsibility.** Unless otherwise approved by DIR, the terms of any subcontract must be sufficient to enable Successful Respondent to perform all of its responsibilities and comply with all of its obligations under this Agreement, including: (i) confidentiality and intellectual property obligations; (ii) DIR's approval rights (which must apply directly to the Subcontractor); (iii) compliance with DIR Rules and applicable laws; (iv) audit rights as described in **Section 7.3**; (v) Key Personnel; (vi) insurance coverage as described in **Attachment A Insurance and Risk of Loss**, with coverage limits consistent with the scope of the work to be performed by such Subcontractors; and (vii) obtaining for DIR and DIR Customers the rights specified in **Section 7.4(a)**. For purposes of this Agreement, services, functions, and responsibilities performed by Subcontractors (including their personnel) shall be deemed Services performed by Successful Respondent, the obligations of Successful Respondent hereunder related to such performance shall be deemed applicable to Subcontractors as if expressly so provided herein and references to Successful Respondent in this Agreement (including references to a "**Party**" constituting references to Successful Respondent) shall include Subcontractors. Successful Respondent shall be DIR's sole point of contact regarding the Services, including with respect to payment. Notwithstanding the terms of the applicable subcontract, the approval of any Subcontractor by DIR or the availability or unavailability of Subcontractor insurance, Successful Respondent shall be and remain responsible and liable for any failure by any Subcontractor or Subcontractor personnel to perform in accordance with this Agreement or to comply with any duties or obligations imposed on Successful Respondent under this Agreement to the same extent as if such failure to perform or comply was committed by Successful Respondent or Successful Respondent personnel. Without limiting the foregoing, Successful Respondent warrants and covenants that in no event shall any provision of this Agreement, or any right or benefit of DIR or the DIR Customers provided for under this Agreement, be reduced, limited or otherwise adversely affected (including through any increase in cost, Charge or expense, including taxes) as a consequence of the performance of any Services by or through Subcontractors.
- (e) **DIR's ability to contract with Subcontractors.** Successful Respondent is permitted to secure from its Subcontractors covenants not to compete with Successful Respondent with respect to the award of the particular Services for which Subcontractor was engaged to perform under the Subcontract, provided that any such covenant not to compete must be coterminous with the Agreement.

- (f) **Historically Underutilized Businesses.** Successful Respondent shall use commercially reasonable efforts to select subcontractors for the performance of the Services in accordance with DIR's then-current "Policy on Utilization of Historically Underutilized Businesses."

7.5 Multi-sourcing Services Integration and Cooperation

Successful Respondent acknowledges and agrees that it will deliver some of the Services to DIR and DIR Customers in an environment in which there are various other Service Component Providers providing related services to DIR and DIR Customers ("Multi-sourcing Services Environment"). Successful Respondent acknowledges that its provision of such Services in a multi-supplier environment may require applicable integration, cooperation, and coordination of processes and procedures with other Service Component Providers.

Security Assessments. As part of each agency's information security program requirements per Texas Administrative Code Chapter 202, agencies must conduct periodic assessments of the risk and impact that could result from unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency for all information resources owned, leased, or under the custodianship of any department, operating unit, or employee of the agency including outsourced resources to another agency, contractor, or other source (e.g. cloud computing).

Successful Respondent acknowledges that, to the extent DIR information or information resources are under the Successful Respondent's custodianship, good faith cooperation during a non-invasive security assessment is expected. DIR shall not perform any activities within the scope of the security assessment that affect the Successful Respondent's network or jeopardizes the technical service delivery of the Successful Respondent, without the prior written consent and authorization of the Successful Respondent. Security assessment activities will be limited to discussion and documentation of the Successful Respondent's information security assurances. Successful Respondent acknowledges that DIR views the right to conduct security assessments as a critical inducement to DIR's agreement to many of the terms of this Agreement, including the Term and termination rights provided for in the Agreement, and therefore Successful Respondent agrees that it will cooperate in good faith to accomplish the objectives contemplated by the security assessment for the benefit of DIR.

7.6 Monitoring Tools

As reasonably requested by DIR, Successful Respondent will provide DIR and its designee access to a history of service outages and planned maintenance on the platform through status.socrata.com. In addition, Successful Respondent will create a series of automated scripts that run in the FME cloud for electronic reporting to the MSI on Successful Respondent's response time, resolution time, and uptime, which electronic reports will be dropped at a location of DIR's choosing on a monthly cadence, as mutually agreed to by DIR and Successful Respondent.

8 DIR RESPONSIBILITIES

8.1 Responsibilities.

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

- (a) **Designated DIR Representative.** DIR shall designate one (1) individual to whom all Successful Respondent communications concerning this Agreement may be addressed (the "**Designated DIR Representative**"), who shall have the authority to act on behalf of DIR in all day-to-day matters pertaining to this Agreement. DIR may change the Designated DIR Representative upon notice to Successful Respondent. Additionally, the Designated DIR Representative may, upon notice to Successful Respondent, delegate such of his or her responsibilities to other DIR employees as the Designated DIR Representative deems appropriate.
- (b) **Cooperation.** DIR shall cooperate with Successful Respondent by, among other things, making available, as reasonably requested by Successful Respondent, management decisions, information, approvals and

acceptances so that Successful Respondent may accomplish its obligations and responsibilities hereunder.

- (c) **Requirement of Writing.** To the extent Successful Respondent is required under this Agreement to obtain DIR's approval, consent, or agreement, such approval, consent, or agreement must be in writing and must be signed by, or directly transmitted by electronic mail from, the Designated DIR Representative or an authorized DIR representative. Notwithstanding the preceding sentence, the Designated DIR Representative may agree in advance in writing that as to certain specific matters oral approval, consent, or agreement shall be sufficient.

9 FEES

9.1 General.

- (a) **Payment of Charges.** In consideration of Successful Respondent's performance of the Services and the license and support terms set forth in Exhibit 3, and in accordance with Chapter 2251, Texas Government Code, DIR shall pay to Successful Respondent pursuant to agreed pricing, as set forth in Exhibit 2.
- (b) **Incidental Expenses.** Successful Respondent acknowledges that, except as expressly provided otherwise in this Agreement, expenses that Successful Respondent incurs in performing the Services (including management, travel and lodging, document reproduction and shipping, equipment, and software required by Successful Respondent personnel, and long-distance telephone) are included in the Charges. Accordingly, such Successful Respondent expenses shall not be separately paid or reimbursed by DIR unless DIR has agreed in advance and in writing to reimburse Successful Respondent for the expenses, and in all events any such expenses shall not exceed the amounts authorized by the current State Travel Regulations or other applicable laws.

9.2 Taxes

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

- (a) **Income Taxes.** Successful Respondent shall be responsible for its own Income Taxes.
- (b) **Sales, Use and Property Taxes.** Successful Respondent shall be responsible for any sales, lease, use, personal property, stamp, duty, or other such taxes on equipment, materials or property it owns or leases or licenses from a third party, including any lease or license assigned pursuant to this Agreement.
- (c) **Taxes on Goods or Services Used by Successful Respondent.** Successful Respondent shall be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties payable by Successful Respondent on any goods or services used or consumed by Successful Respondent in providing the Services where the tax is imposed on Successful Respondent's acquisition or use of such goods or services and the amount of tax is measured by Successful Respondent's costs in acquiring or procuring such goods or services and not by DIR's or any DIR Customer's cost of acquiring such goods or services from Successful Respondent.
- (d) **Service Taxes.**
- (i) Subject to **Sections 9.2(d)(ii)** and **(iii)**, Successful Respondent shall be financially responsible for all Service Taxes; provided that DIR shall be responsible for any such tax imposed on the Services after the Effective Date.
 - (ii) Notwithstanding **Section 9.2(d)(i)**, if Service Taxes imposed on the Services after the Effective Date (whether new or higher) are the result of Successful Respondent moving all or part of its operations to a different jurisdiction (e.g., relocating the performance of the Services to a new

service location or Successful Respondent using an Affiliate or Subcontractor to perform all or part of the Services), Successful Respondent shall be financially responsible for such new or higher Service Taxes.

- (iii) Notwithstanding **Section 9.2(d)(i)** and **(ii)**, if DIR shall become responsible for Service Taxes after the Effective Date (whether new or higher), the Parties shall identify and diligently seek to agree upon legally permissible means of minimizing such new or higher Service Taxes. If the financial impact of all such new or higher Service Taxes exceeds six percent (6%) of the then-current Annual Base Charges, DIR may elect to terminate this Agreement in its entirety or to terminate any portions impacted by such new or higher Service Taxes (unless Successful Respondent agrees to assume financial responsibility for such new or higher Service Taxes exceeding the six percent (6%) threshold).
- (iv) To the extent required under applicable laws, Successful Respondent shall invoice DIR for any such Service Taxes and then credit DIR on such invoice (to the extent permitted by law) or reimburse or otherwise credit DIR, for that portion of such Service Taxes for which Successful Respondent is financially responsible under this provision.
- (e) **Withholding.** Any withholding tax or other tax of any kind that DIR or any DIR Customer is required by applicable law to withhold and pay on behalf of Successful Respondent with respect to amounts payable to Successful Respondent under this Agreement shall be deducted from said amount prior to remittance to Successful Respondent. DIR shall provide to Successful Respondent reasonable assistance, which shall include the provision of documentation as required by revenue authorities, to enable Successful Respondent to claim exemption from or obtain a repayment of such withheld taxes and shall, upon request, provide Successful Respondent with a copy of the withholding tax certificate.
- (f) **Tax Filings.** Successful Respondent represents, warrants, and covenants that it shall file appropriate tax returns, and pay applicable taxes owed arising from or related to the provision of the Services in all applicable jurisdictions. At DIR's request, Successful Respondent shall provide DIR with (i) written confirmation that Successful Respondent has filed all required tax forms and returns and has collected and remitted all applicable amounts, and (ii) such other information pertaining to applicable Taxes as DIR may reasonably request.

9.3 Extraordinary Events.

- (a) **Definition.** As used in this Agreement, an "**Extraordinary Event**" means a circumstance in which an event or discrete set of events has occurred or is planned with respect to the operations of DIR that results or shall result in a change in the scope, nature or volume of the Services that DIR shall require from Successful Respondent. Examples of the kinds of events that might cause such substantial increases or decreases include the following:
 - (i) changes in locations where DIR operates;
 - (ii) changes in constituencies served by, or activities or operations of DIR;
 - (iii) privatizations, dispositions, or reorganizations of the DIR;
 - (iv) changes in the method of service delivery;
 - (v) changes in the applicable regulatory environment or applicable laws;
 - (vi) changes in DIR's policy, technology or processes.
- (b) **Consequence.** If an Extraordinary Event occurs, DIR may, at its option, request more favorable pricing with respect to applicable Charges in accordance with the following:
 - (i) Successful Respondent and DIR shall mutually determine on a reasonable basis the efficiencies, economies, savings and resource utilization reductions, if any, resulting from such Extraordinary Event and, upon DIR's approval, Successful Respondent shall then proceed to implement such efficiencies, economies, savings, and resource utilization reductions as quickly as practicable and in accordance with the agreed upon schedule. As the efficiencies, economies, savings or resource utilization reductions are realized, the Charges shall be promptly and

equitably adjusted to pass through to DIR the net benefit of such efficiencies, economies, savings, and resource utilization reductions; provided, that DIR shall reimburse Successful Respondent for any net costs or expenses incurred to realize such efficiencies, economies, savings, or resource utilization reductions if and to the extent Successful Respondent (i) notifies DIR of such additional costs and obtains DIR's approval prior to incurring such costs, (ii) uses commercially reasonable efforts to identify and consider practical alternatives, and reasonably determines that there is no other more practical or cost effective way to obtain such savings without incurring such expenses, and (iii) uses commercially reasonable efforts to minimize the additional costs to be reimbursed by DIR.

- (ii) An Extraordinary Event shall not result in Charges to DIR being higher than such Charges would have been if the rates and charges then specified in this Agreement. DIR may, at its sole option, elect, for each Extraordinary Event, at any time to forego its rights under this **Section 9.3** and instead, apply rates and charges specified in this Agreement to adjust the Charges. For the avoidance of doubt, upon the occurrence of an Extraordinary Event, DIR is entitled to request more favorable pricing with respect to the applicable Charges even if the change in consumption related to the Extraordinary Event is associated with the applicable fixed and variable Charges set forth in **Exhibit 2 Pricing Structure**.

9.4 Unanticipated Change.

If an Unanticipated Change occurs, and if DIR requests any modifications to the Services to incorporate such Unanticipated Change, the Parties shall use the procedures in **Section 9.3(b)** to equitably adjust the Charges and other relevant provisions of this Agreement to take such Unanticipated Change into account. An "Unanticipated Change" shall consist of a material change in the technologies and/or processes available to provide all or any portion of the Services which is outside the normal evolution of technology experienced by the Services, that was not generally available as of the Effective Date and that would materially reduce Successful Respondent's cost of providing the Services.

9.5 Reserved.

9.6 Reserved.

10 INVOICING AND PAYMENT

10.1 Invoicing.

The Parties acknowledge that Professional Services charges will begin effective July 1, 2018 and Successful Respondent will initiate billing in arrears for same on a monthly basis for transition activities in July and August 2018, and for any further service charges incurred thereafter on a monthly basis in arrears. The Parties further acknowledge Subscription fees shall be invoiced annually in advance beginning September 1, 2018.

10.2 Payment Due.

Subject to the other provisions of this **Article 10**, each monthly invoice provided for under **Section 10.1** and other amounts due under this Agreement shall be due and payable by DIR under and in accordance with Chapter 2251, Texas Government Code.

10.3 Set Off.

Subject to **Section 10.5**, DIR may set off against any and all amounts to be paid or reimbursed by DIR any amount that Successful Respondent is obligated to pay DIR hereunder, provided that DIR notifies Successful Respondent in writing of the amounts of, and the basis for, such set off.

10.4 Disputed Charges.

- (a) **Disputed Amounts.** DIR may withhold any amount of any invoice in dispute as provided in and in accordance with Chapter 2251, Texas Government Code. DIR shall comply with Chapter 2251, Texas Government Code, with respect to timely notice of such disputed amounts.

For invoice amounts that have been paid by DIR that become the subject of a dispute, in addition to any amounts that Successful Respondent may subsequently credit to DIR arising from resolution of such dispute, Successful Respondent shall include interest on the reimbursed amounts accrued monthly at the rate specified by the Texas Comptroller of Public Accounts in accordance with Section 2251.025(b), Texas Government Code, calculated from the ninetieth (90th) day following the date of DIR's dispute.

- (b) **No Waiver.** Neither the failure to dispute any Charges or amounts prior to payment nor the failure to withhold any amount shall constitute, operate or be construed as a waiver of any right DIR may otherwise have to dispute any Charge or amount or recover any amount previously paid.
- (c) **Prompt Resolution.** In the event DIR initiates a dispute related to a monthly invoice (a "**DIR-Initiated Financial Dispute**"), Successful Respondent will promptly respond to the issue raised in such dispute, which response will include a written explanation of the charges that are the subject of the DIR-Initiated Financial Dispute, as well as any supporting documentation necessary to support Successful Respondent's position. If within one hundred eighty (180) days of the date on which DIR notifies Successful Respondent of the DIR-Initiated Financial Dispute, Successful Respondent has either (i) failed to respond to DIR or (ii) failed to provide documentation or other evidence as to the validity of the disputed charges, then such dispute will be deemed resolved in favor of DIR and the appropriate credits will be processed and the matter will be closed.

11 DIR DATA AND OTHER CONFIDENTIAL INFORMATION

11.1 Confidentiality.

In providing the Services, the Successful Respondent may have access to confidential information related DIR or DIR Customers. Therefore, Successful Respondent may be required to execute a mutually agreeable non-disclosure/confidentiality agreement with each DIR Customer, as required.

Information obtained by Successful Respondent in the performance of this Agreement shall be used only for the purposes of carrying out the provisions of this Agreement. Inspection by or disclosure of any such information to anyone other than an officer or employee of Successful Respondent, other than for the purposes of carrying out, and in accordance with, the provisions of this Agreement, shall require prior written approval of the Agreement.

Successful Respondent shall implement and document a comprehensive information security program. Successful Respondent shall use, implement, and document reasonable and appropriate security practices to make information secure. If the security of any shared data is compromised or breached by Successful Respondent or its Subcontractors, or Affiliates, Successful Respondent shall immediately notify DIR and DIR Customer (subject to Article 1.5 above), but no later than twelve (12) hours after discovery of the potential compromise or breach. Successful Respondent shall be liable to DIR for any compromise or breach caused by Successful Respondent, its Subcontractors or Affiliates and shall be liable for all reasonable and appropriate costs associated with remediating the compromise or breach.

12 REPRESENTATIONS, WARRANTIES, AND COVENANTS

12.1 Work Standards.

Successful Respondent represents, warrants, and covenants that (i) the Services shall be rendered with promptness, due care, skill, and diligence; (ii) the Services shall be executed in a professional and workmanlike manner, in accordance with accepted industry standards of first tier providers of services that are the same as or similar to the Services; (iii) as set forth in Exhibit 4, Successful Respondent shall use adequate numbers of qualified individuals with suitable training, education, experience, know-how, competence, and skill to perform the Services; and (iv) Successful Respondent shall provide release notes and/or access to a knowledgebase/FAQ resources to DIR in connection with product updates or upgrades on the same cadence and in the same manner that Successful Respondent makes that information available to similarly situated customers; and (v) Successful Respondent shall have the resources, capacity, expertise and ability in terms of know-how, and personnel to provide the Services. In the event Successful

Respondent breaches this warranty, Successful Respondent shall reperform the Services at no additional cost to DIR.

12.2 Maintenance.

Successful Respondent Responsibility. Successful Respondent represents, warrants, and covenants that, unless otherwise agreed and to the extent it has operational responsibility under this Agreement, it shall maintain the Open Data Portal so that it operates substantially in accordance with the Service Levels and the Specifications, including performing portal maintenance in accordance with the applicable documentation, recommendations and requirements. For purposes of this Agreement, the “Specifications” are those responses to the narratives and checklist set forth in Exhibit 1.

12.3 Efficiency and Cost Effectiveness.

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

- (a) **Timing of Actions.** Making adjustments in the timing of actions (consistent with DIR priorities and schedules for the Services and Successful Respondent’s obligation to meet the Service Levels).
- (b) **Timing of Functions.** Delaying or accelerating, as appropriate, the performance of non-critical functions within limits acceptable to DIR.
- (c) **Systems Optimization.** Tuning or optimizing the Open Data Portal to optimize performance and minimize costs.
- (d) **Usage Scheduling.** Controlling its use of the Open Data Portal and/or the DIR data network by scheduling usage, where possible, to low utilization periods.
- (e) **Efficiency.** Efficiently using resources for which DIR is charged hereunder, consistent with industry norms, and compiling data concerning such efficient use in segregated and auditable form whenever possible.

12.4 Intellectual Property.

- (a) **Ownership and Use.** Successful Respondent represents, warrants, and covenants that it is either the owner of, or is authorized to use, and possesses sufficient rights to grant the rights and licenses contained in this Agreement to, any and all resources or items provided by Successful Respondent. As to any such resources, or items that Successful Respondent does not own, Successful Respondent shall advise DIR as to the ownership and extent of Successful Respondent’s rights with regard to such, resources, or items to the extent any limitation in such rights would materially impair Successful Respondent’s performance of its obligations under this Agreement or the right and licenses granted by Successful Respondent under this Agreement.
- (b) **Performance.** Successful Respondent represents, warrants and covenants that any Successful Respondent Owned Materials consisting of Software provided by Successful Respondent under this Agreement, if any, shall comply in all material respects with their applicable documentation and Specifications and shall provide the functions and features and operate in the manner described therein.
- (c) **Nonconformity of Successful Respondent Owned Software.** In the event that the Successful Respondent Owned Materials consisting of Software (excluding Successful Respondent Owned Developed Materials that are addressed in **Section 12.4(b)**) do not Comply with their applicable documentation and Specifications and/or materially adversely affects the Services provided hereunder, Successful Respondent shall expeditiously repair such Software, or replace such Software with conforming Software.

12.5 Non-Infringement.

- (a) **Performance of Responsibilities.** Except as otherwise provided in this Agreement, each Party represents, warrants and covenants that it shall perform its obligations and responsibilities under this Agreement in a manner that does not infringe or misappropriate, or constitute an infringement or misappropriation of, any

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

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

12.6 General.

- (a) **Successful Respondent.** Successful Respondent represents, warrants, and covenants to DIR that:
- (i) It is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation;
 - (ii) It has the requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement;
 - (iii) Except as otherwise provided in **Article 5**, it has obtained all licenses, authorizations, approvals, consents, or permits required to perform its obligations under this Agreement under all applicable federal, state, or local laws and under all applicable rules and regulations of all authorities having jurisdiction over the Services, including under all applicable laws of the State;
 - (iv) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party;
 - (v) The execution, delivery and performance of this Agreement shall not constitute a violation of any judgment, order or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default; and
 - (vi) As of the Effective Date there is, to Successful Respondent's knowledge, no pending claim, suit or proceeding against or affecting Successful Respondent or any of its Affiliates or Subcontractors that would reasonably be expected to adversely affect Successful Respondent's ability to perform and fulfill its obligations under this Agreement including, without limitation, actions pertaining to the proprietary rights described in **Sections 12.4** and **12.5**. Successful Respondent shall notify DIR within fifteen (15) days of Successful Respondent's knowledge of any such claim, suit, or proceeding. Without limiting the terms of **Section 11.1**, Successful Respondent shall notify DIR, within forty-eight (48) hours, if process is served on Successful Respondent in connection with this Agreement where such matter may reasonably affect the

Services or a Party's rights including any subpoena for Successful Respondent's records, and shall send a written notice of the service together with a copy of the same to DIR within seventy-two (72) hours of such service.

- (b) **DIR.** DIR represents, warrants, and covenants to Successful Respondent that:
- (i) DIR has statutory authority to enter into this Agreement perform its obligations hereunder and offer its contracted services to the DIR Customers; and
 - (ii) The execution, delivery, and performance of this Agreement shall not constitute a violation of any judgment, order, or decree; a material default under any material contract by which it or any of its material assets are bound; or an event that would, with notice or lapse of time, or both, constitute such a default.

12.7 Certifications.

Successful Respondent, for itself and on behalf of its Subcontractors, certifies that it:

- (a) Has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Agreement,
- (b) Is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006, Texas Family Code and acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate,
- (c) Neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage,
- (d) Has not received payment from DIR or any of its employees for participating in the preparation of the Agreement,
- (e) Under Sections 2155.004 and 2155.006, Texas Government Code, is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate,
- (f) To the best of its knowledge and belief, knows there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to it will have a material adverse effect on the ability to fulfill its obligations under the Agreement,
- (g) Successful Respondent and its principals are not suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration;
- (h) As of the Effective Date, is not listed in the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (i) Agrees that any payments due under this Agreement will be applied towards any debt, including but not limited to delinquent taxes and child support, that is owed to the State;
- (j) Is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (k) For itself and on behalf of its Subcontractors, has identified (and will identify, for the duration of the Term)
 - (i) all current or former employees of the State assigned or proposed to work on the Agreement twenty percent (20%) or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two (2) degrees of consanguinity, and, if these facts change during the course of the Agreement, Successful Respondent certifies for itself and on behalf of its Subcontractors, it shall disclose the name and other pertinent information about the employment of

current and former employees and their relatives within two (2) degrees of consanguinity and (ii) any former executive head of a State agency employed by Successful Respondent;

- (l) Represents and warrants that the provision of Services or other performance under the Agreement will not constitute an actual or potential conflict of interest and certifies that it will not create the appearance of impropriety, and, if these facts change during the course of the Agreement, Successful Respondent 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 Successful Respondent and Successful Respondent's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005 or 556.008, Texas Government Code; and
- (n) Successful Respondent acknowledges the applicability of Sections 2155.444 and 2155.4441, Texas Government Code, in fulfilling the terms of the Agreement.
- (o) Successful Respondent shall comply with the requirements related to federal immigration laws and regulations, to include but not limited to Immigration and Reform Act of 1986, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any individual(s) hired on or after the effective date of 1996 Act, who will perform any labor or services under this Agreement. Nothing herein is intended to exclude compliance by Successful Respondent with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

Pursuant to Executive Order No. RP-80, issued by the Governor of Texas on December 3, 2014, and as subsequently clarified, the Successful Respondent shall, as a condition of this Contract, also comply with the United States Department of Homeland Security's E-Verify system to determine the eligibility of:

1. all persons 1) to whom the E-Verify system applies, and 2) who are hired by the Successful Respondent during the term of this Contract to perform duties within Texas; and
2. all Subcontractors' employees 1) to whom the E-Verify system applies, and 2) who are hired by the Subcontractor during the term of this Contract and assigned by the Subcontractor to perform work pursuant to this Contract.

The Successful Respondent shall require its Subcontractors to comply with the requirements of this Section and the Successful Respondent is responsible for the compliance of its Subcontractors. Nothing herein is intended to exclude compliance by Successful Respondent and its Subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

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

- (p) As required by Texas Government Code section 2270.002, by executing the above referenced Agreement, Successful Respondent represents and warrants that Successful Respondent does not, and will not during the term of this Agreement, boycott Israel. Successful Respondent further represents and warrants that no subcontractor of the Successful Respondent boycotts Israel, or will boycott Israel during the term of this Agreement. Successful Respondent agrees to take all necessary steps to ensure this representation and warranty remains true during the term of this Agreement.

12.8 Inducements; DIR Code of Ethics.

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

- (a) **Reliance.** In executing this Agreement, the DIR relies on Successful Respondent's representations, warranties, and covenants regarding the following, to the extent those representations, warranties and covenants are otherwise set forth in this Agreement: (i) Successful Respondent regularly provides the types of services provided for under this Agreement to other public or private entities; (ii) Successful Respondent has the skills, qualifications, expertise, financial resources, and experience necessary to perform the Services described in this Agreement in an efficient, cost-effective manner, with a high degree of quality and wresponsiveness, and has performed similar Services for other public or private entities; (iii) Successful Respondent has thoroughly reviewed, analyzed, and understood the RFO as set forth in its Response and as negotiated in this Agreement, has timely raised all questions or objections to the RFO, and has had the opportunity to review and fully understand the current program, operating environment for the Services, this Agreement and the needs and requirements of DIR, the DIR Customers, and the State during the Term; (iv) Successful Respondent has the ability and capacity to perform the Services for the Term in accordance with the terms and conditions of this Agreement; (v) Successful Respondent also has reviewed and understands all of the risks associated with the Open Data Portal program as described in the Agreement, including the risk of non-appropriation of funds; (vi) Successful Respondent shall at all times be capable of and legally authorized to provide the Services; and (vii) the Charges assessed to DIR and the DIR Customers shall be true and correct.
- (b) **Inducements.** Successful Respondent represents, warrants, and covenants that neither Successful Respondent nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has, shall have, or shall give commissions, payments, kickbacks, lavish or extensive entertainment, or other inducements of more than minimal value to any employee or agent of DIR in connection with this Agreement. Successful Respondent also represents, warrants, and covenants that, to the best of its knowledge, neither Successful Respondent nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has given any such payments, gifts, entertainment or other thing of value to any employee or agent of DIR. Successful Respondent also acknowledges that the giving of any such payments, gifts, entertainment, or other thing of value is strictly in violation of DIR policy on conflicts of interest, and may result in the cancellation of this Agreement and other existing and future contracts between the Parties.
- (c) **DIR Code of Ethics.** Successful Respondent represents, warrants and covenants that, in the performance of the Services and its other contractual obligations hereunder, it shall comply with the provisions of the DIR Code of Ethics reasonably applicable to Successful Respondent, as modified from time to time.
- (d) **No Financial Interest.** Successful Respondent represents, warrants, and covenants that neither Successful Respondent nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee has, shall have, or shall acquire, any contractual, financial, business or other interest or advantage, direct or indirect, that would conflict in any manner or degree with Successful Respondent's performance of its duties and responsibilities to DIR under this Agreement or otherwise create an appearance of impropriety with respect to this Agreement; and Successful Respondent shall promptly inform DIR of any such interest that may be incompatible with the interests of DIR.
- (e) **No Abuse of Authority for Financial Gain.** Successful Respondent represents, warrants, and covenants that neither Successful Respondent nor any of its Affiliates, nor any employee of either, has used or shall use the authority provided or to be provided under this Agreement to improperly obtain financial gain, advantage or benefit for Successful Respondent, any of its Affiliates, any of their employees or any member of the immediate family of any such employee.
- (f) **No Use of Information for Financial Gain.** Successful Respondent represents, warrants, and covenants that neither Successful Respondent nor any of its Affiliates, nor any employee of either, has used or shall use any DIR Confidential Information acquired in connection with this Agreement to obtain financial gain, advantage, or benefit for Successful Respondent, any of its Affiliates, any of their employees, nor any member of the immediate family of any such employee, or any member of the immediate family of any such employee.
- (g) **Independent Judgment.** Successful Respondent represents, warrants, and covenants that neither Successful Respondent nor any of its Affiliates, nor any employee of either, has accepted or shall accept another DIR contract that would impair the independent judgment of Successful Respondent in the

performance of this Agreement.

- (h) **No Influence.** Successful Respondent represents, warrants, and covenants that neither Successful Respondent nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee, has accepted or shall accept anything of value, or an inducement that would provide a financial gain, advantage or benefit, based on an understanding that the actions of Successful Respondent, any such Affiliates or any such employees on behalf of DIR would be influenced thereby; and neither Successful Respondent nor any of its Affiliates shall attempt to influence any DIR employee by the direct or indirect offer of anything of value.
- (i) **No Payment Tied to Award.** Successful Respondent represents, warrants and covenants that neither Successful Respondent nor any of its Affiliates, nor any employee of either, nor any member of the immediate family of any such employee, has paid or agreed to pay any person or entity, other than bona fide employees working solely for Successful Respondent or such Affiliates or any Subcontractors, any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or resulting from the award or execution of this Agreement.
- (j) **No Collusion.** Successful Respondent represents, warrants, and covenants that the prices presented in Successful Respondent's response to the RFO were arrived at independently, without consultation, communication, or agreement with any other proposer for the purpose of restricting competition, the prices quoted were not knowingly disclosed by Successful Respondent to any other proposer and no attempt was made by Successful Respondent to induce any other person or entity to submit or not to submit a proposal for the purpose of restricting competition.

12.9 Malicious Code.

Each Party shall cooperate with the other Party and shall take commercially reasonable actions and precautions to prevent the introduction and proliferation of Malicious Code into DIR's environment or any system used to provide the Services and to notify the other Party expeditiously of any Malicious Code in any such environment or system of which it become aware. Without limiting Successful Respondent's other obligations under this Agreement, in the event Malicious Code is found in Software or systems managed or supported by Successful Respondent, Successful Respondent shall, at no additional charge to DIR, eliminate or permanently quarantine such Malicious Code and reduce the effects of such Malicious Code and, if the Malicious Code causes a loss of operational efficiency or loss of data, mitigate such losses and restore such data with generally accepted data restoration techniques. For purposes of this Agreement, "Malicious Code" means any code in any part of a software system or script that is intended to cause undesired effects, security breaches, or damage to a system that cannot be controlled by conventional antivirus software alone.

12.10 Reserved.

12.11 Compliance with Laws.

- (a) **Compliance by Successful Respondent.** Subject to Sections 12.11(d) and (e), Successful Respondent represents, warrants and covenants that, with respect to the provision of the Services and the performance of any of Successful Respondent's other legal and contractual obligations hereunder, Successful Respondent is and shall be in compliance in all material respects with all applicable laws and shall remain in compliance with such laws during the Term, including identifying and procuring applicable permits, certificates, approvals, and inspections required under such laws. If any charge of non-compliance by Successful Respondent with any such laws occurs or Successful Respondent is aware that it is not in compliance with such laws that could have a material adverse impact on the performance, receipt, or use of the Services, Successful Respondent shall promptly notify DIR of such charge or non-compliance, as applicable.
- (b) **Compliance Data and Reports.** At no additional charge, Successful Respondent shall provide DIR with data and reports in Successful Respondent's possession as reasonably necessary for DIR to comply with all laws applicable to the Services (including the resources it provides or has assumed operational responsibility hereunder).

- (c) **Materials, Equipment, and Systems Compliance.** Successful Respondent represents, warrants, and covenants that the systems owned, developed, implemented, provided or used by Successful Respondent in providing the Services, if any, are in compliance with all applicable Laws and shall remain in compliance with such Laws during the Term.
- (d) **Notice of Laws.** Successful Respondent shall notify DIR of any laws and changes in laws applicable to the Services ("**Successful Respondent Laws**"). DIR shall notify Successful Respondent of any other Laws applicable to DIR, including those specific to DIR's business that are supported by Successful Respondent under this Agreement ("**DIR Laws**"), that would reasonably be expected to materially affect the Services or Successful Respondent's performance of its obligations under this Agreement. Successful Respondent shall undertake reasonable efforts, including through Successful Respondent personnel, to maintain general familiarity with DIR Laws, and shall bring requirements of any such laws known to Successful Respondent to DIR's attention. Subject to its non-disclosure obligation under other customer contracts, Successful Respondent shall use commercially reasonable efforts to obtain information regarding such requirements from other outsourcing customer engagements and to communicate such information to DIR in a timely manner. Each Party shall further use commercially reasonable efforts to advise the other of laws and changes in laws about which such Party becomes aware in any way impacting the performance, provision, receipt, and use of the Services, but without assuming an affirmative obligation of inquiry, except as otherwise provided herein, and without relieving the other Party of its obligations hereunder. At DIR's request, Successful Respondent personnel shall participate in DIR provided compliance training programs.
- (e) **Interpretation of Laws or Changes in Laws.** Successful Respondent shall be responsible for interpreting and agrees to interpret Successful Respondent Laws and shall make adjustments to the Services as needed to maintain compliance with such Successful Respondent Laws. DIR shall be responsible for interpreting and agrees to interpret DIR Laws and, with Successful Respondent's cooperation, advise Successful Respondent of changes that must be made to the Services or Successful Respondent's other obligations under this Agreement that are required to maintain DIR's compliance with DIR Laws. In the event a change to the Services or other Successful Respondent's obligations under this Agreement is required in order to comply with applicable laws, the Parties shall timely comply, with such implementation to be undertaken in accordance with Change Control and **Section 12.11(f)**, as applicable. For purposes of clarity, DIR maintains final approval rights, in its sole discretion, to interpret any such change needed under this **Section 12.11(e)** relating to all applicable laws provided, however, that such approval rights in the case of Successful Respondent Laws will be limited to those Successful Respondent Laws uniquely impacting or otherwise related to DIR or a DIR Customer's operating environment. To the extent the impact of any law (including change in law) applicable to the provision of the Services and the performance of any of Successful Respondent's other legal and contractual obligations hereunder cannot be readily identified by Successful Respondent, the Parties shall cooperate in interpreting such law and shall seek in good faith to identify and agree upon the impact on the performance, provision, receipt and use of the Services. If the Parties are unable to agree upon such impact, DIR shall retain the right, in its sole discretion, to interpret such Law and determine its impact. In addition, if Successful Respondent reasonably concludes, after due inquiry, that the compliance obligations associated with any Law applicable to the provision of the Services and the performance of any of Successful Respondent's other legal and contractual obligations hereunder are unclear or that there is more than one (1) reasonable approach to achieving compliance, Successful Respondent shall escalate the issue to DIR for a final decision. In no event shall either Party be obligated to interpret and/or offer legal advice regarding laws applicable to the other Party.

Without limiting either Party's obligations under this **Section 12.11(e)**, the Parties intend to proactively cooperate with each other in understanding DIR Laws and Successful Respondent Laws, and the impact such laws may have on the Services and DIR's use or receipt of the Services.

- (f) **Implementation of Changes in Laws.** In the event of any changes in laws (including laws other than applicable to the provision of the Services and the performance of any of Successful Respondent's other legal and contractual obligations hereunder, to the extent Successful Respondent has knowledge of such laws, including from DIR), Successful Respondent shall implement any necessary modifications to the Services, prior to the deadline imposed by the regulatory or governmental body having jurisdiction for such requirement or change. Without modifying the Parties' respective financial obligations, Successful Respondent shall bear the costs associated with compliance with (A) Successful Respondent Laws, and (B)

DIR Laws unless the change(s) required for compliance include services outside the scope of this Agreement, in which case those services shall be addressed in an amendment to this Agreement.

- (g) **Termination.** In the event that any change(s) in laws results in an increase of ten percent (10%) or more in the estimated average monthly Charges or otherwise has a material adverse impact on Successful Respondent's ability to perform the Services and DIR would not have incurred such additional cost or impact if it had not outsourced the Services in question to Successful Respondent, then DIR may, within one hundred eighty (180) days of such aggregate increase being attained and upon at least ninety (90) days prior notice to Successful Respondent, terminate this Agreement in its entirety or the impacted Service as of the termination date specified in the notice.
- (h) **Responsibility.** Subject to Section 12.11(e), Successful Respondent will be responsible for any Losses imposed on Successful Respondent, DIR, or the DIR Customers resulting from any failure of Successful Respondent or any third party engaged by Successful Respondent to comply with applicable laws or respond in a timely manner to changes in such laws, as provided for under Section 14.1(f).

12.12 Equal Opportunity Compliance.

Successful Respondent represents, warrants, and covenants that it shall abide by all applicable laws pertaining to equal employment opportunity, including state and federal Laws. In accordance with such laws, Successful Respondent agrees that no individual in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status, or disability, be excluded from employment with or participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity performed by Successful Respondent under this Agreement. If Successful Respondent is found to be in non-compliance with these requirements, Successful Respondent agrees to take appropriate steps to correct these deficiencies. Upon request, Successful Respondent shall furnish to DIR information regarding Successful Respondent's nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

12.13 Information Furnished to DIR.

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

12.14 Previous Contracts.

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

12.15 Completeness of Due Diligence Activities.

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

13 INSURANCE AND RISK OF LOSS

Successful Respondent shall continuously maintain the insurance coverages set forth in **Attachment A Insurance and Risk of Loss**. This attachment contains provisions or other information applicable to Successful Respondent's obligations respecting insurance and to the Parties' allocation of certain risks of loss.

14 INDEMNITIES

14.1 Indemnity by Successful Respondent.

Successful Respondent agrees to indemnify, defend, and hold harmless DIR and the DIR Customers and their respective officers, directors, employees, agents, representatives, successors and assignees from and against any and all Losses (where "Losses" means any damages, liabilities, judgments, settlements, costs and expenses (including reasonable attorney's fees and expenses) and threatened Losses due to non-Party claims arising from or in connection with any of the following:

- (a) **Representations, Warranties and Covenants.** Successful Respondent's breach of any of its representations, warranties, or obligations set forth in **Sections 12.6(a), 12.7, 12.8, 12.9, and 12.11.**
- (b) **Assumed Contracts.** Successful Respondent's decision to terminate or failure to observe or perform any duties or obligations to be observed or performed by Successful Respondent under any of the Third Party Materials licenses, Equipment Leases, or Third Party Contracts assigned to Successful Respondent or for which Successful Respondent has assumed financial or operational responsibility pursuant to this Agreement.
- (c) **Licenses, Leases and Contracts.** Successful Respondent's failure to observe or perform any duties or obligations to be observed or performed by Successful Respondent under Third Party Materials licenses, Equipment Leases, or Third Party Contracts used by Successful Respondent to provide the Services (other than Third Party Materials Successful Respondent is required to use by a Service Component Provider pursuant to a license held by such Service Component Provider) including any action undertaken by DIR in conformity with the request or direction of Successful Respondent with respect to any such license, lease or contract.
- (d) **DIR Data or Confidential Information.** Successful Respondent's breach of its obligations with respect to DIR Data or DIR Confidential Information.
- (e) **Infringement.** Infringement or misappropriation or alleged infringement or alleged misappropriation of a patent, trade secret, copyright, or other intellectual property or other proprietary rights in contravention of Successful Respondent's representations, warranties and covenants in **Sections 12.4 and 12.5.**
- (f) **Compliance with Laws; Government Claims.** Losses, including government fines, penalties, sanctions, interest, or other remedies, resulting from Successful Respondent's failure to perform its responsibilities under this Agreement in compliance with applicable laws as required by this Agreement.
- (g) **Taxes.** Taxes, together with interest and penalties, that are the responsibility of Successful Respondent under **Section 9.2.**
- (h) **Claims Arising in Shared Facility Services.** Any claim for damage, interruption, delay or loss of service (not constituting Services provided pursuant to this Agreement) by a third party receiving services from a shared Successful Respondent facility or using shared Successful Respondent resources.

- (i) **Affiliate, Subcontractor, or Assignee Claims.** Any claim, other than an indemnification claim under this Agreement, initiated by (i) a Successful Respondent Affiliate or Subcontractor asserting rights under this Agreement or (ii) any entity to which Successful Respondent assigned, transferred, pledged, hypothecated, or otherwise encumbered its rights to receive payments from DIR under this Agreement.
- (j) **Personal Injury and Property Loss or Damage.** Personal injury (including death) or any loss or damage to real or tangible personal property resulting from Successful Respondent's negligent or wrongful acts or omissions.
- (k) **Employment Claims.** Any claim resulting from any (i) violation by Successful Respondent or its officers, directors, employees, representatives, or agents, of any applicable laws or any common law protecting persons or members of protected classes or categories, including laws prohibiting discrimination or harassment on the basis of a protected characteristic; (ii) liability resulting from any failure by Successful Respondent to collect and withhold any social security or other employment taxes, workers' compensation claims, and premium payments and contributions applicable to the wages and salaries of such Successful Respondent personnel); (iii) payment or failure to pay any salary, wages, or other cash compensation due and owing to any Successful Respondent personnel, (iv) employee pension or other benefits of any Successful Respondent personnel, (v) other aspects of the employment relationship of Successful Respondent personnel with Successful Respondent or the termination of such relationship, including claims for wrongful discharge, claims for breach of express or implied employment contract, and claims of joint employment; and/or (vi) liability resulting from representations (oral or written) by Successful Respondent or its respective officers, directors, employees, representatives, or agents made in connection with the interview, selection, hiring and/or transition process, the offers of employment made to such employees, the failure to make offers to any such employees, or the terms and conditions of such offers (including compensation and employee benefits).
- (l) **Government Claims.** Any claim by any government or any authority, department or agency thereof (excluding the State DIR and the DIR Customers) resulting from Successful Respondent's failure to comply with its obligations under this Agreement.

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

14.2 Infringement.

In the event that (1) any Services, and other resources or items provided by Successful Respondent or used by Successful Respondent in the performance or delivery of the Services (other than Third Party Materials Successful Respondent is required to use by a Service Component Provider) are found, or in DIR's reasonable opinion are likely to be found, to infringe upon the patent, copyright, trademark, trade secrets, intellectual property, or proprietary rights of any third party in any country in which Services are to be performed or received under this Agreement or (2) the continued use of such Services, and other resources or items is enjoined, Successful Respondent shall, in addition to defending, indemnifying, and holding harmless DIR as provided in **Section 14.1(e)** and to the other rights DIR may have under this Agreement, promptly and at its own cost and expense and in such a manner as to minimize the disturbance to DIR's and the DIR Customers' operations and activities do one of the following:

- (a) **Obtain Rights.** Obtain for DIR and the DIR Customers the right to continue using and receiving the benefits of such Services.
- (b) **Modification.** Modify the item(s) in question so that it is no longer infringing (provided that such modification does not degrade the warranted Services or adversely affect DIR's and the DIR Customers' intended use as contemplated by this Agreement).
- (c) **Replacement.** Replace such item(s) with a non-infringing functional equivalent acceptable to DIR.

- (d) **Discontinued Use.** If, despite Successful Respondent's commercially reasonable efforts to effect the alternatives set forth in **Sections 14.2(a)-(c)** above, the Parties determine that none of such alternatives are feasible, Successful Respondent may discontinue its use of such infringing or potentially infringing Services; provided, however, neither such right or such discontinuation shall limit nor expand DIR's rights or Successful Respondent's obligations under the Agreement; nor shall such right or such discontinuation excuse any breach by Successful Respondent of its obligation to provide the Services and to provide the Services in a non-infringing manner.

14.3 Indemnification Procedures.

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

- (a) **Notice.** Promptly after receipt by DIR or any DIR Customer (Indemnitee) entitled to indemnification under this Agreement of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee shall seek indemnification hereunder, the indemnitee shall notify the indemnitor of such claim. No delay or failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that such indemnitor has suffered actual prejudice by such delay or failure. Within fifteen (15) days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee that the indemnitor elects to assume control of the defense and settlement of that claim (a "**Notice of Election**").
- (b) **Procedure Following Notice of Election.** If the indemnitor delivers a Notice of Election within the required notice period, the indemnitor shall assume sole control over the defense and settlement of the claim; provided, however, that (i) the indemnitor shall keep the indemnitee reasonably apprised at all times as to the status of the defense, and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim asserting any liability against the indemnitee or imposing any obligations or restrictions on the indemnitee or ceasing to defend against such claim. The indemnitor shall not be liable for any legal fees or expenses incurred by the indemnitee following the delivery of a Notice of Election; provided, however, that (A) the indemnitee shall be entitled to employ counsel at its own expense to participate in the handling of the claim, and (B) the indemnitor shall pay the fees and expenses associated with such counsel if the indemnitor has an actual or apparent conflict of interest with respect to such claim which is not otherwise resolved or if the indemnitor has requested the assistance of the indemnitee in the defense of the claim or the indemnitor has failed to defend the claim diligently and the indemnitee is prejudiced or likely to be prejudiced by such failure. Successful Respondent acknowledges that DIR's counsel is the Office of the Texas Attorney General, and Successful Respondent shall coordinate and cooperate with the Office of the Texas Attorney General on all defense and settlement matters relating to claims which are subject to indemnification under this Agreement. The indemnitor shall not be obligated to indemnify the indemnitee for any amount paid or payable by such indemnitee in the settlement of any claim if (1) the indemnitor has delivered a timely Notice of Election and such amount was agreed to without the written consent of the indemnitor, (2) the indemnitee has not provided the indemnitor with notice of such claim and a reasonable opportunity to respond thereto, or (3) the time period within which to deliver a Notice of Election has not yet expired.
- (c) **Procedure Where No Notice of Election Is Delivered.** If the indemnitor does not deliver a Notice of Election relating to any claim within the required notice period, the indemnitee shall have the right to defend the claim in such manner as it may deem appropriate. The indemnitor shall promptly reimburse the indemnitee for all such reasonable costs and expenses incurred by the indemnitee, including reasonable attorneys' fees.

14.4 Subrogation.

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

15 LIABILITY

15.1 General Intent.

Subject to the specific provisions and limitations of this **Article 15** and, to the extent allowed by applicable laws (including the constitution of the State), it is the intent of the Parties that each Party shall be liable to the other Party for any actual damages incurred as a result of the breaching Party's failure to perform its obligations in the manner required by this Agreement.

15.2 Force Majeure.

- (a) **General.** No Party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism, epidemics, or any other similar cause beyond the reasonable control of such Party except to the extent that the non-performing Party is at fault in failing to prevent or causing such default or delay, and provided that such default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout, or labor dispute involving Successful Respondent personnel shall not excuse Successful Respondent from its obligations hereunder. In addition, the refusal of Successful Respondent personnel to enter a facility that is the subject of a labor dispute shall excuse Successful Respondent from its obligations hereunder only if and to the extent such refusal is based upon a reasonable fear of physical harm.
- (b) **Duration and Notification.** In the event of a force majeure event the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so prevented, hindered, or delayed in its performance shall, as quickly as practicable under the circumstances, notify the Party to whom performance is due by telephone (to be confirmed in writing within one (1) day of the inception of such delay) and describe at a reasonable level of detail the circumstances of the force majeure event, the steps being taken to address such force majeure event, and the expected duration of such force majeure event.
- (c) **Reserved.**
- (d) **Reserved.**
- (e) **Payment Obligation.** If Successful Respondent fails to provide Services in accordance with this Agreement due to the occurrence of a force majeure event, all amounts payable to Successful Respondent hereunder shall be equitably adjusted downward so that DIR is not required to pay any amounts for Services that DIR is not receiving, whether from Successful Respondent or from an alternate source at Successful Respondent's expense.
- (f) **Allocation of Resources.** Without limiting Successful Respondent's obligations under this Agreement, whenever a force majeure event or disaster causes Successful Respondent to allocate limited resources between or among Successful Respondent's customers and Affiliates, DIR shall receive at least the same treatment as comparable Successful Respondent customers. In no event shall Successful Respondent re-deploy or re-assign any Key Personnel to another customer or account in the event of the occurrence of a force majeure event.

15.3 Limitation of Liability.

- (a) EXCLUDED DAMAGES. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, COLLATERAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) Liability Cap. Additionally, except as expressly provided in this **Section 15.3** and, in the case of DIR, to the

extent authorized by applicable laws, the total aggregate liability of either Party for all claims asserted by the other Party under or in connection with this Agreement, regardless of the form of the action or the theory of recovery, shall not exceed the charges paid and payable by DIR during the twelve (12) months preceding such action or claim. The foregoing cap shall not apply with respect to Losses occasioned by the fraud, willful misconduct or gross negligence of a Party, or with respect to Losses occasioned by either Party's confidentiality obligations.

- (c) **Items Not Considered Damages.** The following shall not be considered damages subject to, and shall not be counted toward the liability exclusion or cap specified in, **Section 15.3(a)** or **(b)**:
- (i) Amounts withheld by DIR in accordance with this Agreement due to incorrect Charges or Services not provided.
 - (ii) Amounts paid by DIR but subsequently recovered from Successful Respondent due to incorrect Charges or Services not provided.
 - (iii) Invoiced Charges and other amounts that are due and owing to Successful Respondent for Services under this Agreement.
- (d) **Acknowledged Direct Damages.** For the avoidance of doubt, the following shall be considered direct damages and neither Party shall assert that they are indirect, incidental, collateral, consequential or special damages, or lost profits to the extent they result directly from the breaching Party's failure to perform in accordance with this Agreement:
- (i) Costs and expenses of restoring or reloading any lost, stolen, or damaged DIR Data.
 - (ii) Costs and expenses of implementing a work-around in respect of a failure to provide the Services or any part thereof.
 - (iii) Cover damages, including the costs and expenses incurred to procure the Services or corrected Services from an alternate source.
 - (iv) Straight time, overtime or related expenses incurred by either Party, including overhead allocations for employees, wages, and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges, and similar charges.
 - (v) Subject to **Section 12.11**, fines, penalties, sanctions, interest or other monetary remedies incurred as a result of a failure to comply with applicable laws.
 - (vi) Service Level Credits assessed against Successful Respondent, where "Service Level Credits" mean those credits set forth in **Exhibit 3**.
 - (vii) Data breach notification and identity theft protect services required in the event of a data security breach for which Successful Respondent is responsible under **Section 11.1**.

The absence of direct damages listed in this **Section 15.3(d)** shall not be construed or interpreted as an agreement to exclude it as a direct damage under this Agreement.

16 DISPUTE RESOLUTION

16.1 Informal Dispute Resolution.

Subject to compliance with Chapter 2260, Texas Government Code, prior to the initiation of formal dispute resolution procedures with respect to any dispute, other than as provided in **Section 16.1(e)**, the Parties shall first attempt to resolve such dispute informally, as follows:

- (a) **Initial Effort.** The Parties agree that the Designated DIR Representative and the Successful Respondent Account Manager shall attempt in good faith to resolve all disputes (other than those described in **Section 19.1(e)** or **20.8**). In the event the Designated DIR Representative and the Successful Respondent Account Manager are unable to resolve a dispute in an amount of time that either Party deems reasonable under the circumstances, such Party may refer the dispute for resolution to the senior executives specified in **Section 19.1(b)** below upon notice to the other Party.

- (b) **Escalation.** Within five (5) DIR Business Days of a notice under **Section 16.1(a)** above referring a dispute for resolution by senior executives, the Designated DIR Representative and the Successful Respondent Account Manager shall each prepare and provide to the designated senior executive of DIR and the designated senior executive of Successful Respondent, respectively, summaries of the non-privileged relevant information and background of the dispute, along with any appropriate non-privileged supporting documentation, for their review. The designated senior executives shall confer as often as they deem reasonably necessary in order to gather and furnish to the other all non-privileged information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. The designated senior executives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions shall be left to the discretion of the designated senior executives, but may include the preparation of agreed-upon statements of fact or written statements of position.
- (c) **Provision of Information.** During the course of negotiations under **Section 16.1(a)** or **(b)** above, all reasonable requests made by one (1) Party to another for non-privileged information, reasonably related to the dispute, shall be honored in order that each of the parties may be fully advised of the other's position. All negotiations shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one (1) Party for these proceedings shall not be used as evidence by the other Party in any subsequent arbitration or litigation; provided, however, the underlying facts supporting such materials may be subject to discovery.
- (d) **Prerequisite to Formal Proceedings.** Upon the earlier to occur of (i) the designated senior executives under **Section 16.1(b)** concluding in good faith that amicable resolution through continued negotiation of a dispute does not appear likely and (ii) the thirty-first (31st) day following the date of the notice provided under **Section 16.1(a)** referring the dispute to senior executives, then the Parties shall be entitled to discontinue negotiations and to seek to resolve the dispute through the dispute resolution process provided for in Chapter 2260, Texas Government Code, and DIR Rule Number 1, TAC Section 201.1(b).
- (e) **Equitable Remedies.** Notwithstanding the provisions and time periods specified in this **Section 16.1**, at any time the Parties may use formal proceedings pursuant to the process set forth in Chapter 2260, Texas Government Code, and DIR Rule Number 1, TAC Section 201.1(b), in order to (i) avoid the expiration of any applicable limitations period, (ii) preserve a superior position with respect to other creditors, (iii) address a claim arising out of the breach of a Party's obligations under **Article 11**, (iv) pursue claims for injunctive relief with respect to a Party's obligations to the extent resulting in irreparable injury, or (v) address a claim arising out of the breach or attempted or threatened breach of the obligations described in the following sentence. Successful Respondent acknowledges that, in the event it breaches (or attempts or threatens to breach) its obligation to provide any Services (including Termination Assistance Services) in accordance with this Agreement, its obligation respecting continued performance in accordance with **Section 16.3**, or its obligation to provide access to computers or files containing DIR Data, DIR and/or the DIR Customers may be irreparably harmed and DIR may proceed directly to court. If a court of competent jurisdiction should find that Successful Respondent has breached (or attempted or threatened to breach) any such obligations, Successful Respondent agrees that DIR shall be entitled to seek injunctive relief, including entry of an appropriate order compelling performance by Successful Respondent and restraining it from any further breaches (or attempted or threatened breaches).

16.2 Jurisdiction.

This Agreement, and any claim or dispute relating to this Agreement, or in any way relating to the relationship between the parties hereto, shall be exclusively governed by and construed in accordance with the laws of the State of Texas, excluding any provisions thereof that direct the application of any other laws, including without limitation its conflict of law provisions. The state courts located in the State of Texas shall have exclusive jurisdiction to hear and adjudicate any claims, disputes, actions or suits that may arise under or out of this Agreement.

16.3 Continued Performance.

- (a) **General.** Each Party agrees that it shall, unless otherwise directed by the other Party, continue performing its obligations under this Agreement while any dispute is being resolved; provided, that this provision shall

not operate or be construed as extending the Term of this Agreement or prohibiting or delaying a Party's exercise of any right it may have to terminate this Agreement as expressly provided herein. For purposes of clarification, DIR Data may not be withheld by Successful Respondent pending the resolution of any dispute.

- (b) **Non-Interruption of Service.** Successful Respondent acknowledges and agrees that any interruption to the Service may cause irreparable harm to DIR and may adversely impact the ability of the State to carry out vital public safety and other governmental functions (including homeland security matters), in which case an adequate remedy at Law would not be available. Except to the extent expressly permitted under Chapter 2251, Texas Government Code, Successful Respondent expressly acknowledges and agrees that, pending resolution of any dispute or controversy, it shall not deny, withdraw, or restrict Successful Respondent's provision of the Services to DIR and/or the DIR Customers under this Agreement.

16.4 Governing Law.

This Agreement and the rights and obligations of the Parties under this Agreement shall be governed by and construed in accordance with the Laws of the State of Texas, without giving effect to the principles thereof relating to the conflicts of Laws. The Parties expressly disclaim, to the fullest extent permitted by Law, any application of the Uniform Computer Information Transactions Act which may otherwise be or become applicable (including through enactment subsequent to the Effective Date) during the Term.

17 TERMINATION

17.1 Termination for Cause.

- (a) **By DIR.** If Successful Respondent:

- (i) commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of the breach from DIR; or
- (ii) commits a material breach of this Agreement which is not capable of being cured within the period specified pursuant to **Section 17.1(a)(ii)**.

then DIR may, upon notice to Successful Respondent, terminate this Agreement, in whole or in part, as of the termination date specified in the notice.

- (b) **By Successful Respondent.** In the event that DIR fails to pay Successful Respondent amounts due and owing in accordance with Chapter 2251, Texas Government Code and fails to cure such default within thirty (30) days of notice from Successful Respondent of its intention to terminate for failure to make such payment, Successful Respondent may, upon further notice to DIR specifying Successful Respondent's intention to terminate this Agreement in accordance with this provision following an additional thirty (30) days, terminate this Agreement in its entirety as of the termination date specified in the further notice (provided that DIR has not cured the default prior to the effective date of termination). Successful Respondent acknowledges and agrees that this **Section 17.1(b)** describes Successful Respondent's sole right to terminate this Agreement and Successful Respondent hereby waives any other rights it may have to terminate this Agreement.

17.2 Termination for Convenience.

DIR may, upon at least ninety (90) days prior notice to Successful Respondent, terminate this Agreement, in whole or in part, for convenience and without cause as of the termination date specified in the notice without cost or penalty and without payment of any termination charges. Except for prepaid but unused subscription fees to the Open Data Portal, DIR will not be entitled to a refund or offset of previously paid fees under a termination under this Section.

17.3 Termination Upon Successful Respondent Change of Control.

In the event of a change in control of Successful Respondent (or that portion of Successful Respondent providing all or any material portion of the Services under this Agreement) or the entity that controls Successful Respondent (if any), where such control is acquired, directly or indirectly, in a single transaction or series of related transactions, or all or substantially all of the assets of Successful Respondent (or that portion of Successful Respondent providing all or any material portion of the Services under this Agreement) are acquired by any entity, or Successful Respondent (or that portion of Successful Respondent providing all or any material portion of the Services under this Agreement) is merged with or into another entity to form a new entity, then at any time within twelve (12) months after the last to occur of such events, then DIR may, upon at least ninety (90) days prior notice to Successful Respondent, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. Except for prepaid but unused subscription fees to the Open Data Portal, DIR will not be entitled to a refund or offset of previously paid fees under a termination under this Section.

17.4 Termination for Insolvency.

If Successful Respondent (a) becomes or is declared insolvent, or is the subject of any bona fide proceedings related to its liquidation, administration, provisional liquidation, insolvency or the appointment of a receiver or similar officer for it, (b) has a receiver or manager appointed over all or substantially all of its assets, (c) makes an assignment for the benefit of all or substantially all of its creditors, or (d) enters into an agreement or arrangement for the composition, extension, or readjustment of substantially all of its obligations or any class of such obligations, then DIR may, upon notice to Successful Respondent (and during the period such proceeding, condition, event or situation of the termination date in the notice.

Except for prepaid but unused subscription fees to the Open Data Portal, DIR will not be entitled to a refund or offset of previously paid fees under a termination under this Section.

17.5 DIR Rights Upon Successful Respondent's Bankruptcy.

- (a) **General Rights.** In the event of Successful Respondent's bankruptcy or other formal procedure referenced in [Section 17.4](#) or of the filing of any petition under bankruptcy laws affecting the rights of Successful Respondent which is not stayed or dismissed within thirty (30) days of filing, in addition to the other rights and remedies set forth herein, to the maximum extent permitted by Law, DIR shall have the immediate right to retain and take possession for safekeeping all DIR Data, DIR Confidential Information, DIR licensed Third Party Materials, DIR owned, DIR Owned Materials, DIR-Owned Developed Materials and all other Materials, to which DIR are or would be entitled during the Term or upon the expiration or any termination of this Agreement. Successful Respondent shall cooperate fully with DIR and assist DIR in identifying and taking possession of the items listed in the preceding sentence. DIR shall have the right to hold such DIR Data, Confidential Information, Materials, until such time as the trustee or receiver in bankruptcy or other appropriate insolvency office holder can provide adequate assurances and evidence to DIR that they shall be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material or filing. Successful Respondent and DIR agree that without this material provision, DIR would not have entered into this Agreement or provided any right to the possession or use of DIR Data, DIR Confidential Information or DIR Materials covered by this Agreement.
- (b) **DIR Rights in Event of Bankruptcy Rejection.** Notwithstanding any other provision of this Agreement to the contrary and to the maximum extent permitted by applicable laws, in the event that Successful Respondent becomes a debtor under the United States Bankruptcy Code (11 U.S.C. §101 et. seq. or any similar law in any other country (the "**Bankruptcy Code**")) and rejects this Agreement pursuant to Section 365 of the Bankruptcy Code (a "**Bankruptcy Rejection**"), (i) any and all of the licensee and sublicensee rights of DIR and the DIR Customers arising under or otherwise set forth in this Agreement, including the rights of DIR the DIR Customers, and Entities that qualify as DIR Customers shall be deemed fully retained by and vested in DIR the DIR Customers and Entities that qualify as DIR Customers as protected intellectual property rights under Section 365(n)(1)(B) of the Bankruptcy Code and further shall be deemed to exist immediately before the commencement of the bankruptcy case in which Successful Respondent is the debtor; (ii) DIR the DIR Customers, and Entities that qualify as DIR Customers shall have all of the rights afforded to non-debtor licensees and sublicensees under Section 365(n) of the Bankruptcy Code; and (iii) to the extent any rights of DIR, the DIR Customers and/or Entities that qualify as DIR Customers

under this Agreement which arise after the expiration or any termination of this Agreement are determined by a bankruptcy court not to be "intellectual property rights" for purposes of Section 365(n), all of such rights shall remain vested in and fully retained by DIR, the DIR Customers and/or Entities that qualify as DIR Customers after any Bankruptcy Rejection as though this Agreement were terminated or expired. DIR shall under no circumstances be required to terminate this Agreement, in whole or in part, after a Bankruptcy Rejection in order to enjoy or acquire any of its rights under this Agreement, including any of the rights of DIR, the DIR Customers, or Entities that qualify as DIR Customers unless and to the extent required by applicable laws.

17.6 Termination for Material Adverse Change in Successful Respondent's Financial Condition.

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

17.7 Reserved.

17.8 Absolute Right.

If (a) Successful Respondent becomes listed on the prohibited vendors list authorized by Executive Order Number 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control or (b) Successful Respondent becomes suspended or debarred from doing business with the federal government as listed in the Excluded Parties List System maintained by the General Services Administration, then DIR may, upon notice to Successful Respondent, terminate this Agreement, in whole or, to the extent possible under applicable Law, in part, as of the termination date specified in the notice.

17.9 Lack of Sufficient Funds or Statutory Authority.

If funding for DIR's obligations under this Agreement is reduced by law or funds sufficient to pay Successful Respondent for the Services provided hereunder are not appropriated by applicable governing bodies or otherwise made available by law, then DIR may, upon at least thirty (30) days prior notice to Successful Respondent, decrease the amount and types of the Services in such manner and for such periods of time as DIR may elect. In such event, the Charges shall be adjusted downward to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Successful Respondent shall not be providing. DIR shall promptly notify Successful Respondent if DIR believes that the necessary funding or authorizations shall not be obtained. If partial funding sufficient only for a portion of the Services shall be made available, the Parties may agree to perform their respective obligations relative to such Services, and this Agreement shall be amended accordingly. DIR is a State agency whose authority is subject to the actions of the State legislature. If funds sufficient to pay DIR's obligations under this Agreement are not appropriated by applicable governmental authorities or if DIR's statutory authority to enter into this Agreement is repealed by the State legislature or ruled unconstitutional by a court of competent jurisdiction, then DIR may, upon notice to Successful Respondent, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. If DIR and/or the subject matter of this Agreement become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would (a) render the continued provision of the Services impossible or unnecessary, (b) render this Agreement invalid, illegal or otherwise unenforceable, (c) substantially decrease the amount and types of the Services or (d) terminate the appropriations for this Agreement, then DIR may, upon notice to Successful Respondent, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. Except for prepaid but unused subscription fees to the Open Data Portal, DIR will not be entitled to a refund or offset of previously paid fees under a termination under this Section.

18 GENERAL**18.1 Delegation of Authority.**

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

18.2 No Waiver of Sovereign Immunity.

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

18.3 RFO Errors and/or Omissions.

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

18.4 Abandonment.

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

18.5 Place of Performance.

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

18.6 Binding Nature and Assignment.

- (a) **Binding Nature.** This Agreement shall be binding on the Parties and their respective successors and permitted assigns. Except in the instance of an assignment or transfer by DIR of all or any portion of this Agreement pursuant to **Section 18.6(b)**, the assigning Party shall remain liable for the performance of any assigned or transferred obligations hereunder.
- (b) **Assignment.** Successful Respondent may not assign all or any portion of its rights under or interests in this Agreement (including by operation of law) or delegate any of its duties without the prior written consent of DIR, which consent may be withheld in DIR's sole discretion. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment by the Assignee, in a form acceptable to DIR in its sole discretion. Except where otherwise specifically agreed in writing by DIR, DIR's acceptance of any assignment or delegation does not release Successful Respondent from its obligations pursuant to this Agreement. DIR may, without the approval of Successful Respondent, assign or transfer its rights or obligations under this Agreement, in whole or in part, to any other State agency as directed by the State legislature or as otherwise required under law. The consent of a Party to any assignment of this Agreement shall not constitute such Party's consent to further assignment. Each party to whom an assignment or transfer is made must assume all or any part of Successful Respondent's or DIR's interests in this Agreement, the Services, and any documents executed with respect to this Agreement, including, without limitation, its obligation for all or any portion of the payments due hereunder.
- (c) **Impermissible Assignment.** Any attempted assignment that does not comply with the terms of this Section shall be null and void *ab initio*; provided, however, that if Successful Respondent assigns this Agreement in contravention of this Section by operation of law, such assignment shall be voidable at the option of DIR.

18.7 Entire Agreement; Amendment.

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

18.8 Notices.

- (a) **Primary Notices.** Any notice, notification, request, demand or determination provided by a Party pursuant to the following:
 - (i) **Section 9.3** (Extraordinary Events);
 - (ii) **Sections 14.3** (Indemnification Procedures);
 - (iii) **Section 15.2** (Force Majeure);
 - (iv) **Section 16.1** (Informal Dispute Resolution);
 - (v) **Article 17** (Termination); and
 - (vi) **Section 18.6** (Binding Nature and Assignment);

shall be in writing and shall be delivered in hard copy using one of the following methods and shall be deemed delivered upon receipt: (i) by hand, (ii) by an express courier with a reliable system for tracking

delivery or (iii) by registered or certified mail, return receipt requested, postage prepaid. Unless otherwise notified, the foregoing notices shall be delivered as follows:

In the case of DIR:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Ed Kelly, Statewide Data Coordinator
Telephone: 512.463.1811
E-mail Address: ed.kelly@dir.texas.gov

With a copy to:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Martin Zelinsky, General Counsel
Telephone: 512. 463.9884
E-mail Address: martin.zelinsky@dir.texas.gov

And

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Aiko Neill, Director, Enterprise Contracts Division
Telephone: 512.475.0515
E-mail Address: aiko.neil@dir.texas.gov

In the case of Successful Respondent:

Steve Moerbe
705 5th Avenue South, Suite 600
Seattle, WA 98104
206-340-8008

With Copy to:

Chief Legal Officer
Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Telephone: 207-518-4289

- (b) **Other Notices.** All notices, notifications, requests, demands or determinations required or provided pursuant to this Agreement, other than those specified in **Section 18.8(a)**, may be sent in hard copy in the manner specified in **Section 18.8(a)**, or by e-mail transmission (where receipt is acknowledged by the recipient) or facsimile transmission (with acknowledgment of receipt from the recipient's facsimile machine) to the addresses set forth below:

In the case of DIR:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Ed Kelly, Statewide Data Coordinator
Telephone: 512.463.1811
E-mail Address: ed.kelly@dir.texas.gov

With a copy to:

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Martin Zelinsky, General Counsel
Telephone: 512. 463.9884
E-mail Address: martin.zelinsky@dir.texas.gov

And

Texas Department of Information Resources
300 W. 15th Street, Suite 1300
Austin, Texas 78701
Attention: Aiko Neill, Director, Enterprise Contracts Division
Telephone: 512. 475.0515
E-mail Address: aiko.neill@dir.texas.gov

In the case of Successful Respondent:

Steve Moerbe
705 5th Avenue South, Suite 600
Seattle, WA 98104
206-340-8008

With Copy to:

Chief Legal Officer
Tyler Technologies, Inc.
One Tyler Drive
Yarmouth, ME 04096
Telephone: 207-518-4289

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

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

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

effective.

18.9 Counterparts.

This Agreement may be executed in several counterparts, all of which taken together shall constitute one (1) single agreement between the Parties hereto.

18.10 Headings.

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

18.11 Relationship of Parties.

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

18.12 Severability.

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

18.13 Consents and Approval.

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

18.14 Waiver of Default; Cumulative Remedies.

- (a) **Waiver of Default.** A delay or omission by either Party hereto to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant herein contained. All waivers must be in writing and signed by the Party waiving its rights.
- (b) **Cumulative Remedies.** Except as expressly set forth herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party shall not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract or otherwise.

18.15 Survival.

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

expiration or termination of this Agreement to the fullest extent necessary to give the Parties the full benefit of the bargain expressed herein.

18.16 Publicity.

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

18.17 Service Marks.

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

18.18 Third Party Beneficiaries.

The Parties acknowledge and agree that DIR Customers that are agencies or other Entities of the State are intended third party beneficiaries of this Agreement and are entitled to enforce the terms of this Agreement to the extent provided in and in accordance with this Agreement (which shall provide, at a minimum that DIR shall participate and seek the reasonable participation of the Office of the Texas Attorney General, along with any such DIR Customer in evaluating and presenting any claim or dispute). Except as expressly provided in the preceding sentence, this Agreement is entered into solely between, and may be enforced only by, DIR and Successful Respondent and shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including employees, suppliers and customers of a Party, or to create any obligations of a Party to any such third parties.

18.19 Covenant Against Pledging.

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

18.20 Hiring of Employees.

- (a) **Solicitation and Hiring.** Except as expressly set forth herein, during the Term and for a period of twelve (12) months thereafter, Successful Respondent shall not directly or indirectly recruit for employment in a position involved in the performance of Successful Respondent's obligations under this Agreement, any employees of DIR or a DIR Customer or individual DIR Contractors without the prior approval of DIR. Except as expressly set forth herein, including, without limitation, in connection with the expiration or any termination of this Agreement, during the Term and for a period of twelve (12) months thereafter, DIR

shall not solicit for employment, directly or indirectly any employee of Successful Respondent involved in the performance of Successful Respondent's obligations under this Agreement without the prior consent of Successful Respondent. In each case, the prohibition on solicitation and hiring shall extend ninety (90) days after the termination of the employee's employment or, in the case of Successful Respondent's employees, the cessation of his or her involvement in the performance of Services under this Agreement. This provision shall not operate or be construed to prevent or limit any employee's right to practice his or her profession or to utilize his or her skills for another employer or to restrict any employee's freedom of movement or association.

- (b) **Publications.** Neither the publication of classified advertisements in newspapers, periodicals, Internet bulletin boards, or other publications of general availability or circulation nor the consideration and hiring of persons responding to such advertisements shall be deemed a breach of this **Section 18.21**, unless the advertisement and solicitation is undertaken as a means to circumvent or conceal a violation of this provision and/or the hiring party acts with knowledge of this hiring prohibition.

18.21 Further Assurances.

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

18.22 Liens.

Successful Respondent shall not file, or by its action or inaction permit, any liens to be filed on or against property or realty of DIR or any DIR Customer. In the event that any such liens arise as a result of Successful Respondent's action or inaction, Successful Respondent shall obtain a bond to fully satisfy such liens or otherwise remove such liens at its sole cost and expense within ten (10) DIR Business Days. If Successful Respondent fails to do so, DIR may, in its sole discretion, pay the amount of such lien, and/or deduct such amounts from payments due to the Successful Respondent.

18.23 Covenant of Good Faith.

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

18.24 Acknowledgment.

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

18.25 References.

Notwithstanding **Section 11.1**, but subject to appropriate confidentiality arrangements and applicable law, Successful Respondent acknowledges and agrees that DIR may freely discuss all aspects of Successful Respondent's performance and DIR's satisfaction with such performance with prospective Successful Respondent customers. Successful Respondent shall provide such prospective Successful Respondent customers with appropriate DIR contact information.

Authority to Execute.

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

Department of Information Resources

Successful Respondent

Signature on File
Stacey Napier
Executive Director

Signature on File
Abigail Diaz
Chief Legal Officer

June 28, 2018
Date

June 28, 2018
Date

Signature on File June 28, 2018
Legal – Kate Fite