Texas Department of Information Resources

Data Center Services Program

Texas Private Cloud, Computing, and Data Center Facility Services

Master Services Agreement

DIR Contract No. DIR-TPC-MSA-432

Between

The State of Texas, acting by and through

the Texas Department of Information Resources

and

Atos Governmental IT Outsourcing Services, LLC

March 12, 2020

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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 ("Atos Governmental IT Outsourcing Services, LLC_("**Successful Respondent**"), with a principal place of business at 4851 Regent Boulevard, Irving, Texas 75063.

WHEREAS, in accordance with the Laws of the State, DIR issued the "Request for Offers (RFO) for Data Center Services (DCS) Texas Private Cloud, Facilities, and Computing Services" on the Texas Comptroller of Public Accounts' "Electronic State Business Daily (ESBD)" Web site, agency requisition number DIR-CPO-TMP-432 (the "**RFO**");

WHEREAS, in response to the RFO, the Successful Respondent submitted Successful Respondent's Response, dated April 30, 2019, 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 Provision, Performance, and Management by the Successful Respondent

(a) DIR desires that certain services presently provided, performed, and managed by or for DIR and the DIR Customers or otherwise required by the DIR Customers (including pursuant to Chapter 2054 of the Texas Government Code, specifically including Sections 2054.0565 and 2054.059; Subchapter L; and Chapter 2059 of the Texas Government Code) be provided, performed, and managed by the Successful Respondent as described in the Agreement. Texas Government Code Section 2054.0565, USE OF CONTRACTS BY OTHER ENTITIES, subsection (a) provides "The department may include terms in a procurement contract entered into by the department, including a contract entered into under Section 2157.068, that allow the contract to be used by another state agency, a political subdivision of this state, a governmental entity of another state, or an assistance organization as defined by Section 2175.001."

(b) The Successful Respondent has carefully reviewed DIR's and the DIR Customers' requirements, has performed all due diligence it deems necessary, has received all information requested and required of DIR and DIR Customers, and desires to deploy, perform, and manage such services for DIR and the DIR Customers. If Successful Respondent later discovers such due diligence was insufficient or lacking in certain information, Successful Respondent shall assume any associated costs or expenses.

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 Section 4.1 Overview 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 Article 14 GENERAL, the word "**notice**" and "**notification**" and their derivatives means notice or notification in writing. References in this Agreement to any Law shall be to such Law in changed or amended form or to a newly adopted Law replacing a prior Law. All references to this Agreement shall include the Exhibits and Attachments to this Agreement unless otherwise provided. Other terms used in this Agreement are defined in the context in which they are used and have the meanings there indicated.

1.4 Definitions

Except as otherwise expressly provided in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed to them in the **Definitions table in the Statement of Work**. Capitalized terms used in this Agreement but not defined in the **Definitions table** shall have the meanings ascribed to them in Information Technology Information Library (ITIL) conventions. Words having well-known technical or trade meanings, but not otherwise defined in the **Definitions table** or in ITIL, shall be accorded such meaning unless expressly defined otherwise herein. Terms or phrases that are not capitalized are to be given their usual meaning.

1.5 Compliance with Procurement Laws

This Agreement is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-CPO-TMP-432, for the Services. The Successful Respondent responded, and DIR conducted its evaluation. DIR determined that Successful Respondent should be invited into negotiations. DIR and Successful Respondent then engaged in extensive negotiations, discussions, and due diligence that 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-CPO-TMP-432 shall be posted by DIR on the ESBD.

2 CONTRACT DOCUMENTS

(a) This Agreement includes each of the Exhibits, Attachments, Appendices, 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, Appendices, and other documents attached to this Agreement. A listing of Exhibits and certain of the Attachments is included in the table of contents. Unless otherwise expressly stated, references to specific Exhibits and Attachments include all numbered subsidiary Exhibits and Attachments (e.g., references to **Exhibit 2** include not only **Exhibit**, but also all attachments and appendices unless otherwise specified).

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

(i) Articles 1 through 14 of this Agreement;
(ii) Exhibit 1 SOW;
(iii) Exhibit 2 Pricing;
(iv) Request for Offer # DIR-CPO-TMP-432 and any Revisions or Addenda thereto;
(v) The documents submitted by Successful Respondent to DIR as version 2.0 (the "Proposal Documents").

3 TERM

3.1 Initial Term

The initial 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, 2024, 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 "**Initial Term**").

3.2 Extension

By giving notice to the Successful Respondent no less than ninety (90) days prior to the expiration date of the Initial Term or the then-current Renewal Term, DIR shall have the right to extend the Term for four (4) extension periods (each, a "**Renewal Term**") of up to one (1) year each (the exact period of which shall be specified in DIR's notice of extension) on the terms and conditions of this Agreement that are then in effect. No Termination Charge shall be applicable to any termination on or after the end of the Initial Term.

4 SERVICES

4.1 Overview

Commencing on the Effective Date, the Successful Respondent shall provide the Services to DIR, and, upon DIR's request, to DIR Customers, Constituents, and Authorized Users. The Services shall consist of any or all of the following, as they may evolve during the Term or be supplemented, enhanced, modified or replaced, in each case in accordance with and within the scope of this Agreement: the services, functions, and responsibilities described in this Agreement and its Exhibits and Attachments and the following: (1) the Transition Services; (2) the Transformation Services; (3) the services, functions, and responsibilities described in the Operating Level Agreements ("OLAs") entered into by and between Successful Respondent and the applicable DCS SCPs in accordance with **Exhibit 1 SOW, Section 10.2 Multi-sourcing Services Integration and Cooperation**; (4) any Projects, upon DIR's authorization of such Project in accordance with the terms of this Agreement; (5) any New Services, upon DIR's authorization of such New Services in accordance with the terms of this Agreement; and (6) Termination Assistance Services.

4.1.1 Included Services

If any services, functions, or responsibilities not specifically described in this Agreement are an inherent, necessary, or customary part of the Services or are required for proper performance or provision of the Services in accordance with this Agreement, such services, functions, or responsibilities are deemed to be included within the scope of the Services to be delivered for the Charges, as if such services, functions, or responsibilities were specifically described in this Agreement.

4.1.2 Notices

A. Notification of Problems

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

B. Notification of Defaults

DIR and Successful Respondent shall promptly inform the other Party in writing of any breach of, misuse, or fraud in connection with any Third Party Contract, Equipment Lease, or Third Party Materials license used in connection with the Services of which it becomes aware and shall cooperate with the other Party to prevent or stay any such breach, misuse, or fraud.

C. Notice of Adverse Impact

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

4.1.3 Pre-Commencement Services

DIR and Successful Respondent may agree that performance of certain Services by Successful Respondent prior to the Commencement Date is necessary to avoid adverse impact on activities, operations, facilities, processes, or systems of DIR or the DIR Customers. In such event, the Parties shall mutually agree to the scope of Services, roles and responsibilities of the Parties, deliverables and deliverable acceptance criteria associated with the Services, charges, and the timeframe for performance of the Services. Successful Respondent shall invoice DIR after the Commencement Date for any Services provided prior to the Commencement Date.

4.2 Use of Third Parties

4.2.1 DIR (and DIR Customer) Right of Use

(a) Notwithstanding anything to the contrary contained in this Agreement, Successful Respondent acknowledges and agrees that:

  (i) this is not a requirements contract and DIR and the DIR Customers shall not be required to obtain their requirements for any of the Services from Successful Respondent; and

  (ii) Successful Respondent is not the exclusive provider to DIR or the DIR Customers of any of the Services and DIR and the DIR Customers may at any time themselves and/or through third parties (each, a "DIR Contractor") provide and/or obtain any services (including services to supplement, replace, or render unnecessary the Services).

(b) Nothing in this Agreement shall be construed or interpreted as limiting DIR's right or ability to add or delete DIR Customers, or DIR's or any DIR Customer's right or ability during the Term to change requirements, move parts

of Services in and out of scope, or to increase or decrease their demand for Services. To the extent DIR or a DIR Customer obtains from DIR Contractors, or provides to itself, any of the Services, the Charges and Termination Charges, if any, shall be adjusted downward in accordance with **Exhibit 2 Pricing**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Successful Respondent shall not be providing to the extent that **Exhibit 2 Pricing** does not provide for such reduction. Such equitable adjustments shall include, if applicable, the unrecovered amounts set forth in **Exhibit 2 Pricing** in proportion to the portion of the Services that Successful Respondent shall not be providing; provided, however, that such unrecovered amounts have been incurred by Successful Respondent in good faith and with a reasonable expectation of providing the Services pursuant to this Agreement. In the event total Service Level Invoice Amounts for the cumulative prior Contract Year are less than 50% of the estimated charges for the Contract Year in **Attachment 2.1 Pricing and Volumes**, as reflected in the Summary Charges tab, the Unit Rates shall be equitably adjusted by the Parties, provided that any such adjustments will be on a prospective basis only and will reflect the lower fixed cost required to deliver the Services. Both Parties shall approve such adjustments in writing. Nothing herein will prevent either Party from measuring Service Level Invoice Amounts trends and notifying the other Party of any significant decreases upon occurrence.

(c) DIR may elect to solicit and receive bids from third parties to perform any New Services. If DIR elects to use third parties to perform New Services:

(i) such New Services shall not be deemed "Services" under the provisions of this Agreement; and
(ii) Successful Respondent shall cooperate with such third parties as provided in Section 4.2 Use of Third Parties.

4.2.2 Successful Respondent Cooperation

(a) Successful Respondent shall perform the Services in a manner that shall not: (1) disrupt or have an unnecessary adverse impact on the activities or operations of DIR, the DIR Customers, or a DIR Contractor; (2) degrade the Services then being received by DIR or the DIR Customers; or (3) disrupt or interfere with the ability of DIR or the DIR Customers to obtain the full benefit of the Services.

(b) Successful Respondent acknowledges that its provision of the Services shall require significant cooperation with third parties, and Successful Respondent shall fully cooperate and work in good faith with third parties as described in this Agreement and to the extent otherwise requested by DIR. Such cooperation shall include providing:

(i) access to Successful Respondent Facilities (as necessary for the third parties to perform their work);
(ii) access to Successful Respondent owned or leased Equipment and Successful Respondent owned or licensed Software (to the extent permitted under any underlying agreements with third parties);
(iii) such information regarding the operating environment, System constraints and other operating parameters as a person with reasonable commercial skills and expertise would find reasonably necessary for the third parties to perform their work, including after expiration or termination of this Agreement; and
(iv) assistance to third parties and/or new vendors in order to migrate to new solutions or to continue running existing solutions arising out of or relating to the Services provided by Successful Respondent, including following the expiration or termination of the Agreement.

(c) DIR and DIR Customer personnel and DIR Contractors shall comply with Successful Respondent's reasonable security and confidentiality requirements and shall, to the extent performing work on Software, Equipment or Systems for which Successful Respondent has operational responsibility, comply with Successful Respondent's reasonable standards, methodologies, and procedures as communicated in writing to such third parties by Successful Respondent.

4.2.3 Notice by Successful Respondent

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

4.3 DIR Rules/Employee Safety

4.3.1 DIR Rules and Compliance

(a) In performing the Services and using the DIR Facilities, Successful Respondent shall observe and comply with all DIR and DIR Customer policies, rules, and regulations applicable at or to DIR Facilities or the provision of the Services which have been communicated to Successful Respondent or Successful Respondent Personnel in advance in writing (which may include email communications and notices of information contained on web sites or conspicuously posted at DIR Facilities to the extent consistent with the way in which DIR or the DIR Customers disseminate such information to their own employees) or by such means as are generally used by DIR or DIR Customers to disseminate such information to its employees or contractors and those applicable to specific DIR Facilities (collectively, "DIR Rules"). The Parties acknowledge and agree that, as of the Commencement Date, the Successful Respondent is fully informed as to the DIR Rules that have been communicated to it consistent with the foregoing. Successful Respondent shall be responsible for the promulgation and distribution of DIR Rules to Successful Respondent Personnel as and to the extent necessary and appropriate. Additions or modifications to the DIR Rules may be:

    (i) disclosed to Successful Respondent and Successful Respondent Personnel in writing (which may include email communications and notices of information contained on web sites to the extent consistent with the way in which DIR or the DIR Customers disseminate such information to their own employees);
    (ii) conspicuously posted at a DIR facility;
    (iii) electronically posted; or
    (iv) communicated to Successful Respondent or Successful Respondent Personnel by means generally used by DIR and DIR Customers to disseminate such information to its employees or contractors (including oral communications in immediately applicable or emergency situations).

(b) Successful Respondent and Successful Respondent Personnel shall observe and comply with such additional or modified DIR Rules.

4.3.2 Safety and Health Compliance

Successful Respondent and Successful Respondent Personnel shall familiarize themselves with the premises and operations at each DIR Facility at, to, or from which Services are rendered and the DIR Rules applicable to each such facility. Successful Respondent and Successful Respondent Personnel also shall observe and comply with all DIR Rules with respect to safety, health, security, and the environment and shall take precautions to avoid injury, property damage, spills, or emissions of hazardous substances, materials, or waste, and other dangers to persons, property, or the environment. To the extent required by DIR, Successful Respondent Personnel shall receive and complete prescribed training prior to entering certain DIR Facilities.

4.4 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, or Equipment, including acts and omissions constituting negligence, gross negligence, willful misconduct, and/or fraud.

4.5 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, termination of employment, failing to employ, agency, or Subcontracts (including, but not limited to, claims of discrimination against Successful Respondent, its officers, or its agents or its Subcontractors) are the sole responsibility of Successful Respondent and are not the responsibility of DIR or any DIR Customer, and that Successful Respondent will indemnify and hold harmless the State from any and all such claims asserted against the State, DIR or any DIR Customer. Successful Respondent understands that any person who alleges a claim arising out of employment, alleged employment, termination of employment, failing to employ, agency, or Subcontract by Successful Respondent (including, but not limited to, claims of discrimination against Successful Respondent, its officers, or its agents or its Subcontractors) will not be entitled to any compensation, rights or benefits from DIR (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

4.6 Conduct of Successful Respondent Personnel

4.6.1 Conduct and Compliance

Successful Respondent Personnel shall:

(i) comply with applicable DIR Rules and other rules and regulations as further described in Section 4.3.1 DIR Rules and Compliance and **Exhibit 1 SOW,** Article 6 Successful Respondent Personnel Requirements;
(ii) comply with requests of DIR or the DIR Customers personnel pertaining to personal and professional conduct;
(iii) attend workplace training offered by DIR and/or the DIR Customers at DIR's request; and
(iv) otherwise conduct themselves in a businesslike manner.

4.6.2 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 or the relevant DIR Customer indicating that he or she is a "contractor" when at a DIR Facility.

4.6.3 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 Contract to the State, DIR, or any DIR Customer at DIR Facilities (including marketing of any New Services), other than, subject to Section 6.1 Confidentiality, reporting potential marketing opportunities to Successful Respondent's designated marketing representatives.

4.7 Substance Abuse

4.7.1 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, in a DIR Customer vehicle, or while performing Services. In the case of reasonable suspicion, such removal shall be pending completion of the applicable investigation. Substance abuse includes the sale, attempted sale, possession, or use of illegal drugs, drug paraphernalia or alcohol, or the misuse of prescription or non-prescription drugs.

4.7.2 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.

4.8 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 a DIR Customer or impact Successful Respondent's ability to timely perform its duties and obligations under this Agreement.

4.9 Change Control

4.9.1 Compliance with Change Control Procedures

In making any change in the standards, processes, procedures, and controls or associated technologies, architectures, standards, products, Materials, Equipment, Systems, or services provided, operated, managed, supported, or used in connection with the Services, the Parties shall comply with the change control procedures specified in the Service Management Manual (SMM) ("**Change Control Procedures**"). The SMM shall contain a procedure that allows DIR to exercise the approval rights in this Section and complies with the following requirements.

A. Impact Assessment

If Successful Respondent desires to make any change, upgrade, replacement, or addition that may have an adverse impact or require changes as described in Section 4.9.3 DIR Approval – Cost, Adverse Impact or increase the risk of Successful Respondent not being able to provide the Services in accordance with this Agreement or violate or be inconsistent with DIR Standards or Strategic Plans, then Successful Respondent shall prepare a written risk assessment and mitigation plan (1) describing in detail the nature and extent of such adverse impact or risk, (2) describing any benefits, savings, or risks to DIR or the DIR Customers associated with such change, and (3) proposing strategies to

mitigate any adverse ricks or impacts associated with such change; and, after consultation and agreement with DIR, implement the plan.

B. Comparison Analysis

Each time that Successful Respondent makes a material change to the Materials, Equipment, Systems, or Services, Successful Respondent shall perform a comparison analysis in accordance with DIR's specifications to confirm the change shall not have an adverse impact on the costs, operations, or environment of DIR or a DIR Customer or on the functionality, interoperability, performance, accuracy, speed, legality, responsiveness, quality, or resource efficiency of the Services. In addition, at DIR's request, Successful Respondent shall perform a comparison in accordance with DIR's specifications, between the amount of chargeable resources required to perform a representative sample of the Services being performed for DIR immediately prior to the change and immediately after the change. DIR shall not be required to pay for increased chargeable resources usage due to a change except to the extent that such change is requested or approved by DIR after notice from Successful Respondent of such increased chargeable resources usage.

C. Testing

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

4.9.2 Financial Responsibility for Changes

Without limiting DIR's right of approval under Section 4.9.3 DIR Approval – Cost, Adverse Impact, unless otherwise set forth in this Agreement or otherwise expressly approved by DIR, Successful Respondent shall bear all charges, fees, and costs associated with any change desired by Successful Respondent, including all charges, fees, and costs associated with:

(i) the design, installation, implementation, testing, and rollout of such change;
(ii) any modification or enhancement to, or substitution for, any impacted processes or associated Materials, Equipment, System, or Services;
(iii) any increase in the cost to DIR or the DIR Customers of operating, maintaining, or supporting any impacted processes or associated Materials, Equipment, System, or Services; and
(iv) subject to **Exhibit 2 Pricing**, any increase in Resource Unit usage resulting from such change.

4.9.3 DIR Approval – Cost, Adverse Impact

(a) Other than as expressly set forth in the Transition Plan as approved by DIR, Successful Respondent shall make no changes which may:

(i) increase DIR's total cost of receiving the Services;
(ii) require material changes to or have an adverse impact on DIR's or any DIR Customer's operations, facilities, processes, systems, software, utilities, tools, or equipment (including those provided, managed, operated, supported, and/or used on their behalf by DIR Contractors);
(iii) require DIR or any DIR Customer to install, at their cost or expense, a new version, release, Upgrade of, or replacement for any Software or Equipment or to modify any Software or Equipment;
(iv) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, or resource efficiency of the Services;
(v) have an adverse impact on the cost, either actual or planned, to DIR of terminating this Agreement, in whole or in part, or on DIR's rights to insource or use third parties;

(vi) have an adverse impact on DIR's or any DIR Customer's environment (including its flexibility to deal with future changes, interoperability, and its stability);

(vii) introduce new technology to:

A. DIR's or any DIR Customer's environment or operations or

B. Successful Respondent's environment to the extent that such introduction has or may have an adverse impact on DIR's or any DIR Customer's environment;

(viii) have an adverse impact on the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost, or resource efficiency of DIR's Retained Systems and Processes; or

(ix) violate or be inconsistent with DIR Standards, DIR Rules, and any Strategic Plan.

without first obtaining DIR's approval, which approval DIR may withhold in its sole discretion.

(b) If Successful Respondent desires to make such a change, it shall provide to DIR a written proposal describing in detail the extent to which the desired change may affect the functionality, performance, price, or resource efficiency of the Services and any benefits, savings, or risks to DIR or the DIR Customers associated with such change.

4.9.4 Information for Exercise of Strategic Authority

In order to facilitate DIR's strategic control pursuant to Section 4.9 Change Control, Successful Respondent shall provide DIR with such information as DIR shall require prior to making any proposed change. Such information shall include, at a minimum, a description of the proposed rights of DIR and the DIR Customers with respect to ownership and licensing (including any related restrictions) relating to such Materials, Equipment, or other technology. Such description shall include the license fees, maintenance fees, and/or purchase or lease terms (if any) for use of such Materials, Equipment, or other technology by DIR, the DIR Customers, and their designee(s) upon termination or expiration of this Agreement or the completion of Termination Assistance Services and any limitations or conditions on such use.

4.9.5 Temporary Emergency Changes

Notwithstanding the foregoing, Successful Respondent may make temporary changes required by an emergency if it has been unable to contact the Designated DIR Representative to obtain approval after making reasonable efforts. Successful Respondent shall document and report such emergency changes to DIR not later than the next DIR Business Day after the change is made. Such changes shall not be implemented on a permanent basis unless and until approved by DIR.

4.9.6 Implementation of Changes

Successful Respondent shall schedule and implement all changes so as not to:

(i) disrupt or adversely impact the operations of DIR or the DIR Customers;

(ii) degrade the Services then being received by them; or

(iii) interfere with their ability to obtain the full benefit of the Services.

4.10 Access to Specialized Successful Respondent Skills and Resources

Upon DIR's request, Successful Respondent shall provide DIR and the DIR Customers with prompt access to Successful Respondent's services, personnel, and resources pertaining to standards, processes and procedures, and associated software, equipment, and systems on an expedited basis, taking into account the relevant circumstances (the "**Specialized Services**"). The Parties acknowledge that the provision of such Specialized Services may, in some cases, constitute New Services for which Successful Respondent is entitled to additional compensation, but in no event shall Successful Respondent be entitled to any additional compensation for New Services under this Section unless the DIR Statewide Technology Center Services Manager and Successful Respondent Account Manager, or their authorized designees, expressly agree upon such additional compensation or Successful Respondent's entitlement to

additional compensation is established through the dispute resolution process. If DIR authorizes Successful Respondent to proceed but the Parties disagree as to whether the authorized work constitutes New Services and DIR reasonably believes that such work is material and is required on an urgent basis, Successful Respondent shall proceed with such work if directed to do so by DIR. The Parties will diligently seek to resolve any such dispute, including through prompt submission of the disagreement to the dispute resolution pursuant to Article 12 DISPUTE RESOLUTION, as appropriate.

4.11 Audit Rights

4.11.1 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**").

4.11.2 Operational Audits

(a) During the Audit Period, Successful Respondent shall provide to DIR and DIR Customers (and internal and external auditors, inspectors, regulators, and other representatives that DIR or DIR Customers may designate from time to time, including customers, vendors, licensees, and other third parties to the extent DIR or the DIR Customers are legally or contractually obligated to submit to audits by such Entities), and the State Auditor's Office and any successor governmental authorities (collectively, "**DIR Auditors**"), provided any such external customers, vendors, licensees and other third parties agree to protect 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) 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.

(b) Successful Respondent shall:

(i) provide any assistance requested by DIR Auditors in conducting any such audit, including installing and operating audit software;

(ii) make requested Successful Respondent Personnel, records, and information available to DIR Auditors; and

(iii) in all cases, provide such assistance, personnel, records, and information in an expeditious manner to facilitate the timely completion of such audit.

(c) 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.

4.11.3 Financial Audits

(a) 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 (1) verify the accuracy and completeness of Contract Records, (2) verify the accuracy and completeness of Charges and any Pass-Through Expenses and Out-of-Pocket Expenses, (3) examine the financial controls, processes, and procedures utilized by Successful Respondent in connection with the Services, (4) examine Successful Respondent's performance of its other financial and accounting obligations to DIR under this Agreement, and 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.

(b) Successful Respondent shall:

(i) provide any assistance requested by DIR Auditors in conducting any such audit;

(ii) make requested Successful Respondent Personnel, records, and information available to DIR Auditors; and

(iii) in all cases, provide such assistance, personnel, records, and information in an expeditious manner to facilitate the timely completion of such audit.

(c) 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 12 DISPUTE RESOLUTION, 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.

4.11.4 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 2262.154, Texas 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 2262.154.

4.11.5 General Procedures

(a) Successful Respondent shall obtain audit rights equivalent to those specified in this Section 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.

(b) 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.

(c) 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.

(d) 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. To the extent permissible under such Laws, 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.

(e) 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 4.11.4 Audits by Governmental Authorities 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 4.11.4 Audits by Governmental Authorities, it shall provide reasonable notice to Successful Respondent.

4.11.6 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 Exhibit 2 Pricing 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.

4.11.7 Successful Respondent Response

Successful Respondent and DIR shall meet promptly upon the completion of an audit conducted pursuant to this Section (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.

4.11.8 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.

4.12 Subcontractors

4.12.1 Use of Subcontractors

(a) 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 entire and complete proposed subcontract (however Successful Respondent may provide the annual spend rather than the specific pricing or payment terms and Successful Respondent may redact any information specific to other customers, specific pricing information, and pricing terms), or (in DIR's discretion) a detailed description of the scope and material terms (other than specific pricing or payment terms) of the proposed subcontract;
- (ii) obtain for DIR the licenses described in Article 7 MATERIALS;
- (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 described in **Exhibit 1 SOW, Section 12.2 Termination Assistance Services** and Article 7 MATERIALS;
- (iv) obtain DIR's prior written approval of such Subcontractor; and
- (v) update Subcontract information described herein in accordance with the relevant SMM.

(b) The requirement to provide an entire and complete copy of the subcontract includes any contract that Successful Respondent considers an enterprise agreement such that Successful Respondent utilizes the subcontract for Successful Respondent's other customer(s) in addition to DIR and DIR Customers. If Successful Respondent has used best efforts to obtain permission from Subcontractor for DIR to receive a copy of the subcontract and the Subcontractor has refused such permission, then Successful Respondent shall notify DIR of the refusal prior to utilizing the services or products of the Subcontractor. Subject solely to DIR's discretion, DIR will determine if Successful Respondent should proceed with that Subcontractor. Providing Successful Respondent follows the above required notification and consent process, Successful Respondent's failure to obtain permission from a Subcontractor will not constitute a breach of this Agreement and nothing in this Section 4.12.1 Use of Subcontractors shall require Successful Respondent to disclose any information that such Subcontractor has not agreed in writing to provide. Upon termination or expiration or upon DIR's request, Successful Respondent shall transfer or assign subcontracts to DIR, DIR's Customers, or DIR's Designees with the same terms and conditions.

4.12.2 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 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.

4.12.3 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 Section 13.3 Termination Upon Successful Respondent Change of Control and Section 14.1 Delegation of Authority, DIR hereby approves such subcontracts, provided that Successful Respondent shall:

(i) provide DIR with prior notice of any such performance;
(ii) obtain for DIR, the DIR Customers, and their designee(s) the rights described in Section 4.2 Use of Third Parties;
(iii) obtain for DIR, the DIR Customers, and their designee(s) the licenses described in Article 7 MATERIALS; and
(iv) Subject to Section 4.12.1 Use of Subcontractors, deliver to DIR a copy of the entire and complete subcontract, allowing DIR to disclose the subcontract during future procurements.

4.12.4 Successful Respondent Responsibility

(a) 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) obtaining for DIR, the DIR Customers, and their designee(s) the rights described in **Exhibit 1 SOW, Section 12.2 Termination Assistance Services**;
(iii) obtaining for DIR, the DIR Customers, and their designee(s) the licenses described in Article 7 MATERIALS;
(iv) DIR's approval rights (which must apply directly to the Subcontractor);
(v) compliance with DIR Rules, DIR Standards, Strategic Plans, and applicable laws;
(vi) audit rights as described in Section 4.11 Audit Rights;
(vii) Key Personnel;
(viii) insurance coverage as described in **Attachment 2 Insurance and Risk of Loss**, with coverage limits consistent with the scope of the work to be performed by such Subcontractors;
(ix) obtaining for DIR and DIR Customers the rights specified in Section 4.12.1 Use of Subcontractors.

(b) 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.

4.12.5 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.

4.12.6 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."

4.13 Retained Systems and Processes

4.13.1 No Adverse Effect

Except as otherwise expressly agreed upon by the Parties in the Transition Plan, any Project Work Order or in connection with any New Services or Contract Change, Successful Respondent shall not, by any act or omission (1) adversely affect or alter the functionality, interoperability, performance, accuracy, speed, responsiveness, quality, cost, or resource efficiency of DIR's Retained Systems and Processes without the prior consent of DIR, or (2) require changes to DIR's Retained Systems and Processes, including associated processes, applications, systems, software, utilities, tools, or equipment, without the prior consent of DIR.

4.13.2 Interface

Successful Respondent shall provide that the processes, Systems, Software, and Equipment used by Successful Respondent to provide the Services interface and integrate with DIR's Retained Systems and Processes.

4.13.3 Assistance

As part of the Services, Successful Respondent shall provide DIR (upon DIR's written request) with Services in relation to DIR's Retained Systems and Processes, including: liaising with DIR or third parties regarding the impact of any alterations to DIR's Retained Systems and Processes and vice versa.

4.14 Monitoring Tools

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

4.15 Required Consents

4.15.1 Successful Respondent Responsibility

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

4.15.2 Financial Responsibility

Except to the extent expressly provided otherwise in Section 4.16.3 General Rights and **Attachment 2.2 Financial Responsibility Matrix**, Successful Respondent shall pay all transfer, re-licensing, termination charges, and other costs or expenses associated with obtaining any Required Consents or terminating any licenses or agreements as to which Successful Respondent is unable to obtain such Required Consents.

4.15.3 Contingent Arrangements

If, despite using commercially reasonable efforts, Successful Respondent is unable to obtain a Required Consent, then with respect to DIR and/or DIR Customer licensed Third Party Materials, Service Provider shall implement a work-around, reasonably satisfactory to DIR, that may include:

(i) replace the DIR or DIR Customer license for such Third Party Materials with a Successful Respondent license;
(ii) replace such Third Party Materials with other Materials offering equivalent features and functionality; or
(iii) Otherwise arrange to rightfully manage the DIR and/or DIR Customer licensed Third Party Materials on behalf of DIR and the DIR Customers.

4.15.4 Termination

If Successful Respondent fails to obtain any Required Consent within ninety (90) days of the Commencement Date or to implement adequate contingent arrangements in accordance with Section 4.15.3 Contingent Arrangements and such failure has a material adverse impact on the use or enjoyment of the Services, then DIR may, upon notice to Successful Respondent, terminate this Agreement for cause in its entirety or in part with respect to, or any affected portions of, the Services, as of the termination date specified in the notice.

4.16 Materials, Equipment, and Third Party Contracts

4.16.1 Financial Responsibility

Each Party shall be financially responsible for any third party fees or expenses incurred on or after the Commencement Date associated with Materials, Equipment, Equipment Leases and Third Party Contracts for which such Party is financially responsible under **Attachment 2.2 Financial Responsibility Matrix** (excluding Third Party Contracts administered by Successful Respondent on a Pass-Through basis, which are addressed in **Exhibit 2**). Unless otherwise expressly provided, each Party also shall be financially responsible for any third party fees or expenses on or after the Commencement Date associated with new, substitute or replacement Materials, Equipment, Equipment Leases or Third Party Contracts (including Upgrades, enhancements, new versions or new releases of Software or Equipment) for which such Party is financially responsible under **Attachment 2.2 Financial Responsibility Matrix**. With respect to Third Party Material licenses, Equipment Leases and Third Party Contracts that are assigned to Successful Respondent by DIR and/or DIR Customers or for which Successful Respondent otherwise assumes financial responsibility under this Agreement, Successful Respondent shall:

(i) pay all amounts becoming due under such licenses, leases or contracts, and all related expenses, for periods on or after the Commencement Date;

(ii) rebate to DIR any payment of such amounts in accordance with **Attachment 2.2 Financial Responsibility Matrix**;

(iii) pay all modification, termination, cancellation, late payment, renewal or other fees, penalties, charges, interest or other expenses attributable to periods on or after the Commencement Date (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the wrongful acts or omissions of DIR, prior to assignment to Successful Respondent);

(iv) pay all costs associated with the transfer of such licenses, leases and contracts to Successful Respondent, including all taxes associated with such transfer; and

(v) be responsible for curing any defaults in Successful Respondent 's performance under such licenses, leases and contracts on or after the Commencement Date (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the wrongful acts or omissions of DIR, prior to assignment to Successful Respondent).

4.16.2 Operational Responsibility

With respect to Materials, Equipment, Equipment Leases and Third Party Contracts for which Successful Respondent is operationally responsible under **Attachment 2.2 Financial Responsibility Matrix**, Successful Respondent shall be responsible for:

(i) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of such Materials, Equipment, Equipment Leases and Third Party Contracts;

(ii) the evaluation, procurement, testing, installation, rollout, use, support, management, administration, operation and maintenance of new, substitute or replacement Materials, Equipment, Equipment Leases and Third Party Contracts (including Upgrades, enhancements, new versions or new releases of such Software);

(iii) the performance, availability, reliability, compatibility and interoperability of such Materials, Equipment and Third Party Contracts each in accordance with this Agreement, including the Service Levels and Change Control Procedures;

(iv) the compliance with and performance of all operational, administrative and contractual obligations specified in the applicable licenses, leases and contracts;

(v) the observance of and compliance with all Laws applicable to such licenses, leases, and contracts (without limiting the obligation of the Parties under Section 8.11 Compliance with Laws);

(vi) the administration and exercise as appropriate of all rights available under such licenses, leases, and contracts; and

(vii) the payment of any fees, penalties, charges, interest, or other expenses due and owing under or with respect to such licenses, leases and contracts that are incurred or caused by, or result from Successful Respondent 's failure to comply with or perform its obligations under this Section 4.16.2 Operational Responsibility (except to the extent that such fees, penalties, charges, interest or other expenses directly result from the wrongful acts or omissions of DIR, prior to assumption of financial responsibility by Successful Respondent).

4.16.3 General Rights

(a) With respect to all Third Party Materials licenses, Equipment Leases and Third Party Contracts for which Successful Respondent is financially responsible under **Attachment 2.2 Financial Responsibility Matrix**, Successful Respondent shall:

(i) obtain for DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) the license, sublicense, assignment and other rights specified in Section 7.6 Ongoing DIR Rights and **Exhibit 1 SOW, Section 11.2 Termination Assistance Services**;

(ii) ensure that the granting of such license, sublicense, assignment and other rights is not subject to subsequent third party approval or the payment by DIR, the DIR Customers, Entities that qualify as DIR Customers or their designee(s) of license, assignment or transfer fees or penalties;

(iii) ensure that the terms, conditions and prices applicable to DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) are at least sufficient for the continuation of the activities comprising the services of the nature of the Services;

(iv) ensure that any Assistance Event does not trigger less favorable terms, conditions or pricing; and

(v) update Third Party Materials licenses, Equipment Leases and Third Party Contracts information described herein in accordance with the relevant SMM.

(b) With respect to all Third Party Materials licenses, Equipment Licenses, and Third Party Contracts that are specific agreements relating to Services for DIR or DIR Customers solely, Successful Respondent shall provide DIR a complete copy of the relevant agreement(s). Successful Respondent shall provide such copies prior to Commencement Date for all relevant contracts. During the Term, Successful Respondent shall provide such copies upon DIR's request and shall permit DIR to disclose such contracts to outside parties during future procurements. Successful Respondent shall also provide (in DIR's discretion) a detailed description of the scope and material terms (other than pricing terms) of the Third Party Materials licenses, Equipment Licenses, and Third Party Contracts. Successful Respondent shall ensure that the assigned terms, conditions, and prices are no less favorable than those otherwise applicable to Successful Respondent. Successful Respondent shall allow DIR to disclose such agreement(s) during future procurements for the relevant Services to entities that are participating in the procurement and that have signed a Non-Disclosure Agreement.

(c) With respect to all Third Party Materials licenses, Equipment Licenses, and Third Party Contracts that are that are not exclusively used by Successful Respondent for DIR's benefit ("Enterprise Third Party Contracts"):

(i) Successful Respondent agrees to provide written notice to DIR prior to utilizing such contracts in the performance of the Service and provide, upon DIR's request, a detailed description of the scope and material terms (other than pricing terms) of the Third Party Materials licenses, Equipment Licenses, and Third Party Contracts, including but not limited to service delivery obligations, license assignability, and license termination (including any termination fees).

(ii) Prior to Commencement Date and at other times during the Term upon DIR's request, Successful Respondent shall provide DIR the right to review all contract terms and conditions. DIR agrees that it will not disclose any information regarding the contracts to any outside third parties. If Successful Respondent has used best efforts to obtain permission from the Third Party for DIR's review and the Third Party has refused such permission, then Successful Respondent shall notify DIR of the refusal prior to utilizing the services or products of the Third Party vendor. Subject solely to DIR's discretion, DIR will determine if Successful Respondent should proceed with utilizing that Third Party under this Agreement. Providing Successful Respondent follows the above required notification and consent process, Successful Respondent's failure to obtain permission from a Third Party will not constitute a breach of this Agreement and nothing in this Section 4.16.3(c) shall require Successful Respondent to disclose any information that such Third Party has not agreed in writing to provide.

(iii) Upon request from DIR, Successful Respondent shall promptly provide DIR a copy of all DIR or DIR Customer specific terms, including but not limited to specific Work Orders, Order Forms, addendum, attachment, amendment, specific license, and any terms DIR discovers through its review of the Enterprise Third Party Contracts that specifically relate to or effect the DIR Services

or that DIR determines to be necessary information for the successful reprocurement of Services (collectively "DIR Specific Terms").

(iv) In Successful Respondent's summary description of material terms, DIR's review of the Enterprise Third Party Contracts, and the copies of the terms provided to DIR in accordance with subsections 1 through 3 above, Successful Respondent may redact any specific Go to Market Initiatives, information specific to other customers, specific pricing information, and pricing terms; however, Successful Respondent shall provide annual spend amounts attributable to DIR and DIR Customers.

(v) Upon request, Successful Respondent shall provide a copy of the Third Party Vendor's standard terms and conditions that the Third Party Vendor would provide to a new customer or would be excepted to be provided to DIR's Designee at the termination or expiration of this Agreement.

(vi) Successful Response shall grant DIR the right to disclose all information provided in writing in accordance with subsections (i) and (iii) through (v) above to outside parties during future procurements. Such outside parties shall be limited to entities that are participating in the procurement and that have signed a Non-Disclosure Agreement.

(vii) In accordance with Section 4.16.3(a), Successful Respondent complies with the Third Party Materials licenses, Equipment Licenses, and Third Party Contracts assignment requirements for its Enterprise Third Party Contracts if all DIR Specific Terms, which does not include the commercial agreement portion of its Enterprise Third Party Contracts, are assignable to DIR or DIR's Designee.

4.16.4 Evaluation of Third Party Materials, Equipment

In addition to its obligations under Section 4.16.1 Financial Responsibility and Section 4.16.2 Operational Responsibility and in order to facilitate DIR's control of architecture, standards and plans pursuant to Section 4.9 Change Control, Successful Respondent shall evaluate any Third Party Materials consisting of Software and Equipment selected by or for DIR or a DIR Customer to determine whether such Software and Equipment shall adversely affect DIR Customers' environment, DIR Customers' ability to interface with and use the Software, Equipment, and Systems and/or Successful Respondent's ability to provide the Services. Successful Respondent shall complete and report the results of such evaluation to DIR within thirty (30) days of its receipt of DIR's request; provided, that Successful Respondent shall respond more quickly in the case of a pressing need or an emergency situation.

5 DIR RESPONSIBILITIES

5.1 Responsibilities

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

5.1.1 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 and the DIR Customers 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.

5.1.2 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.

5.1.3 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.

5.2 Savings Clause

(a) Successful Respondent's failure to timely or otherwise perform its responsibilities under this Agreement (including failure to meet the Service Levels or Critical Milestones) shall be excused if and to the extent such Successful Respondent non-performance is caused by:

- (i) the wrongful or tortious actions or omissions of DIR or a DIR Customer; or
- (ii) the failure of DIR or a DIR Customer to perform DIR's obligations under this Agreement, but only if and to the extent:
  - A. Successful Respondent, upon becoming aware of such an occurrence, immediately and expeditiously notifies DIR of such wrongful or tortious action or failure to perform and its inability to perform under such circumstances;
  - B. Successful Respondent provides DIR with reasonable opportunity to correct such wrongful or tortious action or failure to perform and thereby avoid such Successful Respondent non-performance;
  - C. Successful Respondent identifies and pursues commercially reasonable means to avoid or mitigate the impact of such wrongful or tortious action or failure to perform;
  - D. Successful Respondent uses commercially reasonable efforts to perform notwithstanding such wrongful or tortious action or failure to perform (with DIR reimbursing Successful Respondent for its additional reasonable Out-of-Pocket Expenses incurred in connection with such effort provided, however, that DIR has provided prior written approval of any such additional Out-of-Pocket Expenses); and
  - E. Successful Respondent conducts a Root Cause Analysis and thereby demonstrates to DIR's satisfaction that such wrongful or tortious action or failure to perform is the cause of Successful Respondent's non-performance.

(b) Successful Respondent acknowledges and agrees that the circumstances described in this Section, together with Section 11.2 Force Majeure are the only circumstances in which its failure to perform its responsibilities under this Agreement or to meet the Service Levels will be excused and that Successful Respondent will not assert that any other act or omission of DIR or a DIR Customer excuses any such failure on Successful Respondent's part, provided, however, that upon the occurrence of a Service Level Escalation Event or a Governance Escalation Event, Successful Respondent may escalate such issue for resolution through governance in accordance with **Exhibit 1 SOW, Article 9 DCS Governance Model**, which resolution may include excusing Successful Respondent's performance. Solely for the purposes of excusing Successful Respondent's performance under this Section, DIR will consider the wrongful or tortious actions or omissions of a DIR Contractor engaged by a DIR Customer provided that such DIR Contractor is not a DIR Service Component Provider.

5.3 Governance Escalation Event

(a) A Governance Escalation Event occurs if:

(i) the Successful Respondent asserts that it has been unable to perform all or a portion of the Services solely as a result of the failure by a Service Component Provider to perform certain obligations reasonably specified in the SMM or in the applicable Operating Agreement (OA);

(ii) the Successful Respondent has performed its own obligations as set forth in the Agreement, including the Statements of Work, SMM, and the applicable OA; and

(iii) the Successful Respondent, upon becoming aware of such an occurrence or failure:

A. immediately notifies the Service Component Provider of such failure and that such failure will result in a failure by the Successful Respondent to perform its obligations to DIR under such circumstances;

B. provides the Service Component Provider with reasonable opportunity to correct such failure to perform and thereby avoid the Successful Respondent's non-performance;

C. uses commercially reasonable efforts to perform its obligations under the Agreement notwithstanding such failure to perform;

D. has notified DIR that corrective action has commenced; and

E. has otherwise exhausted all other rights and remedies to cause the Service Component Provider to perform.

(b) Upon the occurrence of a Governance Escalation Event, the Successful Respondent may escalate the Service Component Provider's failure through the appropriate governance structure for resolution in accordance with **Exhibit 1, Article Section 9 DCS Governance Model**. If the applicable governance committee has determined that Successful Respondent has satisfied each of the requirements and obligations set forth above, such resolution shall include excusing Successful Respondent's performance related to such failure and may include other actions as reasonably determined by DIR including appropriate changes to the SMM and/or the applicable OA.

5.4 DIR Benchmarking Reviews

5.4.1 Benchmarking Review

During the course of the Contract, beginning not less than eighteen (18) months after the Commencement Date, DIR may, at its expense and subject to this Section, engage the services of an independent third party (a "**Benchmarker**") to compare the quality and price of all or any Service Component of the Services against the quality and price of representative suppliers performing similar services to determine whether DIR is receiving from Successful Respondent pricing and levels of service that are competitive with market rates and prices, given the nature, volume and type of Services and Service Levels provided by Successful Respondent hereunder ("**Benchmarking**"). In making this comparison, the Benchmarker shall consider a minimum of four (4) comparable transactions (at least three (3) of which shall involve public sector clients), and shall further consider the following factors and normalize the pricing data as and to the extent appropriate:

(i) whether supplier transition, transformation, and other charges are paid by the customer as incurred or over a period of time;

(ii) the extent to which supplier pricing includes the purchase of the customer's existing assets or assumption of any agreements.

(iii) the extent to which supplier pricing includes the cost of acquiring future assets;

(iv) the extent to which the comparable supplier is working within a Multi-Sourcing Services Integrator (MSI) model;

(v) the extent to which this Agreement calls for Successful Respondent to provide and comply with unique DIR requirements;

(vi) whether taxes are included in such pricing or stated separately in supplier invoices;

(vii) the restrictions related to location of the delivery of the Services;
(viii) differences in the volumes of the services being compared;
(ix) applicability of service levels, and
(x) material differences in terms and conditions.

5.4.2 General

(a) Any Benchmarker engaged by DIR shall:

(i) be independent;
(ii) have, in DIR's reasonable judgment, experience in benchmarking the required services; and
(iii) execute a non-disclosure agreement substantially in the form attached hereto as **Attachment 1 Form of Non-disclosure**; provided, however, Successful Respondent agrees and acknowledges that such non-disclosure agreement shall be amended to permit the Benchmarker to anonymously reuse all Benchmarking data or other benchmarking studies it performs.

(b) Successful Respondent recognizes that DIR must comply with applicable Laws respecting procurement of services in connection with any engagement of a Benchmarker. To the extent permissible under such Laws and the reasonable practice of DIR, DIR shall consult with Successful Respondent respecting the Benchmarker and appropriate criteria related thereto (including general terms of engagement) in making its selection; provided, however, DIR reserves the right to determine, in its sole discretion, the appropriate Benchmarker to be engaged and the arrangement for such engagement. Successful Respondent shall cooperate fully with DIR and the Benchmarker and shall provide reasonable access to any premises, equipment, personnel or documents and provide any assistance required by the Benchmarker to conduct the Benchmarking, all at Successful Respondent's cost and expense provided, however, that Successful Respondent will not be obligated to provide the Benchmarker with Successful Respondent's internal costs or information concerning other Successful Respondent customers.

5.4.3 Result of Benchmarking

If the Benchmarker finds that the aggregate Charges that are the subject of the Benchmarking are more than ten percent (10%) higher than the average of the comparable transactions set forth above, then Successful Respondent shall reimburse DIR for its costs associated with such Benchmarking and the Parties will work together in good faith to eliminate any such unfavorable variance either through reduced Charges equivalent to the variance or through other means that demonstrate value to the State. The Successful Respondent will eliminate the unfavorable variance within 180 days, provided, however, if the Successful Respondent does not decrease the Charges or otherwise demonstrate an equivalent value to the State as described above within such 180 days, DIR may, at its option, terminate this Agreement in whole or in relevant part (determined in DIR's judgement provided further, however, that any termination exercised by DIR hereunder will not be subject to or otherwise require payment of any Termination Charges). Termination by DIR under this Section shall not be deemed a termination for cause under Section 13.1 Termination for Cause. Under no circumstances shall Benchmarking result in any increases to the Charges. The Benchmarker shall reasonably explain its methodology, including its use of relevant comparative data in the Benchmarker's report. DIR will instruct the Benchmarker to conduct the Benchmark so as not to unreasonably disrupt Successful Respondent's operations under this Agreement.

5.4.4 Successful Respondent's Review and Dispute

DIR shall provide Successful Respondent with a copy of the Benchmarker's report. Successful Respondent shall have ten (10) Business Days to dispute the validity the report, in writing, to the DIR Contract Manager. No later than twenty (20) Business Days after receipt of the report, Successful Respondent must provide quantitative evidence for each point disputed in the Benchmarker's report. Failure to provide materials within the timeframes contained in this Section shall result in a forfeiture of the Successful Respondent's right to dispute.

6 DIR DATA AND OTHER CONFIDENTIAL INFORMATION

6.1 Confidentiality

Nothing in this Section is intended to limit the obligations of Successful Respondent under Section 6.2 DIR Data and Section 6.3 DIR Personal Data of this Agreement with respect to the DIR Data addressed in such Sections and, to the extent the provisions of Sections 6.2 DIR Data or 6.3 DIR Personal Data conflict with the provisions of this Section as they pertain to DIR Data, the provisions of Sections 6.2 DIR Data or 6.3 DIR Personal Data shall control over the provisions of this Section, as applicable.

6.1.1 Confidential Information

(a) Successful Respondent and DIR each acknowledge that the other possesses and shall continue to possess information that has been developed or received by it, has commercial, proprietary, or other value in its or its constituents' or customers' activities or operations and is not generally available to the public, subject, however to the applicability of the Public Information Act and other applicable Law. Except as otherwise specifically agreed in writing by the Parties, "**Confidential Information**" means:

(i) all information marked confidential, restricted, or proprietary by either Party; and

(ii) any other information that is treated as confidential by the disclosing Party and would reasonably be understood to be confidential, whether or not so marked.

(b) In the case of DIR and the DIR Customers, Confidential Information also shall include Developed Materials, DIR Data, DIR Personal Data, Work Product, Authorized User information, attorney-client privileged materials, attorney work product, research information, information that contains trade secrets, human resources and personnel information, or other information or data obtained, received, transmitted, processed, stored, archived, or maintained by Successful Respondent under this Agreement. Successful Respondent's Confidential Information shall not include Confidential Information of DIR or other DIR Customers, and provided further, however characterization of information as Confidential Information of Successful Respondent shall not limit or restrict the rights of DIR or DIR Customers to exercise their rights (including rights related to auditing and benchmarking) provided for under this Agreement.

6.1.2 Disclosure of Confidential Information

(a) The disclosing Party represents and warrants that it has the right to disclose its Confidential Information to the Receiving Party, subject to the confidentiality obligations contained in this Section.

(b) During the term of this Agreement and at all times thereafter as specified in Section 6.7 Survival, each Receiving Party:

(i) shall hold Confidential Information received from a disclosing Party in confidence and shall use such Confidential Information only for the purposes of fulfilling its obligations or exercising its rights under this Agreement and for no other purposes;

(ii) shall follow all applicable security requirements, protocols, and procedures for accessing and handling such Confidential Information; and

(iii) shall not disclose, provide, disseminate, or otherwise make available any Confidential Information of the disclosing Party to any third party without the express written permission of the disclosing Party, unless expressly permitted by items (d) and (f) below or elsewhere in this Agreement.

(c) Subject to the requirements of Sections 6.2.2 Safeguarding of DIR Data and 6.3 DIR Personal Data, as applicable, each Receiving Party shall use at least the same degree of care to prevent disclosure, dissemination, and misuse of the disclosing Party's Confidential Information to third parties as the Receiving Party employs to avoid

unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care.

(d) The Receiving Party may disclose Confidential Information of the disclosing Party to its employees, directors, attorneys, financial advisors, contractors, and agents (including DIR Auditors in the case of DIR) provided that:

(i) such person or Entity has a need to know the Confidential Information for purposes of performing his or her obligations under or with respect to this Agreement or as otherwise naturally occurs in such person's scope of responsibility;

(ii) such disclosure is made pursuant to an obligation of confidentiality upon such person or Entity that is no less stringent than that set forth in this Section, and

(iii) such disclosure is not in violation of Law, the SMM, or applicable DIR Standards.

(e) The Receiving Party assumes full responsibility for the acts or omissions of any person or Entity to whom it discloses Confidential Information of the disclosing Party regarding their use of such Confidential Information and must take commercially reasonable measures to protect the Confidential Information from disclosure or use in contravention of this Agreement.

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

(g) Unless expressly permitted by this Agreement, neither Party shall:

(i) make any use or copies of the Confidential Information of the other Party except as expressly contemplated by this Agreement;

(ii) possess or acquire any right in or assert any lien against the Confidential Information of the other Party,

(iii) sell, assign, transfer, lease, encumber or otherwise dispose of or disclose the Confidential Information of the other Party to third parties or commercially exploit, or permit a third party to commercially exploit, such information, including through Derivative Work; or

(iv) refuse for any reason (including a default or material breach of this Agreement by the other Party) to promptly provide the other Party's Confidential Information (including any copies thereof) to the other Party if requested to do so.

(h) Notwithstanding the provisions of this Section, DIR may disclose Confidential Information relating to the financial or operational terms of this Agreement and/or Successful Respondent's performance hereunder (e.g., applicable Service Levels and measurements of Successful Respondent's performance with respect to such Service Levels) in connection with the solicitation of proposals for or the procurement of the same or similar services from prospective DIR Contractors provided, DIR may not disclose Confidential Information related to Successful Respondent's processes and procedures without first securing an obligation from prospective DIR Contractors to keep such information confidential.

(i) Notwithstanding the provisions of this Section, the Parties acknowledge and agree that each Party may be required to disclose Confidential Information pursuant to Chapter 552, Texas Government Code (the "Public Information Act"), that DIR and DIR Customers shall be required to and may disclose this Agreement and the terms hereof

pursuant to the Public Information Act and that the Parties shall comply with the Public Information Act and with all applicable opinions of the Office of the Texas Attorney General concerning the Public Information Act.

(j) Each Party shall take all necessary steps to cause its employees, contractors and subcontractors to comply with the provisions of Article 6 DIR DATA AND OTHER CONFIDENTIAL INFORMATION.

6.1.3 Exclusions

Notwithstanding the above, Section 6.1.2 Disclosure of Confidential Information shall not apply to any particular information which the receiving Party can demonstrate:

(i) is, at the time of disclosure to it, generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations;
(ii) after disclosure to it, is published by the disclosing Party or otherwise becomes generally available to the public other than through a breach of the Receiving Party's or a third party's confidentiality obligations;
(iii) was lawfully in the possession of the Receiving Party immediately prior to the time of disclosure to it,
(iv) is received from a third party having a lawful right to disclose such information; or
(v) is independently developed by the Receiving Party without reference to the disclosing Party's Confidential Information. The exclusions in this Section shall not apply to DIR Personal Data.

6.1.4 Loss of Confidential Information

(a) Each party shall:

(i) immediately notify the other Party of any possession, use, knowledge, disclosure, or loss of such other Party's Confidential Information in contravention of this Agreement;
(ii) promptly furnish to the other Party all known details and assist such other Party in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure, or loss;
(iii) cooperate with the other Party in any investigation or litigation deemed necessary by such other Party to protect its rights; and
(iv) promptly use appropriate efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this Agreement.

(b) Each party shall bear any costs it incurs in complying with this Section.

6.1.5 No Implied Rights

Nothing contained in Section 6.1 Confidentiality shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to any Confidential Information of the other Party.

6.1.6 Return or Destruction of Confidential Information

(a) Each Party shall securely store the other Party's Confidential Information until such Confidential Information is returned or destroyed as described in this Section. Except as provided below with respect to Contract Records, each Party shall destroy all documentation in any medium that contains, refers to or relates to the other Party's Confidential Information (or the portion of such Confidential Information specified by the other Party) or shall return such documentation to the other Party or its designee, in the format and on the media reasonably prescribed by the other Party, as follows:

(i) within thirty (30) days of the expiration or termination of this Agreement and completion of each Party's obligations hereunder, including, with respect to Successful Respondent, all periods of Termination Assistance Services requested by DIR; and

(ii) with respect to DIR Confidential Information, at any time DIR requests such Confidential Information or, with respect to particular Confidential Information, within thirty (30) days of the date that such Confidential Information is no longer required by Successful Respondent to perform its obligations under this Agreement as identified by DIR or pursuant to the SMM.

(b) Such documentation shall include all copies of a Party's Confidential Information in the other Party's possession or under the other Party's control. The Party returning or destroying the other Party's Confidential Information shall deliver to the other Party written certification of its compliance with this paragraph signed by an authorized representative of such Party. Notwithstanding the foregoing, either Party may retain one (1) copy of the other Party's Confidential Information in its legal department as and to the extent required to comply with applicable Laws or enforce its rights under this Agreement; provided that such Confidential Information shall be returned or destroyed in accordance with this provision upon the expiration of the period specified in the applicable Law, the expiration of the applicable statute of limitations and the final resolution of any pending dispute. Contract Records shall be retained by Successful Respondent for the duration of the Audit Period unless and to the extent Successful Respondent is directed by DIR to deliver such Contract Records to DIR prior to the expiration of the Audit Period. In no event shall a party withhold any Confidential Information of the other party as a means of resolving any dispute.

6.1.7 Transfer of DIR Confidential Information

Successful Respondent shall not transfer DIR Confidential Information to any other locations, nor change the locations for storage and processing of such DIR Confidential Information, except with the express written consent of DIR, which DIR may withhold in its sole discretion.

6.2 DIR Data

Nothing in this Section is intended to limit the obligations of Successful Respondent under Section 6.1 Confidentiality and Section 6.3 DIR Personal Data of this Agreement with respect to the Confidential Information addressed in such Sections.

6.2.1 Ownership of DIR Data

DIR Data shall be and shall remain, as between the Parties, the property of DIR and/or the applicable DIR Customers. Successful Respondent shall not sell, assign, lease, or encumber DIR Data. Successful Respondent shall not disclose to or allow access by third parties to DIR Data, unless expressly provided for in this Agreement. Successful Respondent shall not commercially exploit, or permit a third party to commercially exploit, DIR Data on behalf of Successful Respondent or any other person or Entity. DIR Data shall be made available to DIR, upon its request, in the form and format as requested by DIR. Upon the expiration or termination of this Agreement, Successful Respondent shall, at DIR's discretion, assist in and/or facilitate the transfer of DIR Data to a Third Party of DIR's choosing.

6.2.2 Safeguarding of DIR Data

(a) Successful Respondent shall maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational, and security measures against the destruction, loss, unauthorized access, or alteration of DIR Data in the possession of Successful Respondent, and which shall be:

(i) no less rigorous than those maintained (or required to be maintained) by DIR or the relevant DIR Customer as of the Commencement Date (or required or implemented by DIR or the relevant DIR Customer in the future to the extent deemed necessary by DIR or such DIR Customer and communicated to Successful Respondent in accordance with Section 4.3 DIR Rules/Employee Safety);

(ii) no less rigorous than those maintained by Successful Respondent for its own information of a similar nature (subject, however, to **Exhibit 2 Financial Provisions and Pricing, Section 2.1.3**

New Services and implementation through Change Control upon approval by DIR, as applicable, but without limiting Successful Respondent's obligations respecting Technology Evolution);

(iii) no less rigorous than accepted security standards in the industry (subject, however, to **Exhibit 2 Financial Provisions and Pricing, Section 2.1.3 New Services** and implementation through Change Control upon approval by DIR, as applicable, but without limiting Successful Respondent's obligations respecting Technology Evolution; and

(iv) (without limiting the Parties' obligations under Section 8.11 Compliance with Laws) compliant with all applicable DIR Rules and DIR Standards, including the requirements of DIR's and the relevant DIR Customer's then-current privacy, security, and records retention policies (such as Internal Revenue Service guidelines contained within IRS Publication 1075 and the rules pertaining to information technology security standards found at 1 Texas Administrative Code (TAC) Chapter 202).

(b) Successful Respondent acknowledges and agrees that certain DIR Customers are legally prohibited from disclosing or allowing access to certain DIR Data, including disclosures to and access by DIR, other DIR Customers, and Successful Respondent. The content and implementation of such data security program and associated technical, organizational, and security measures shall be fully documented by Successful Respondent in the SMM, including the process DIR Customers shall follow to identify DIR Data they are legally prohibited from disclosing and the confidentiality requirements of DIR Customers. Successful Respondent shall permit DIR Auditors to review such documentation and/or to inspect Successful Respondent's compliance with these provisions in accordance with this Section. DIR acknowledges that elements of Successful Respondent's data security program involve customized services offerings regarding the specific means and levels of security protection selected by a customer (regarding, for example, desired levels of host and network intrusion detection services, methods for monitoring and limiting access to data, extent of desired encryption, etc.), and DIR agrees that the specific services selected by DIR pursuant to this Agreement establish the contract requirements with respect to those activities, subject to Technology Evolution and other applicable provisions of this Agreement. From time to time, but not less frequently than two (2) times per Contract Year, Successful Respondent shall proactively provide technical information regarding security best practices in the industry, and upon DIR's approval, Successful Respondent shall, subject to **Exhibit 2 Financial Provisions and Pricing, Section 2.1.3 New Services** (but without limiting Successful Respondent's obligations respecting Technology Evolution) implement any changes to the above security requirements through Change Control.

(c) Under no circumstances shall Successful Respondent make any changes that materially weaken any technical, organizational or security measures in place to safeguard DIR Data, or result in Successful Respondent's failure to meet any of the minimum standards set forth above without DIR's prior approval. Under no circumstances shall Successful Respondent or Successful Respondent Personnel attempt to access or allow access to DIR Data that is not required for the performance of Successful Respondent's obligations or otherwise permitted under this Agreement.

(d) Subject to any restriction in contracts with Successful Respondent's other customers, Successful Respondent shall regularly advise DIR of data security practices, procedures, and safeguards in effect for other Successful Respondent customers that, in Successful Respondent's reasonable judgment, are:

(i) relevant to the Services being provided under this Agreement; and

(ii) define or exceed relevant industry standards relevant to the Services. If requested by DIR, Successful Respondent shall, to the extent reasonably practicable and subject to the Change Control Procedures, implement such enhanced practices, procedures, and safeguards with respect to its provision of Services to DIR hereunder.

(e) DIR shall have the right to establish backup security for any DIR Data and to keep backup and files for such Data in its possession if it chooses. Successful Respondent shall provide DIR with downloads of DIR Data, as requested and directed by DIR, to enable DIR to maintain such backup copies.

(f) In the event Successful Respondent discovers or is notified of a breach, potential breach, exposure, or inappropriate disclosure of security relating to DIR Data, Successful Respondent shall, in addition to its obligations pursuant to Section 4.3 DIR Rules/Employee Safety, immediately once Successful Respondent knows or should have known such a breach, potential breach, exposure, or inappropriate disclosure has occurred:

(i) notify DIR of such breach, potential breach, exposure, or inappropriate disclosure;
(ii) investigate (with DIR's participation if so desired by DIR) such breach, potential breach, exposure, or inappropriate disclosure and perform a risk assessment, Root Cause Analysis, and corrective action plan thereon;
(iii) provide a written report to DIR of such risk assessment, Root Cause Analysis, and action plan;
(iv) remediate the effects of such breach, potential breach, exposure, or inappropriate disclosure of security as soon as practicable or coordinate such remediation if Successful Respondent does not have responsibility for the matters which are the source of the breach, potential breach, exposure, or inappropriate disclosure; and
(v) provide DIR with reasonable assurances that such breach, potential breach, exposure, or inappropriate disclosure shall not recur.

(g) To the extent Successful Respondent removes DIR Data from any media that is taken out of service that is under Successful Respondent's control, Successful Respondent shall destroy or securely erase such media in accordance with the SMM. Under no circumstances shall Successful Respondent use or re-use media on which DIR Data has been stored to store data of any other customer of Successful Respondent or to deliver data to a third party, including another Successful Respondent customer, unless such DIR Data has been securely erased in accordance with the SMM.

(h) Successful Respondent agrees that Successful Respondent and Successful Respondent Personnel shall not access any DIR or DIR Customer Data for any purpose other than the fulfillment of requested Services as provided for in this Agreement. Successful Respondent shall not disclose or allow access to DIR Data, including DIR Customer Data, without an approved request for service that requires access to DIR or DIR Customer's Data for the fulfillment of Services.

6.3 DIR Personal Data

In addition to the provisions of Section 6.1 Confidentiality and Section 6.2 DIR Data, the following privacy and data protection provisions shall apply to DIR Personal Data.

(a) Successful Respondent shall hold any DIR Personal Data that it receives in confidence and in compliance with:

(i) Successful Respondent's obligations under this Agreement, the Exhibits, and Attachments hereto and the SMM; and
(ii) subject to Section 8.11 Compliance with Laws, all Laws regarding its use of and access to such DIR Personal Data.

(b) Successful Respondent agrees that Successful Respondent and Successful Respondent Personnel shall not use any DIR Personal Data for any purpose other than the fulfillment of the terms and conditions of this Agreement. Successful Respondent shall not process or disseminate DIR Personal Data to any third party or transfer DIR Personal Data without the approval of DIR unless expressly provided for in this Agreement. Successful Respondent shall take appropriate action to cause:

(i) any Successful Respondent Personnel who have access to DIR Personal Data pursuant to this Agreement to be advised of, and comply with, the terms and conditions of this Section; and
(ii) any Successful Respondent Personnel who have access to DIR Personal Data to be trained regarding their handling of such DIR Personal Data.

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

(c) When interfacing with DIR or the applicable DIR Customer regarding DIR Personal Data, Successful Respondent shall only disclose or transmit DIR Personal Data to those DIR or DIR Customer employees and DIR Contractors authorized by the Designated DIR Representative or identified in the SMM.

(d) With respect to Personal Medical Data, Successful Respondent shall not need to obtain authorizations from the persons to whom such Personal Medical Data pertains unless DIR determines that such authorizations are necessary and advises Successful Respondent to obtain such authorization. In such case, Successful Respondent agrees to reasonably assist DIR or the applicable DIR Customer in obtaining an authorization, or in confirming that such authorization has been obtained, from each person before viewing any Personal Medical Data of such person contained in DIR's files or systems. The authorization form to be used for this purpose shall be provided by DIR.

(e) With respect to Personal Medical Data, a person may request to inspect, copy, amend, and restrict disclosure of his or her Personal Medical Data when and as permitted by Law. Any such requests that are received by Successful Respondent shall be directed to, and any actions required shall be determined by, DIR.

(f) DIR shall notify Successful Respondent of any:

(i) Limitation in any privacy notice used by DIR to the extent that such limitation may affect Successful Respondent's use or disclosure of DIR Personal Data; and
(ii) Restrictions on the use or disclosure of DIR Personal Data to which DIR agreed to the extent that such restriction may affect Successful Respondent's use or disclosure of such DIR Personal Data.

Successful Respondent agrees to promptly implement any such limitation or restriction as directed by DIR.

(g) If Successful Respondent has knowledge of any unauthorized disclosure of or access to DIR Personal Data, Successful Respondent shall:

(i) report such unauthorized disclosure or access to DIR within three (3) hours of discovering the unauthorized disclosure or access;
(ii) mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Successful Respondent or its agents; and
(iii) cooperate with DIR in providing any notices regarding impermissible disclosures caused by such disclosure or access which DIR deems appropriate.

(h) To the extent such unauthorized disclosure or access is attributable to a breach by Successful Respondent or Successful Respondent Personnel of Successful Respondent's obligations under this Agreement with respect to DIR Personal Data, Successful Respondent shall bear:

(i) the costs incurred by Successful Respondent in complying with its legal obligations relating to such breach; and
(ii) in addition to any other damages for which Successful Respondent may be liable for under this Agreement [except to the extent such disclosure is due to DIR's failing to provide (including through authorization to provide as part of the Services) the level of encryption required under applicable Law to protect such Data], the following costs incurred by DIR or the DIR Customer in complying with their legal obligations relating to such breach, to the extent applicable:

A. the cost of providing notice to affected individuals;
B. the cost of providing such affected individuals with credit-monitoring services for thirty-six (36) months;
C. creating a call center support for such affected individuals for thirty (30) days after the last notification is sent;
D. any related governmental fees or fines assessed against DIR or DIR Customers; and
E. any other Losses for which Successful Respondent would be liable under Section 10.1.4 DIR Data or Confidential Information.

The above shall not be considered damages subject to, and shall not be counted toward, any liability exclusion or cap specified in Article 11 LIABILITY.

(i) As requested by DIR, Successful Respondent shall deliver to DIR all or any specified Personal Medical Data in the format and on the media prescribed by DIR and promptly deliver such Data to DIR or a designated DIR Contractor.

(j) With respect to Personal Medical Data constituting "protected health information" ("PHI"), as such term is defined by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, Successful Respondent shall:

(i) Subject to Section 8.11 Compliance with Laws, implement the technical, organizational, and security measures, including administrative, physical, and technical safeguards, to protect the confidentiality, integrity, and availability of Personal Medical Data constituting electronic PHI ("ePHI") created, received, maintained, or transmitted by Successful Respondent or Successful Respondent Personnel in compliance with the HIPAA Security Rule. Successful Respondent shall cause any Successful Respondent Personnel who have access to ePHI to agree in writing to protect the confidentiality, integrity, and availability of ePHI as required by the HIPAA Security Rule. Successful Respondent shall expeditiously report to DIR any successful unauthorized access, use, disclosure, modification, or destruction of ePHI or interference with system operations in an information system containing PHI of which Successful Respondent becomes aware:

A. such reports shall be provided only as frequently as the Parties mutually agree but no more than once person calendar quarter; and
B. if the HIPAA Security Rule is amended to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify, or destroy ePHI from the definition of "Security Incident," this paragraph shall no longer apply as of the effective date of such amendment. For purposes of this provision, "Security Incident" shall have the meaning given in HIPAA Security Regulation, 45 CFR Part 164, as such regulations may be amended from time to time.

(ii) Subject to Section 8.11 Compliance with Laws, at DIR's request, Successful Respondent shall provide access to Personal Medical Data contained in a "designated record set" (as such terms are defined by the HIPAA Privacy Rule) of a person currently or formerly covered by a DIR benefit plan subject to HIPAA (the "Plan") to DIR or the person currently or formerly covered by the Plan who is requesting such Data. Successful Respondent also shall amend Personal Medical Data in its possession as directed by DIR. Subject to Section 8.11 Compliance with Laws, such access and amendment shall be provided at a time and in a format permitted by the HIPAA Privacy Rule.

(iii) Subject to Section 8.11 Compliance with Laws, Successful Respondent shall document all disclosures of Personal Medical Data to provide a person currently or formerly covered by the Plan with an accounting of disclosures as required by the HIPAA Privacy Rule. Successful Respondent shall, upon DIR's request, provide such an accounting to DIR or the person currently or formerly covered by the Plan who requested such Data at a time and in a format permitted by the HIPAA Privacy Rule.

(iv) Without limiting DIR's obligations under Section 8.11 Compliance with Laws, DIR shall notify Successful Respondent of any:

A. limitations in the Plan's privacy notice to the extent that such limitation may affect Successful Respondent's use or disclosure of Personal Medical Data;
B. changes in or revocation of, permission by a person currently or formerly covered by the Plan to use or disclose Personal Medical Data to the extent that such change may affect Successful Respondent's use or disclosure of the Data; and
C. restrictions on the use or disclosure of Personal Medical Data to which the Plan agreed to the extent that such restriction may affect Successful Respondent's use or disclosure of the Data. Successful Respondent agrees to implement such limitation, change, or restriction as required by HIPAA and in accordance with Section 8.11 Compliance with Laws.

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

6.4 File Access

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

6.5 DIR Data – Correction and Restoration

6.5.1 Corrections

(a) The correction of any errors or inaccuracies in or with respect to DIR Data shall be performed by the Party that has operational responsibility for inputting such DIR Data into the applicable System. To the extent:

(i) Successful Respondent is operationally responsible for inputting such data; or
(ii) such errors or inaccuracies are attributable to the failure of Successful Respondent or Successful Respondent Personnel to comply with Successful Respondent's obligations under this Agreement.

(b) Successful Respondent shall bear the cost of correcting such errors or inaccuracies.

6.5.2 Re-running of Corrected Data

If the correction of errors or inaccuracies as described above necessitates the re-running of corrected DIR Data and thereby results in the usage of additional Resource Units, DIR shall pay the applicable Charge as set forth in **Exhibit 2 Pricing**, unless the underlying errors or inaccuracies are attributable to the failure of Successful Respondent or Successful Respondent Personnel to comply with Successful Respondent's obligations under this Agreement (including the failure of Successful Respondent or Successful Respondent Personnel to adhere to applicable processes

and controls that, if adhered to, would have enabled Successful Respondent or Successful Respondent Personnel to identify and timely correct such errors or inaccuracies, even if caused by DIR), in which case Successful Respondent shall be financially responsible for any additional Resource Units usage resulting from the re-running of corrected data.

6.5.3 Restoration of Data

The restoration of any destroyed, lost, or altered DIR Data shall be performed through generally accepted data restoration techniques by the Party that has operational responsibility under **Exhibit 2 Pricing, Attachment 2.2 Financial Responsibility Matrix** for maintaining the System on which such DIR Data resides and for creating and maintaining backup copies of such DIR Data. To the extent (1) Successful Respondent is operationally responsible for performing such restoration or (2) such destruction, loss, or alteration is attributable to the failure of Successful Respondent or Successful Respondent Personnel to comply with Successful Respondent's obligations under this Agreement, Successful Respondent shall bear the cost of restoring such data to the most recent required back-up.

6.5.4 Cardholder Data

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

6.6 FTI Compliance

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

(b) In performance of this contract, the Successful Respondent agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

    (i) All work will be done under the supervision of the Successful Respondent or the Successful Respondent's employees.

    (ii) The Successful Respondent and the Successful Respondent's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.

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

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

(v) The Successful Respondent certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Successful Respondent at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.

(vi) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS date will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency or his or her designee with a statement containing the data of destruction, description of material destroyed, and the method used.

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

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

(ix) The Successful Respondent will maintain a list of employees with authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.

(x) In addition to including the above provisions into the Services Management Manual to be drafted by the Successful Respondent pursuant to the Agreement, the Services Management Manual should also include details concerning the Successful Respondent's responsibilities during a safeguard review and the support required to resolve identified findings.

(xi) DIR will have the right to void the Agreement, in whole or in part, if Successful Respondent fails to provide the safeguards described above.

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

(xiii) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this

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

(xiv) Additionally, it is incumbent upon Successful Respondent to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

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

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

6.7 Survival

Notwithstanding the expiration or any termination of this Agreement:

(i) the limitation on use and disclosure by Successful Respondent under this Section with respect to DIR Personal Data shall survive the expiration or any termination of this Agreement and shall be perpetual; and

(ii) each party's confidentiality obligations under this Agreement shall continue for any period required by applicable law or until such time as the Confidential Information is publicly known and made generally available through no action or inaction of the receiving Party.

6.8 Requirements for Information in Legal Proceedings

6.8.1 Preservation of Legal Privilege

If DIR notifies Successful Respondent, or Successful Respondent is otherwise aware, that particular DIR Confidential Information may be within DIR attorney-client or work-product privileges of DIR, then regardless of any applicable exclusions, Successful Respondent shall:

(i) not disclose such DIR Confidential Information or take any other action that would result in a waiver of such privileges; and

(ii) instruct all Successful Respondent Personnel who may have access to such communications to maintain privileged material as strictly confidential and otherwise protect DIR privileges.

6.8.2 Successful Respondent Responsibility for DIR Information

To the extent requested by DIR, Successful Respondent shall comply with DIR litigation response plan, including policies and procedures to prepare for and respond to discovery requests, subpoenas, investigatory demands, and other requirements for information related to legal and regulatory proceedings, as such plan may be revised from time to time, including preparing for and complying with requirements for preservation and production of data in connection with legal and regulatory proceedings and government investigations. Upon receipt of any request, demand, notice, subpoena, order, or other legal information request relating to legal proceedings or investigations by third parties relating to any Materials, DIR Confidential Information, or related Systems in Successful Respondent's possession, Successful Respondent shall immediately notify DIR and provide DIR with a copy of all documentation of such legal information request, to the extent Successful Respondent legally may do so and shall cooperate with DIR in responding to such request, demand, notice, subpoena, order, or other legal information request.

6.8.3 Cost of Compliance

Successful Respondent's cost of complying with this Section shall be at no additional charge to DIR.

7 MATERIALS

7.1 DIR Owned and Licensed Materials

7.1.1 Ownership of DIR Owned Materials

As between the parties, DIR shall be the sole and exclusive owner of:

(i) all Materials and other intellectual property owned by DIR or any DIR Customer as of the Effective Date;

(ii) all Materials and other intellectual property acquired by DIR or any DIR Customer on or after the Effective Date; and

(iii) certain Developed Materials as provided in Section 7.2.1 DIR Ownership (collectively, "DIR Owned Materials"), including but not limited to all United States and foreign patents, copyrights, trademarks, service marks, trade secrets, moral rights, author's rights, reversionary rights, and any and all other intellectual property or similar rights ("IP Rights") that exist now or in the future in the DIR Owned Materials.

7.1.2 License to DIR Owned Materials

(a) As of the Effective Date, DIR hereby grants to Successful Respondent and, if and to the extent necessary for Successful Respondent to provide the Services, to Subcontractors designated by Successful Respondent, a non-exclusive, non-transferable, royalty-free limited right and license during the Term to Use the DIR Owned Materials provided by DIR and/or the DIR Customers to Successful Respondent for the express and sole purpose of providing the Services, subject to any conditions or limitations arising from the financial participation of United

States federal government authorities in the development or acquisition of such DIR Owned Materials or otherwise imposed under applicable Laws. Successful Respondent shall have no right to the source code to such DIR Owned Materials unless and to the extent approved in advance in writing by DIR. DIR Owned Materials shall remain the property of DIR. Successful Respondent shall not:

(i) use any DIR Owned Materials for the benefit of any person or Entity other than DIR or the DIR Customers;
(ii) separate or uncouple any portions of the DIR Owned Materials, in whole or in part, from any other portions thereof; or
(iii) reverse assemble, reverse engineer, translate, disassemble, decompile, or otherwise attempt to create or discover any source or human readable code, underlying algorithms, ideas, file formats, or programming interfaces of the DIR Owned Materials by any means whatsoever without the prior approval of DIR, which may be withheld at DIR's sole discretion.

(b) Except as otherwise requested or approved by DIR, Successful Respondent shall cease all use of DIR Owned Materials upon the end of the Term and shall certify such cessation to DIR in a notice signed by an officer of Successful Respondent. THE DIR OWNED MATERIALS ARE PROVIDED BY DIR TO SUCCESSFUL RESPONDENT ON AN AS-IS, WHERE-IS BASIS. DIR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE DIR OWNED MATERIALS OR THE CONDITION OR SUITABILITY OF THE DIR OWNED MATERIALS FOR USE BY SUCCESSFUL RESPONDENT TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.1.3 License to DIR Third Party Materials

(a) Subject to Successful Respondent having obtained any Required Consents, DIR hereby grants to Successful Respondent, for the sole purpose of performing the Services and subject to DIR's and/or the DIR Customers' underlying rights and any conditions or limitations imposed under applicable Laws, the same rights of access and use as DIR and/or the applicable DIR Customer possesses under the applicable licenses with respect to the DIR licensed Third Party Materials provided by DIR and/or DIR Customers to Successful Respondent. Subject to Successful Respondent having obtained any Required Consents, DIR shall also grant such rights to Subcontractors designated by Successful Respondent if and to the extent necessary for Successful Respondent to provide the Services. Except as otherwise expressly agreed by the applicable third party licensors, Successful Respondent shall comply with the duties, including use restrictions and nondisclosure obligations, imposed on DIR and/or the DIR Customers by such licenses. If proof of entitlement for a license is not available, DIR and/or DIR Customers will, at a minimum, notify Successful Respondent in writing of:

(i) the name of the software product and vendor;
(ii) the number of licenses available to DIR and/or the DIR Customers; and
(iii) any other duties, restrictions, and obligations known to DIR or the DIR Customers.

(b) Except as otherwise requested or approved by DIR (or the relevant licensor), Successful Respondent shall cease all use of such Third Party Materials upon the end of the Term. THE DIR LICENSED THIRD PARTY MATERIALS ARE PROVIDED BY DIR TO SUCCESSFUL RESPONDENT ON AN AS-IS, WHERE-IS BASIS. DIR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO THE DIR LICENSED THIRD PARTY MATERIALS OR THE CONDITION OR SUITABILITY OF THE DIR LICENSED THIRD PARTY MATERIALS FOR USE BY SUCCESSFUL RESPONDENT TO PROVIDE THE SERVICES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7.2 Developed Materials

7.2.1 DIR Ownership

(a) Except as otherwise expressly provided in Sections 7.2.3 Successful Respondent Owned Developed Materials and 7.2.4 Third Party Materials, DIR shall be the sole and exclusive owner of all:

(i) Developed Materials that are modifications, enhancements, improvements, configurations, or Upgrades to or Derivatives Works of DIR Owned Materials, including all IP Rights therein; and

(ii) the copyright in all other Developed Materials that are provided to DIR as a Deliverable (as defined in Sections 7.2.3 Successful Respondent Owned Developed Materials).

(b) All Developed Materials owned (or to be owned) by DIR pursuant to this Section shall be considered "works made for hire" (as that term is used in the United States Copyright Act, 17 U.S.C. Section 101, or in analogous provisions of other applicable Laws). To the extent the Developed Materials are not considered works made for hire by operation of law, Successful Respondent hereby irrevocably and perpetually assigns, and shall assign, to DIR without further consideration to the extent of such ownership by DIR all of Successful Respondent's right, title and interest in and to such Developed Materials, including all IP Rights. Successful Respondent acknowledges that DIR and the successors and assignees of DIR shall have the right to obtain and hold in their own name all rights, title, and interest in and to all such rights in such Developed Materials. Successful Respondent agrees to execute any documents and take any other actions requested by DIR to effectuate the purposes of this Section. DIR hereby grants Successful Respondent certain license and other rights with respect to such Developed Materials, as described in Section 7.1.2 License to DIR Owned Materials.

7.2.2 Source Code and Documentation

Successful Respondent shall, promptly as it is developed by Successful Respondent, provide DIR with the source code, if any, and object code and documentation for all Developed Materials owned by DIR pursuant Section 7.1.2 License to DIR Owned Materials. Such source code and technical documentation shall be sufficient to allow a reasonably knowledgeable and experienced programmer to maintain and support such Materials. The user documentation for such Materials shall accurately describe in terms understandable by a typical Authorized User the functions and features of such Materials and the procedures for exercising such functions and features.

7.2.3 Successful Respondent Owned Developed Materials

Successful Respondent shall be the sole and exclusive owner of all Developed Materials that are modifications, enhancements, improvements, configurations, or Upgrades, to or Derivative Works of, Successful Respondent Owned Materials or to the extent not owned by DIR pursuant to Section 7.1.2 License to DIR Owned Materials, including all IP Rights; provided, however, that if the creation of any such Developed Material is specifically requested by DIR or a DIR Customer and is provided through performance of the Services, it shall be treated as commercially available Successful Respondent Owned Developed Material for purposes of all license and other rights of DIR and DIR Customers therein granted pursuant to this Agreement, including under Section 7.6 Ongoing DIR Rights. DIR acknowledges that Successful Respondent and the successors and assignees of Successful Respondent shall have the right to obtain and hold in their own name all rights, title and interest in and to Developed Materials owned by Successful Respondent pursuant to this Section. DIR agrees to execute any documents and take any other actions reasonably requested by Successful Respondent to effectuate the purposes of this Section. Successful Respondent hereby grants DIR and the DIR Customers certain license and other rights with respect to such Developed Materials, as described in Section 7.3.2 License to Successful Respondent Owned Materials and Section 7.6 Ongoing DIR Rights.

7.2.4 Third Party Materials

The ownership of Derivative Works of Third Party Materials created by Successful Respondent in connection with the Services shall, as between Successful Respondent and DIR, be considered Developed Materials owned by DIR. DIR's ownership of such Derivative Works may be subject to, or limited by, the terms of the underlying agreement

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

7.2.5 Disclosure by Successful Respondent of Developed Materials

Successful Respondent shall promptly disclose in writing to DIR the Developed Materials that are developed under this Agreement. With respect to each disclosure, Successful Respondent shall indicate the features or concepts that it believes to be new or different.

7.2.6 Waiver of Moral Rights

To the extent permitted by Law, Successful Respondent hereby waives and shall cause Successful Respondent Personnel who will provide any Services to waive any moral rights, reversionary rights, artist rights, or any similar rights in the DIR owned Developed Materials, such as the right to be named as author, the right to modify, the right to prevent mutilation, and the right to prevent commercial exploitation, whether arising under the Berne Convention or otherwise. Successful Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of such moral rights, reversionary rights, artist rights, or any similar rights and agrees to provide equitable compensation to Successful Respondent Personnel for any assignment or waiver of moral rights.

7.3 Successful Respondent Owned and Licensed Materials

7.3.1 Ownership of Successful Respondent Materials

As between the Parties, Successful Respondent shall be the sole and exclusive owner of the:

(i) Materials and other intellectual property lawfully owned by it or its Affiliates prior to the Effective Date;

(ii) Materials and other intellectual property acquired by Successful Respondent or its Affiliates on or after the Effective Date (including any such Materials and intellectual property purchased from DIR pursuant to this Agreement) other than Materials and other intellectual property obtained by Successful Respondent or its Affiliates from third parties specifically for or on behalf of DIR or a DIR Customer;

(iii) certain Developed Materials as provided in Section 7.2.3 Successful Respondent Owned Developed Materials and 7.2.4 Third Party Materials; and

(iv) Materials and other intellectual property that are not developed by or on behalf of Successful Respondent pursuant to this Agreement or otherwise paid for by DIR or any DIR Customer under this Agreement (collectively, "Successful Respondent Owned Materials"), including all IP Rights in the Successful Respondent Owned Materials.

7.3.2 License to Successful Respondent Owned Materials

(a) As of the Commencement Date, Successful Respondent hereby grants to DIR and the DIR Customers, at no additional charge, a world-wide, non-exclusive, irrevocable, perpetual royalty-free right and license to Use, with the right to allow, Service Component Providers, DIR Contractors and other third parties to Use for the benefit of or Use by DIR and DIR Customers, the Successful Respondent Owned Materials (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials, configurations, and media related thereto), including to:

(i) receive the full benefit of the Services;

(ii) perform or have performed services of the nature of the Services, including in-scope processes and services;

(iii) monitor, access, interface with or use the Materials then being used in the performance of the Services, and

(iv) perform or have performed ancillary services and functions, including related information technology services and functions, and modifying the Successful Respondent Owned Materials for continued Use after the expiration or termination of this Agreement.

(b) Successful Respondent Owned Materials shall remain the property of Successful Respondent. The rights and obligations of DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) with respect to such Successful Respondent Owned Materials following the expiration or any termination of this Agreement, in whole or in part, are set forth in Section 7.6 Ongoing DIR Rights.

7.3.3 License to Successful Respondent Third Party Materials

(a) As of Commencement Date, and subject to Successful Respondent having obtained any Required Consents, Successful Respondent hereby grants to DIR and the DIR Customers during the term, at no additional charge, a world-wide, non-exclusive, irrevocable, and royalty-free right and license to Use, with the right to grant sublicenses to DIR Contractors and other third parties to Use, the Third Party Materials for which Successful Respondent holds the license or for which Successful Respondent is financially responsible under this Agreement (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials, configurations, and media related thereto) for the benefit of DIR and the DIR Customers, including to:

(i) receive the full benefit of the Services;
(ii) perform or have performed services of the nature of the Services, including in-scope processes and Services;
(iii) monitor, access, interface with, or use the Materials then being used in the performance of the Services; and
(iv) perform or have performed ancillary services and functions, including related information technology services and functions, and modifying the Successful Respondent Owned Materials for continued Use after the expiration or termination of this Agreement.

(b) To the extent a DIR Contractor requires a license to Successful Respondent licensed Third Party Materials for the performance of services or functions previously performed by Successful Respondent in circumstances in which the services or functions in question have not been terminated or taken completely away from Successful Respondent and such Third Party Software is generally commercially available at established market rates, if Successful Respondent is required to buy additional licenses to accommodate such use by a DIR Contractor, then DIR or the DIR Contractor shall pay or shall reimburse Successful Respondent for such license fees, provided that Successful Respondent notifies DIR of such fee, obtains DIR's approval prior to incurring it; and uses commercially reasonable efforts (including providing DIR the benefit of discounted license fees that are available to Successful Respondent under the circumstances) to minimize any fee to be paid or reimbursed by DIR or the DIR Contractor. Except as provided in this provision, neither DIR or the DIR Customers nor the DIR Contractors shall be required to pay any other fees or expenses in connection with such licenses to such Third Party Software. The rights and obligations of DIR, the DIR Customers, Entities that qualify as DIR Customers and their designee(s) with respect to such Successful Respondent licensed Third Party Materials following the expiration or any termination of this Agreement, in whole or in part, are set forth in Section 7.6 Ongoing DIR Rights.

7.3.4 Assignment of Licenses, Leases, and Related Agreements

A. Assignment and Assumption

Subject to Successful Respondent obtaining any Required Consents, DIR may assign to Successful Respondent, and Successful Respondent shall assume and agree to perform, all obligations arising on or after the Commencement Date that are related to, the Third Party Materials licenses, Equipment Leases, and Third Party Contracts for which Successful Respondent is financially responsible under **Attachment 2.2 Financial Responsibility Matrix** or this document. Such assignment shall not include any assignment or transfer of any intellectual property rights in Materials

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

B. Items Not Assignable

If, after Successful Respondent has used commercially reasonable efforts for a reasonable period of time, any Third Party Materials licenses, Equipment Leases, or Third Party Contracts cannot, as of the Commencement Date or at any time thereafter, be assigned to Successful Respondent without breaching their terms or otherwise adversely affecting the rights or obligations of DIR, a DIR Customer, or Successful Respondent thereunder, Successful Respondent shall, at DIR's option and with DIR's consent, replace such licenses, leases, or contracts (or the subject thereof) with appropriate alternatives providing equivalent features and functionality and shall remain responsible for providing all of the Services in accordance with the terms of this Agreement.

C. Modifications and Substitution

(a) Successful Respondent may terminate, shorten, modify, or extend the Third Party Materials licenses, Equipment Leases, and Third Party Contracts for which Successful Respondent is financially responsible under Section 8.11.3 Materials, Equipment, and Systems Compliance, **Exhibit 1 SOW**, or **Attachment 2.2 Financial Responsibility Matrix** and, subject to Section 4.12.1 Use of Subcontractors (including DIR's right of prior approval), may substitute or change vendors relating to goods or services covered thereby; provided that, except as otherwise disclosed by Successful Respondent and agreed to by DIR, such change(s):

- (i) shall not constitute a breach of applicable Laws or any obligation of DIR or the DIR Customers under such Materials licenses, Equipment Leases or Third Party Contracts;
- (ii) shall not result in additional financial obligations, financial or operational risk or Losses to DIR or the DIR Customers;
- (iii) shall not result in any increase to DIR or the DIR Customers in the cost of receiving the Services; and
- (iv) if assumable by DIR or the DIR Customers, shall not provide for less favorable terms, conditions or prices for DIR, the DIR Customers and/or their designee(s) following the expiration or termination of this Agreement or any applicable Service(s) than would otherwise be applicable to Successful Respondent (except for terms, conditions or prices available to Successful Respondent because of its volume purchases).

(b) Successful Respondent 's rights under the preceding sentence are conditioned upon Successful Respondent paying all applicable termination or cancellation charges, Losses and other amounts due to the applicable vendor associated with such action and indemnifying DIR and the DIR Customers against any such charges, Losses or other amounts associated therewith. Notwithstanding anything to the contrary herein, Successful Respondent shall not terminate, shorten or modify without DIR's prior written consent any license for Third Party Materials either created exclusively for DIR or the DIR Customers or otherwise not commercially available. Successful Respondent shall reimburse DIR and the DIR Customer(s) for any termination charges, cancellation charges, or other amounts paid by them at Successful Respondent 's direction in connection with obtaining any such modification. DIR and any DIR Customer may request, and Successful Respondent shall provide, copies of all extensions, renewals, terminations and modifications proposed and/or entered into by Successful Respondent hereunder.

7.3.5 Embedded and Dependent Materials

To the extent that Successful Respondent Owned Materials or Third Party Materials are either (1) embedded in or (2) dependent on or necessary for the Use of any Developed Materials owned by DIR pursuant to Section 7.2.1 DIR Ownership or any Third Party Materials that DIR or any DIR Customer licenses, then subject to Section 7.2.4 Third Party Materials, Successful Respondent shall not be deemed to have assigned its or any third party's intellectual property rights in such Materials to DIR, but Successful Respondent hereby grants to DIR, the DIR Customers and Entities that qualify as DIR Customers a world-wide, non-exclusive, perpetual, irrevocable, royalty-free right and license to Use, with the right to allow Service Component Providers, DIR Contractors, and other third parties the right to Use for the benefit of or Use by DIR, the DIR Customers, and Entities that qualify as DIR Customers, such Materials (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials, configurations, and media related thereto); provided, however, such license shall not extend to DIR's, any DIR Customer's, or any Entity that qualifies as a DIR Customer's commercial exploitation of such Successful Respondent Owned Materials or Third Party Materials on a stand-alone basis. Following the expiration or any termination of this Agreement and the termination of the Service(s) for which such Successful Respondent Owned Materials were used, Successful Respondent shall, at DIR's request, provide Upgrades, maintenance, support and other services for such Successful Respondent Owned Materials or Third Party Materials in accordance with Section 7.6.2 Successful Respondent Owned Materials or Section 7.6.3 Third Party Materials, as applicable.

7.3.6 Source Code Escrow

(a) At DIR's request, Successful Respondent shall deposit in escrow with an escrow agent selected by DIR the source code and related documentation for Successful Respondent Owned Materials consisting of Software in any of the following circumstances:

  (i) in the case of any such Software that is no longer routinely supported by Successful Respondent; or

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

(b) In the event of the occurrence of any event giving rise to termination of this Agreement by DIR pursuant to Section 13.4 Termination for Insolvency, Successful Respondent shall provide reasonable assurance to DIR that such occurrence has not and shall not jeopardize Successful Respondent Owned Materials continuing to be routinely supported by Successful Respondent comparable to that provided prior to such occurrence. If Successful Respondent shall be unable to comply with the foregoing to DIR's reasonable satisfaction, Successful Respondent shall, upon direction from DIR, comply with the obligations of this Section as if such Successful Respondent Owned Materials were then no longer routinely supported by Successful Respondent.

(c) At DIR's request, Successful Respondent shall deposit in escrow, with an escrow agent selected by DIR, the source code and related documentation, to the extent available to Successful Respondent, for any Third Party Materials consisting of Software used by Successful Respondent to perform the Services; provided, however, that this obligation will not be applicable to Commercial Off-the-Shelf (COTS) Third Party Materials. Any such escrow shall be governed by and subject to the terms and conditions appearing in the Escrow Agreement attached hereto as **Attachment 3 Form of Source Code Escrow Agreement**, as such terms and conditions may be modified by DIR and the escrow agent. Unless approved by DIR, Successful Respondent shall not use any Third Party Materials consisting of Software for the performance of the Services without obtaining the right to the source code for such software, other than COTS Third Party Materials as permitted above, whether by escrow or otherwise. While Successful Respondent shall not be required to escrow third party COTS software, Successful Respondent shall ensure that Successful Respondent provides all licenses and other rights required under this Agreement.

7.4 Work Product; Other Materials

All Work Product shall be owned by DIR. DIR shall have all right, title, and interest in and to the Work Product and all copies made from them. To the extent any Work Product is not deemed a "work made for hire" by operation of law, Successful Respondent hereby irrevocably assigns, transfers, and conveys, and shall cause its employees, contractors, and agents to assign, transfer and convey, to DIR without further consideration all of its and their right, title, and interest in and to such Work Product, including all rights of copyright, trade secret, moral rights, and other similar rights in such materials. Successful Respondent acknowledges, and shall cause its employees, contractors, and agents to acknowledge that DIR and the successors and permitted assignees of DIR shall have the right to obtain and hold in their own name any such intellectual property rights in and to such Work Product. Successful Respondent agrees to execute, and shall cause its employees, contractors, and agents to execute, any documents or take any other actions as may reasonably be necessary, or as DIR may reasonably request, to perfect DIR's ownership of any such Work Product. This Agreement shall not confer upon either Party intellectual property rights in Materials of the other Party (to the extent not covered by this Article 7 MATERIALS) unless otherwise so provided elsewhere in this Agreement.

7.5 General Rights

7.5.1 Copyright Legends

Each Party agrees to reproduce copyright legends which appear on any portion of the Materials which may be owned by the other Party or third parties.

7.5.2 No Implied License

Except as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to one (1) Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Materials owned by the other Party, any Affiliate of Successful Respondent or any DIR Customer.

7.5.3 Incorporated Materials

Without limiting the provisions of Section 7.3.4 Assignment of Licenses, Leases, and Related Agreements, should either Party incorporate into Developed Materials any intellectual property subject to third party patent, copyright or license rights, any ownership or license rights granted herein with respect to such Materials shall be limited by and subject to any such patents, copyrights or license rights; provided that, prior to incorporating any such intellectual property in any Materials, the Party incorporating such intellectual property in the Materials has disclosed this fact and obtained the prior approval of the other Party.

7.5.4 Residuals

This Agreement shall not restrict an individual who is an employee or representative of a Party from using ideas, concepts, or know-how relating to the provision of information technology, network management and data processing products and services that are retained solely in the unaided memory of such individual after performing the obligations of such Party under this Agreement, except to the extent that such use infringes upon IP Rights of a Party (or in the case of DIR any DIR Customer) or its Affiliates; provided, however, that this Section shall not operate or be construed as permitting an employee or representative of Successful Respondent to disclose, publish, disseminate, or use:

(i) the source of any proprietary information of DIR or a DIR Customer,
(ii) any financial, statistical or personnel information of DIR or a DIR Customer, or
(iii) the operational plans of DIR or the DIR Customers. An individual's memory is unaided if the individual has not intentionally memorized the information for the purpose of retaining and subsequently using or disclosing it as otherwise permitted under this Section and does not identify the information as Confidential Information upon recollection.

7.5.5 Termination or Expiration

In accordance with Article 7 MATERIALS and by way of illustration only, if Successful Respondent uses or embeds automation scripts or other proprietary or commercially-available products in order to deliver or manage the Services, DIR has the unrestricted right and license to continue offering the Services post-expiration or post-termination, including use of such automation scripts or other proprietary or commercially-available products for that purpose. The Parties agree that the purpose of this right and license, as described fully in Article 7, is to ensure uninterrupted offering of Services, including the full benefit of such Services, even if Successful Respondent is no longer a vendor of services to DIR.

7.6 Ongoing DIR Rights

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

7.6.1 DIR Customer Owned and Licensed Materials

With respect to DIR Owned Materials and DIR Customer licensed Third Party Materials, Successful Respondent shall, at no cost to DIR:

(i) deliver to DIR all such Materials and all copies thereof in the format and medium in use to provide the Services; and

(ii) following confirmation by DIR that the copies of such Materials delivered by Successful Respondent are acceptable and the completion by Successful Respondent of any Termination Assistance Services for which such Materials are required, destroy, or securely erase all other copies of such Materials then in Successful Respondent's possession, and cease using such Materials and any information contained therein for any purpose.

7.6.2 Successful Respondent Owned Materials

A. Commercially Available Successful Respondent Owned Materials

With respect to those Materials owned by Successful Respondent or Successful Respondent Affiliates or Subcontractors that are implicated by the Assistance Event that are used to provide the Services (including all modifications, replacements, Upgrades, enhancements, improvements, methodologies, tools, documentation, materials, configurations, and media related thereto) and that are commercially licensed or otherwise commercially available:

(i) Successful Respondent hereby grants to DIR, the DIR Customers and Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)) a worldwide, perpetual, non-exclusive, irrevocable, royalty-free, fully paid-up license on standard terms and conditions no less favorable than those offered generally by Successful Respondent to commercial licensees of such Materials (or at DIR election under then current terms and conditions applicable between Successful Respondent and DIR for similar items) to Use, with the right to grant sublicenses to Use, such Materials and the IP Rights therein; provided that, in all events, such terms and conditions shall be at least broad enough to permit DIR and the DIR Customers following the expiration or termination of the Agreement, to continue to use such Materials to provide for the Services and uses for which such Materials are in use at the time of such expiration or termination;

(ii) Successful Respondent shall deliver to DIR, the DIR Customers and Entities that qualify as DIR Customers (or, at DIR's election, to their designee(s)):

A. a copy of such Materials and related documentation;

B. the source code and object code for such Materials to the extent such code is reasonably necessary to permit them to Use such Materials;

C. the source code and object code for such Materials that are not Commercial Off The Shelf products; and

D. the source code and object code for such Materials that are Commercial Off The Shelf products if Successful Respondent does not offer or provide upgrades, maintenance, support and other services for such Successful Respondent Owned Materials as provided in Section 7.6.2.1(ii)(B); and

(iii) Successful Respondent shall offer to provide to DIR, the DIR Customers, and Entities that qualify as DIR Customers [or, at DIR's election, to their designee(s)] Upgrades, maintenance, support, and other services for such Materials on reasonable commercial terms and conditions and for reasonable fees and charges (on the basis of most favored customer pricing based on Successful Respondent customers receiving similar volumes of services similar to such Upgrades, maintenance, support, and other services).

B. Non-Commercially Available Successful Respondent Owned Materials

(a) With respect to those Materials owned by Successful Respondent or Successful Respondent Affiliates or Subcontractors that are implicated by the Assistance Event that are used to provide the Services (including all modifications, replacements, Upgrades, enhancements, improvements, derivative works, methodologies, tools, documentation, materials, configurations, and media related thereto) and that are not then commercially licensed or otherwise commercially made available, unless otherwise expressly agreed by DIR in writing prior to the first use of such Materials, Successful Respondent hereby grants to DIR (or, at DIR's direction, its designee) a worldwide, perpetual, irrevocable, non-exclusive, non-transferable (except to the extent this Agreement is assigned in accordance with this Agreement) fully paid-up license, to Use such Materials and the IP Rights therein following the expiration or termination of the term or termination of the Service(s) for which such Materials were in use. Such license shall be limited to the use of such Materials and IP Rights by DIR (or, at DIR's direction, its designee) to provide for the DIR Customers and Entities that qualify as DIR Customers or have provided for them by a third party, services similar to the Services and such other uses permitted therefor under this Agreement. DIR (or, at DIR's direction, its designee) shall not be obligated to pay any license or transfer fees in connection with its receipt of the licenses and other rights specified above.

(b) If Successful Respondent is unwilling or unable to grant DIR or its designee the license and other rights described in the preceding paragraph, Successful Respondent shall so notify DIR and shall not use such non-commercially available Materials to provide the Services without DIR's prior written approval. In seeking DIR's approval, Successful Respondent may propose alternative terms, such as a fee for such license, a limitation on the use of such Materials by DIR Contractors, or a limitation on the license period and/or the substitution of a functionally equivalent product.

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

(d) Notwithstanding the foregoing, during the Termination Assistance Services period, Successful Respondent may substitute a license for Third Party Software or Materials sufficient to perform, without additional cost, support or resources and at the levels of performance and efficiency required by this Agreement, the functions of such non-commercially available Materials. If it proposes to do so, Successful Respondent shall notify DIR and describe in detail the features, functionality, and cost of the substitute product. DIR may, in its sole discretion,

elect to use a different product for such purpose. In such case, Successful Respondent shall direct the amount it would have expended in procuring the proposed substitute product toward the procurement of the product selected by DIR.

(e) Unless DIR has otherwise agreed in advance, DIR, the DIR Customers and Entities that qualify as DIR Customers [and, to the extent applicable, their designee(s)] shall not be obligated to pay any fees or costs in connection with their receipt of the licenses and other rights contained in Section 7.6.2 Successful Respondent Owned Materials. Successful Respondent's use of any such Materials to provide the Services shall obligate Successful Respondent to provide, at no additional cost, the license and other rights set forth in Section 7.6.2 Successful Respondent Owned Materials to DIR, the DIR Customers, Entities that qualify as DIR Customers and their designees.

7.6.3 Third Party Materials

(a) With respect to Third Party Materials (subject to Section 4.16.3) for which Successful Respondent holds the license or for which Successful Respondent is financially responsible under this Agreement, upon the effective date of an Assistance Event, Successful Respondent hereby grants to DIR, the DIR Customers and Entities that qualify as DIR Customers [or, at DIR's election, to their designee(s)] a sublicense (with the right to grant sublicenses) on the same rights and terms (including warranties) that are available to Successful Respondent (or Successful Respondent's Affiliates or Subcontractors) to such Third Party Materials that are implicated by that Assistance Event for the benefit of DIR, the DIR Customers and Entities that qualify as DIR Customers; provided that, during the applicable period of time in which Successful Respondent performs the relevant Termination Assistance Services, Successful Respondent may, with DIR's approval, substitute one of the following for such sublicense:

(i) the transfer or assignment to DIR, any DIR Customer or Entities that qualify as DIR Customers [or, at DIR's election, to their designee(s)] of the underlying license for such Third Party Materials on terms and conditions acceptable to all applicable parties;

(ii) the procurement for DIR, any DIR Customer or Entities that qualify as DIR Customers [or, at DIR's election, to their designee(s)] of a new license (with terms at least as favorable as those in the license held by Successful Respondent or its Affiliates or Subcontractors and with the right to either grant sublicenses or allow a third party the right to access and Use such Materials for the benefit of or Use by DIR, DIR Customers, and Entities that qualify as DIR Customers) to such Third Party Materials for the benefit of DIR, the DIR Customers, and Entities that qualify as DIR Customers; or

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

(b) Successful Respondent shall deliver to DIR, the DIR Customers, and Entities that qualify as DIR Customers [or, at DIR's election, to their designee(s)] a copy of such Third Party Materials (including source code, to the extent it has been available to Successful Respondent) and related documentation and shall cause maintenance, support and other services to continue to be available to DIR, the DIR Customers, and Entities that qualify as DIR Customers [or, at DIR's election, to their designee(s)] to the extent it has been available to Successful Respondent. Unless DIR has otherwise agreed in, DIR, the DIR Customers, and Entities that qualify as DIR Customers shall not be obligated to pay any fees or costs in connection with their receipt of the licenses, sublicenses, and other rights specified in this Section. Successful Respondent shall not use any Third Party Materials in connection with the Services for which it is unable to offer the license or other rights set forth in this Section without DIR's prior written approval (and absent such approval, Successful Respondent's use of any such Third Party Materials shall

obligate Successful Respondent to provide, at no additional cost, such license and other rights to DIR, the DIR Customers, Entities that qualify as DIR Customers, and their designees). DIR, however, shall be obligated to make monthly or annual payments attributable to periods after Successful Respondent 's completion of all Termination Assistance Services with respect to the Services for which such Third Party Materials were used for the right to use and receive maintenance or support related thereto, but only to the extent Successful Respondent would have been obligated to make such payments if it had continued to hold the licenses in question or DIR has agreed in advance to make such payments.

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

7.6.4 Ownership of Deliverables

(a) All Deliverables shall be owned by DIR, and DIR shall have all right, title and interest, IP Rights in and to the Deliverables and all copies made from it, and all Deliverables are considered "works made for hire" by DIR as the "author" and owner. Successful Respondent shall document appropriately all Deliverables created by Successful Respondent. Successful Respondent further acknowledges, certifies, and agrees that:

(i) DIR is and shall be deemed the exclusive owner throughout the world of all rights (including the IP Rights) in and to the Deliverables for any and all purposes;

(ii) DIR has the unencumbered right to reproduce, reuse, alter, modify, edit, prepare derivative works based on, or change the Deliverables as it sees fit and for any purpose; and

(iii) DIR has the right to exploit any or all of the foregoing in any and all media, now known or hereafter devised, throughout the universe, in perpetuity, in all configurations as DIR determines in its sole discretion.

(b) Successful Respondent hereby irrevocably and unconditionally waives any and all "moral rights" and any analogous rights, including rights of attribution, paternity, and integrity, arising under any Law, that Successful Respondent has in the Deliverables, and any contribution thereto, and hereby agrees not to make any claim against DIR or any party authorized by DIR to exploit the Deliverables based on such "moral rights" and any analogous rights. Unless otherwise permitted by Law, Successful Respondent shall not, at any time during or after the Term, dispute or contest, directly or indirectly, DIR's exclusive right and title to the Deliverables and the Intellectual Property rights related thereto or the validity thereof. Notwithstanding anything in this Agreement to the contrary, DIR shall have a non-exclusive, royalty-free, fully paid-up, perpetual, irrevocable, non-transferable license to any Successful Respondent Intellectual Property incorporated or embedded in Deliverables.

8 REPRESENTATIONS, WARRANTIES, AND COVENANTS

8.1 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 the Service Levels and accepted industry standards of first tier providers of services that are the same as or similar to the Services;

(iii) Successful Respondent shall use adequate numbers of qualified individuals with suitable training, education, experience, know-how, competence, and skill to perform the Services;

(iv) Successful Respondent shall provide such individuals with training as to new products and services prior to the implementation of such products and services in DIR's and the DIR Customers' environments; and

(v) Successful Respondent shall have the resources, capacity, expertise and ability in terms of Equipment, Materials, know-how, and personnel to provide the Services.

8.2 Maintenance

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 Equipment and Software so that they operate substantially in accordance with the Service Levels and their Specifications, including:

(i) maintaining Equipment in good operating condition, subject to normal wear and tear;

(ii) undertaking repairs and preventive maintenance on Equipment in accordance with the applicable Equipment manufacturer's recommendations and requirements; and

(iii) performing Software maintenance in accordance with the applicable Software supplier's documentation, recommendations and requirements.

8.3 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 the following subsections.

8.3.1 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).

8.3.2 Timing of Functions

Delaying or accelerating, as appropriate, the performance of non-critical functions within limits acceptable to DIR.

8.3.3 Systems Optimization

Turning or optimizing the Systems (including memory), Applications Software, database, and/or processes to optimize performance and minimize costs.

8.3.4 Usage Scheduling

Controlling its use of the System and/or the DIR data network by scheduling usage, where possible, to low utilization periods.

8.3.5 Alternative Technologies

Subject to **Exhibit 1 SOW, Section 6.2.2 Processes, Procedures, Architecture, Standards, and Planning** using alternative technologies to perform the Services.

8.3.6 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.

8.4 Intellectual Property

8.4.1 Ownership and Use

Successful Respondent represents, warrants, and covenants that: (1) it is either the owner of, or is authorized to use, and possesses sufficient rights to grant the rights and licenses contained in this Agreement to, any and all Materials, Equipment, Systems and other resources or items utilized and/or provided by Successful Respondent and (2) that such Materials, Equipment, Systems, and other resources or items utilized and/or provided by Successful Respondent shall not infringe the IP Right of any third party. As to any such Materials, Equipment, Systems, resources, or items that Successful Respondent does not own, Successful Respondent shall advise DIR in writing as to the ownership and extent of Successful Respondent's rights with regard to such Materials, Equipment, Systems, 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.

8.4.2 Performance

Successful Respondent represents, warrants and covenants that any Successful Respondent Owned Materials consisting of Software and any Equipment provided by Successful Respondent 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.

8.4.3 Developed Materials Compliance

Successful Respondent warrants and covenants that Developed Materials and Services shall be free from material errors in operation and performance, shall Comply in all material respects with the applicable documentation and Specifications, shall not infringe the IP Rights of any third party, and shall provide the functions and features and operate in the manner described in Exhibit 1 SOW or otherwise agreed by the Parties (including in the Transition Plan), for the later of one hundred twenty (120) days and the completion of three (3) full production cycles involving such Developed Material. During such warranty period, Successful Respondent shall correct any failure to Comply at no additional charge to DIR and shall use commercially reasonable efforts to do so as expeditiously as possible. In the event that Successful Respondent fails or is unable to repair or replace such nonconforming Developed Material, DIR shall, in addition to any and all other remedies available to it hereunder, be entitled to obtain from Successful Respondent a copy of the source code and/or object code and/or other applicable documentation to such Developed Material, provided that with respect to any such provided source code for Successful Respondent owned Developed Materials, DIR (or its designee) may utilize such source code only for the repair or maintenance of such Successful Respondent owned Developed Material, and/or to facilitate the Termination Assistance Services to be provided by Successful Respondent during the Termination Assistance period (to the extent reasonably necessary for DIR to continue to have Services performed for it pursuant to the terms of this Agreement). The foregoing warranties and covenants will not extend to any failure of any Successful Respondent to Comply attributable to:

(i) any change or modification to the Developed Material requested by DIR that is not contemplated by this Agreement, and for which Successful Respondent or its Affiliate or Subcontractor provides notice as being outside the scope of this Agreement; or

(ii) DIR operating such Developed Material contrary to:

A. the applicable documentation and Specifications;

B. the purpose(s) contemplated by this Agreement; or

C. the types of hardware contemplated by this Agreement or recommended, supplied, or approved by Successful Respondent.

8.4.4 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 8.4.3 Developed Materials Compliance or any

Equipment provided by Successful Respondent 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 Equipment, or replace such Software or Equipment with conforming Software or Equipment.

8.5 Non-Infringement

8.5.1 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.

8.5.2 Third Party Materials Indemnification

In addition, with respect to Third Party Materials provided by Successful Respondent pursuant to this Agreement, Successful Respondent covenants that it shall either indemnify, defend, and hold DIR and the DIR Customers harmless from and against any Losses arising out of or relating to such Third Party Materials, or 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.

8.6 General

8.6.1 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 Section 4.15 Required Consents, 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 8.4 Intellectual Property and 8.5 Non-Infringement 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 6.1.2 Disclosure of Confidential Information, 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 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.

8.6.2 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.

8.7 Certifications

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

(i) 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;

(ii) 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;

(iii) 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;

(iv) has not received payment from DIR or any of its employees for participating in the preparation of the Agreement;

(v) 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;

(vi) 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;

(vii) 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;

(viii) 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;

(ix) 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;

(x) is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;

(xi) for itself and on behalf of its Subcontractors, has identified (and will identify for the duration of the Term):

A. all current or former employees of the State assigned or proposed to work on the 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

B. any former executive head of a State agency employed by Successful Respondent;

(xii) 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;

(xiii) 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;

(xiv) Successful Respondent acknowledges the applicability of Sections 2155.444 and 2155.4441, Texas Government Code, in fulfilling the terms of the Agreement;

(xv) 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, 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;

(xvi) 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:

A. all persons to whom the E-Verify system applies, and who are hired by the Successful Respondent during the term of this Contract to perform duties within Texas; and

B. all Subcontractors' employees to whom the E-Verify system applies, and who are hired by the Subcontractor during the term of this Contract and assigned by the Subcontractor to perform work pursuant to this Contract;

(xvii) 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;

(xviii) in accordance with Section 2054.5192, Texas Government Code, for any contract with a state agency, if Successful Respondent, or subcontractor, officer, or employee, of the Successful Respondent will have access to a state computer system or database, then Successful Respondent shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, Texas Government Code, as selected by DIR. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. Successful Respondent shall verify to DIR completion of the program by each such officer, employee, or subcontractor;

(xix) 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.

8.8 Inducements; 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.

8.8.1 Reliance

In executing this Agreement, DIR relies on Successful Respondent's representations, warranties, and covenants regarding the following:

(i) Successful Respondent regularly provides the types of Services described in the RFO 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 responsiveness, and has performed similar Services for other public or private entities;

(iii) Successful Respondent has thoroughly reviewed, analyzed, and understood the RFO, has timely raised all questions or objections to the RFO, and has had the opportunity to review and fully

understand the 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 had the opportunity to review and understand the State's stated objectives in entering into this Agreement and, based on such review and understanding, 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 data center services program as described in the RFO and 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.

8.8.2 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.

8.8.3 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 DIR Code of Ethics, as modified from time to time.

8.8.4 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.

8.8.5 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.

8.8.6 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.

8.8.7 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.

8.8.8 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.

8.8.9 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.

8.8.10 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.

8.9 Malicious Code

Each Party shall cooperate with the other Party and shall take commercially reasonable actions and precautions consistent with industry standards to prevent the introduction and proliferation of Malicious Code into DIR's or a DIR Customer's environment or any System used to provide the Services and to notify the other Party expeditiously of any Malicious Code in any such environment or System of which it become aware. Without limiting Successful Respondent's other obligations under this Agreement, in the event Malicious Code is found in Equipment, 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.

8.10 Disabling Code

Successful Respondent represents, warrants, and covenants that, without the prior written consent of DIR, Successful Respondent shall not insert into the Software any code that could be invoked to disable or otherwise shut down all or any portion of the Software, Equipment, and/or Systems. Successful Respondent further represents, warrants, and covenants that, with respect to any disabling code that may be part of the Software, Successful Respondent shall not invoke or cause to be invoked such disabling code at any time, including upon expiration or any termination of this Agreement, without DIR's prior written consent. Successful Respondent also represents, warrants, and covenants that it shall use commercially reasonable efforts to not use Third Party Materials consisting of Software containing disabling code without the prior approval of DIR. For purposes of this provision, code that serves the function of

ensuring software license compliance (including passwords) shall not be deemed disabling code, provided that Successful Respondent will use commercially reasonable efforts to attempt to learn from third parties whether such code is included in third party products and will notify DIR accordingly and obtain DIR's approval prior to installing such code in any Software, Equipment, or System.

8.11 Compliance with Laws

8.11.1 Compliance by Successful Respondent

Subject to Section 8.11.4 Notice of Laws and Section 8.11.5 Interpretation of Laws or Changes in Laws, 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.

8.11.2 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 Equipment, Materials, and other resources it provides or has assumed operational responsibility hereunder).

8.11.3 Materials, Equipment, and Systems Compliance

Successful Respondent represents, warrants, and covenants that the Materials, Equipment, and Systems owned, developed, implemented, provided or used by Successful Respondent in providing the Services are in compliance with all applicable Laws and shall remain in compliance with such Laws during the Term.

8.11.4 Notice of Laws

Successful Respondent shall notify DIR of any Laws and changes in Laws applicable to the providers of services similar to the Services or to the performers of activities or functions similar to any of Successful Respondent's other legal and contractual obligations hereunder ("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.

8.11.5 Interpretation of Laws or Changes in Laws

(a) 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 8.11.7 Termination, as applicable. For purposes of clarity, DIR maintains final approval rights, in its sole discretion, to interpret any such change needed under this Section 8.11.5 Interpretation of Laws or Changes in Laws 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 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.

(b) Without limiting either Party's obligations under this Section 8.11.5 Interpretation of Laws or Changes in Laws, 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.

8.11.6 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, Materials, Equipment, and Systems prior to the deadline imposed by the regulatory or governmental body having jurisdiction for such requirement or change. Without modifying the Parties' respective financial obligations set forth in **Attachment 2.2 Financial Responsibility Matrix**, Successful Respondent shall bear the costs associated with compliance with (1) Successful Respondent Laws and (2) DIR Laws unless the change(s) required for compliance meets the definition of New Service in which case it shall be treated as Project.

8.11.7 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.

8.11.8 Responsibility

Subject to Section 8.11.5 Interpretation of Laws or Changes in Laws, 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.

8.12 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

8.13 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.

8.14 Previous and Outside Contracts

(a) 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.

(b) Successful Respondent shall disclose any future litigation, mediation, arbitration, or other alternate dispute resolution procedure involving Successful Respondent, its Affiliates or Subcontractors that would reasonably be expected to materially adversely affect Successful Respondent's ability to perform and fulfill its obligations under this Agreement or would relate to the type of Services performed under this Agreement.

8.15 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.

8.16 Interoperability

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

8.17 Prohibition on Contracts with Companies Boycotting Israel

As required by Texas Government Code Section 2270.002, by executing the above referenced Contract, Successful Respondent represents and warrants that it does not and will not during the term of this Contract 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 Contract. Successful Respondent agrees to take all necessary steps to ensure this representation and warranty remains true during the term of this Contract.

8.18 Contracting Information Responsibilities

Successful Respondent represents and warrants that it will comply with the requirements of Section 552.372(a) of the Texas Government Code. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552 of the Government Code, may apply to the contract and the Successful Respondent agrees that the contract can be terminated if the Respondent knowingly or intentionally fails to comply with a requirement of that subchapter.

8.19 Human Trafficking Prohibition

Under Section 2155.0061 of the Texas Government Code, the Successful Respondent certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified Agreement and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

9 INSURANCE AND RISK OF LOSS

Successful Respondent shall continuously maintain the insurance coverages set forth in **Attachment 2 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.

10 INDEMNITIES

10.1 Indemnities 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 and threatened Losses due to non-Party claims arising from or in connection with any of the following:

10.1.1 Representations, Warranties, and Covenants

Successful Respondent's breach of any of its representations, warranties, or obligations set forth in Section 8.6.1 Successful Respondent, Section 8.7 Certifications, Section 8.8 Inducements; Code of Ethics, Section 8.9 Malicious Code, Section 8.10 Disabling Code, and Section 8.11 Compliance with Laws.

10.1.2 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.

10.1.3 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 or a DIR Customer in conformity with the request or direction of Successful Respondent with respect to any such license, lease, or contract.

10.1.4 DIR Data or Confidential Information

Successful Respondent's breach of its obligations with respect to the above Article 6 DIR DATA AND OTHER CONFIDENTIAL INFORMATION, including any breach or exposure of DIR Data, DIR Personal Data, or DIR Confidential Information.

10.1.5 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 Section 8.4 Intellectual Property and Section 8.5 Non-Infringement.

10.1.6 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.

10.1.7 Taxes

Taxes, together with interest and penalties, that are the responsibility of Successful Respondent under **Exhibit 2 Financial Provisions and Pricing, Section 2.1.2 Taxes**.

10.1.8 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.

10.1.9 Affiliate, Subcontractor, or Assignee Claim

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.

10.1.10 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.

10.1.11 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).

10.1.12 Government Claims

(a) 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.

(b) THE PARTIES AGREE THAT THE INDEMNITIES ABOVE (SECTIONS 10.1.1 THROUGH 10.1.12) 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.

10.2 Infringement

In the event that (1) any Materials, Equipment, Systems, 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 Materials, Equipment, Systems, Services, and other resources or items is enjoined, Successful Respondent shall, in addition to defending, indemnifying, and holding harmless DIR as provided in Section 10.1.5 Infringement 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 (1) of the following:

10.2.1 Obtain Rights

Obtain for DIR and the DIR Customers the right to continue using and receiving the benefits of such Materials, Equipment, or Services.

10.2.2 Modification

Modify the item(s) in question so that it is no longer infringing (provided that such modification does not degrade the performance or quality of the Services or adversely affect DIR's and the DIR Customers' intended use as contemplated by this Agreement).

10.2.3 Replacement

Replace such item(s) with a non-infringing functional equivalent acceptable to DIR, including all associated services and expenses such as testing, integrating, and configuring.

10.2.4 Discontinued Use

If, despite Successful Respondent's commercially reasonable efforts to effect the alternatives set forth in Section 10.2.1 Obtain Rights through Section 10.2.3 Replacement above, the Parties determine that none of such alternatives are feasible, Successful Respondent may discontinue its use of such infringing or potentially infringing Materials, Equipment, or Services; provided, however, neither such right or such discontinuation shall limit nor expand DIR's rights or 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.

10.3 Indemnification Procedures

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

10.3.1 Notice

Promptly after receipt by any Entity entitled to indemnification under this Agreement of notice of the commencement or threatened commencement of any civil, criminal, administrative, or investigative action or proceeding involving a claim in respect of which the indemnitee shall seek indemnification hereunder, the indemnitee shall notify the indemnitor of such claim. No delay or failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that such indemnitor has suffered actual prejudice by such delay or failure. Within fifteen (15) days following receipt of notice from the indemnitee relating to any claim, but no later than five (5) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee that the indemnitor elects to assume control of the defense and settlement of that claim (a "Notice of Election").

10.3.2 Procedure Following Notice of Election

(a) 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.

(b) 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:

  (i) the indemnitee shall be entitled to employ counsel at its own expense to participate in the handling of the claim; and

  (ii) 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.

(c) 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:

(i) the indemnitor has delivered a timely Notice of Election and such amount was agreed to without the written consent of the indemnitor;
(ii) the indemnitee has not provided the indemnitor with notice of such claim and a reasonable opportunity to respond thereto; or
(iii) the time period within which to deliver a Notice of Election has not yet expired.

10.3.3 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.

10.4 Subrogation

Except as otherwise provided in **Attachment 2 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.

11 LIABILITY

11.1 General Liability

Subject to the specific provisions and limitations of Article 11 LIABILITY 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.

11.2 Force Majeure

11.2.1 General

Subject to Section 11.2.4 Disaster Recovery, 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.

11.2.2 Duration and Notification

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

11.2.3 Substitute Services; Termination

If any event described in Section 11.2.1 General has substantially prevented, hindered, or delayed, or is reasonably expected to substantially prevent, hinder, or delay the performance by Successful Respondent of Services necessary for the performance of critical DIR or DIR Customer functions for longer than the recovery period specified in the applicable disaster recovery plan or, if there is no such specified recovery period, twenty-four (24) hours, Successful Respondent shall, unless and until otherwise directed by DIR, use commercially reasonable efforts to procure such Services from an alternate source at Successful Respondent's expense for so long as the delay in performance shall continue, up to the Charges actually paid to Successful Respondent for the Services with respect to the period of non-performance. If Successful Respondent is unable to procure such substitute services on an expedited basis or DIR elects to contract directly for such services, DIR may procure such Services from an alternate source at DIR's expense. In addition, if any event described in Section 11.2.1 General substantially prevents, hinders or delays the performance by Successful Respondent of Services necessary for the performance of critical DIR functions:

(i) for more than seven (7) days, then DIR may, upon notice to Successful Respondent, terminate all or any portion of the Services so affected (including portions that are no longer required if the impacted portion is terminated) as of the termination date specified in the notice; or

(ii) for more than fifteen (15) days, then DIR may, upon notice to Successful Respondent, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. Successful Respondent shall not have the right to additional payments or increased usage charges as a result of any force majeure occurrence affecting Successful Respondent's ability to perform.

11.2.4 Disaster Recovery

Upon the occurrence of a force majeure event that constitutes a disaster under the applicable disaster recovery plan and as declared at DIR's discretion, Successful Respondent shall promptly implement, as appropriate, the applicable business continuity and disaster recovery plan and provide business continuity and Disaster Recovery Services, including as described in **Exhibit 1 SOW**. The occurrence of a force majeure event shall not relieve Successful Respondent of its obligation to implement, as appropriate, the applicable business continuity and disaster recovery plan and provide business continuity and Disaster Recovery Services, except to the extent execution of the disaster recovery plan is itself prevented by the force majeure event.

11.2.5 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 adjusted downward so that DIR is not required to pay any amounts for Services that DIR and/or any DIR Customer is not receiving, whether from Successful Respondent or from an alternate source at Successful Respondent's expense pursuant to Section 11.2.3 Substitute Services; Termination.

11.2.6 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 and the DIR Customers 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.

11.3 Limitation of Liability

11.3.1 Exclusions from Limitations

EXCEPT AS PROVIDED IN THIS SECTION 11.3, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, COLLATERAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, REGARDLESS OF THE FORM OF THE ACTION OR THE THEORY OF RECOVERY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Further, indirect, incidental, collateral, consequential, special, exemplary, or punitive damages or lost profits do not include those Losses that may be recoverable pursuant to the indemnification obligations set forth in Section 10.1 Indemnities by Successful Respondent.

11.3.2 Liability Cap

Additionally, except as provided in this Section 11.3 Limitation of Liability and, in the case of DIR, to the extent authorized by applicable Laws (including the constitution of the State), the total aggregate liability of either Party, for all claims asserted by the other Party under or in connection with this Agreement, regardless of the form of the action or the theory of recovery, shall not exceed the following amounts: (i) for any claim arising from or related to the period beginning on the Effective Date until twelve (12) months after the Commencement Date, the Charges paid and payable by DIR during the eighteen (18) months preceding such action or claim or, in the event the Charges have not been paid for eighteen (18) months following the Commencement Date, an amount equal to the amounts specified in **Exhibit 2 Attachment 2.1** applicable to the first eighteen (18) contract months following the Commencement Date, and (ii) for the remainder of the Term, Charges paid and payable by DIR during the twelve (12) months preceding such action or claim .

11.3.3 Exceptions to Limitations of Liability

Section 11.3.1 Exclusions from Limitations and Section 11.3.2 Liability Cap shall not apply with respect to:

(i) Losses occasioned by the fraud, willful misconduct, or gross negligence of a Party.
(ii) Losses that are the subject of indemnification under this Agreement.
(iii) Any losses occasioned by any breach of Successful Respondent's representations, warranties, or covenants under this Agreement set forth in Sections 8.6.1, 8.7, 8.8, 8.9, 8.10, 8.11, and 8.12.
(iv) Losses occasioned by Successful Respondent 's refusal to provide Services or Termination Assistance Services. For purposes of this provision, "refusal" shall mean the refusal or failure to commence performance or the intentional cessation by Successful Respondent, in a manner impermissible under this Agreement, of the performance of all or a material portion of the Services or Termination Assistance Services then required to be provided by Successful Respondent under this Agreement.
(v) Any losses occasioned by Successful Respondent's breach of its obligations under Article 6 DIR DATA AND OTHER CONFIDENTIAL INFORMATION.

11.3.4 Items Not Considered Damages

(a) The following shall not be considered damages subject to, and shall not be counted toward any liability exclusion or cap:

- (i) Service Level Credits or Deliverable Credits assessed against Successful Respondent pursuant to **Exhibit 1 SOW, Attachment 1.2 Service Levels Matrix**.
- (ii) Amounts withheld by DIR in accordance with this Agreement due to incorrect Charges or Services not provided.
- (iii) Amounts paid by DIR but subsequently recovered from Successful Respondent due to incorrect Charges or Services not provided.
- (iv) Invoiced Charges and other amounts that are due and owing to Successful Respondent for Services under this Agreement.
- (v) Liquidated Damages assessed against Successful Respondent pursuant to Section 11.4 Liquidated Damages.

(b) Further, indirect, incidental, collateral, consequential, or special damages or lost profits do not include those damages provided in Article 10 INDEMNITIES or Section 11.4 Liquidated Damages.

11.3.5 Waiver of Liability Cap.

If, at any time, the total aggregate liability of one Party for claims asserted by the other Party under or in connection with this Agreement exceeds sixty percent (60%) of the applicable liability cap specified in Section 11.3.2 and, upon receipt of the request of the other Party, the Party incurring such liability refuses to waive such cap and/or increase the available cap to an amount at least equal to the original liability cap, then the other Party may, upon notice, terminate this Agreement in its entirety as of the termination date specified in the notice.

11.3.6 Acknowledged Direct Damages

(a) For the avoidance of doubt, the following shall be considered direct damages and neither Party shall assert that they are indirect, incidental, collateral, consequential or special damages, or lost profits to the extent they result directly from the breaching Party's failure to perform in accordance with this Agreement:

- (i) Costs and expenses of restoring or reloading any lost, stolen, or damaged DIR Data.
- (ii) Costs and expenses of implementing a work-around in respect of a failure to provide the Services or any part thereof.
- (iii) Costs and expenses of replacing lost, stolen, or damaged Equipment and Materials.
- (iv) Cover damages, including the costs and expenses incurred to procure the Services or corrected Services from an alternate source.
- (v) Costs and expenses incurred to bring the Services in-house or to contract to obtain the Services from an alternate source.
- (vi) Straight time, overtime or related expenses incurred by either Party in performing (1) through (5) above, including overhead allocations for employees, wages, and salaries of additional employees, travel expenses, overtime expenses, telecommunication charges, and similar charges.
- (vii) Subject to Section 8.11 Compliance with Laws, fines, penalties, sanctions, interest or other monetary remedies incurred as a result of a failure to comply with applicable Laws.
- (viii) Service Level Credits or Deliverable Credits assessed against Successful Respondent.
- (ix) Costs and expenses of protecting and compensating the State and its constituents after a Security Incident, including but not limited to notifications, fines and penalties, establishing a call center, and thirty-six (36) months of credit monitoring for effected individuals.

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

11.3.7 DIR Customer Claims and Damages

(a) Successful Respondent acknowledges and agrees that:

(i) DIR shall be entitled to assert actions, claims, rights, remedies and privileges against Successful Respondent on behalf of all DIR Customers that have received Services;

(ii) direct damages suffered by each DIR Customer arising out of or relating to Successful Respondent 's performance or failure to perform under this Agreement shall be deemed to be the direct damages of DIR to the extent such damage would constitute a direct damage hereunder or under applicable Law if such damage had been incurred directly by DIR; and

(iii) the losses suffered by each DIR Customer shall be deemed to be losses of DIR to the extent such losses would have been recoverable hereunder or under applicable Law if incurred by DIR.

(b) DIR and Successful Respondent agree that in the event DIR is finally awarded damages against Successful Respondent that arose directly as a result of a claim that Successful Respondent breached its obligations under the Agreement, such damages award will be reduced by the amount of any Service Level Credit (for which the right of Earnback has been lost or has expired), Deliverable Credit, or CAP Failure Credit which DIR has received from Successful Respondent solely to the extent such Service Level Credit, Deliverable Credit, or CAP Failure Credit, as the case may be, arises directly from the same event that is the basis of the damages award.

11.3.8 Duty to Mitigate

Each Party shall use appropriate efforts to mitigate its damages to the extent within its reasonable control and consistent with the Parties' respective performance obligations under this Agreement; provided, however, this provision is not intended to expand or diminish a Party's rights or obligations under this Agreement, alter the plain meaning of the provisions contained herein, or limit a Party's rights to act in its own self-interest.

11.4 Liquidated Damages

(a) In the event of an interruption of Services experienced by any device or telecommunications system located at the DCS consolidated data center(s) and affecting more than fifty percent (50%) of DCS Customers in any way, provided such interruption is within the Successful Respondent's scope and caused, in whole or in part, by the fault of Successful Respondent or its subcontractors as determined by DIR, DIR may assess liquidated damages up to $7,562.79 per fifteen (15) minutes until such Service is restored or such pro-rated amount.

(i) For purposes of this section, an 'interruption' includes any time that a System, Application, Software, Equipment, Network or any other part of the Services is not Available.

(ii) The timing of such interruption begins at the time the interruption begins, regardless of Successful Respondent's awareness of the interruption, and ends when the Services are completely restored.

(b) In the event of a breach of the DCS consolidated data center(s), including the physical structure and related systems within Successful Respondent's scope, the Successful Respondent shall notify DIR of such breach within three (3) hours of Successful Respondent discovery such breach. If Successful Respondent fails to notify DIR within the required three (3) hour notification time period, DIR may assess liquidated damages up to $7,562.79 per fifteen (15) minutes until such notification is made.

12 DISPUTE RESOLUTION

12.1 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 12.1.5 Remedies, the Parties shall first attempt to resolve such dispute informally, as follows.

12.1.1 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 12.1.5 Remedies or Section 13.8 Absolute Right). 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 12.1.2 Escalation below upon notice to the other Party.

12.1.2 Escalation

Within five (5) DIR Business Days of a notice under Section 12.1.1 Initial Effort 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.

12.1.3 Provision of Information

During the course of negotiations under Section 12.1.1 Initial Effort or Section 12.1.2 Escalation 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 proceedings; provided, however, the underlying facts supporting such materials may be subject to discovery.

12.1.4 Prerequisite to Formal Proceedings

Upon the earlier to occur of (1) the designated senior executives under Section 12.1.2 Escalation concluding in good faith that amicable resolution through continued negotiation of a dispute does not appear likely and (2) the thirty-first (31st) day following the date of the notice provided under Section 12.1.1 Initial Effort 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).

12.1.5 Remedies

(a) Notwithstanding the provisions and time periods specified in this Section 12.1 Informal Dispute Resolution, 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 6 DIR DATA AND OTHER CONFIDENTIAL INFORMATION; or
- (iv) address a claim arising out of the breach or attempted or threatened breach of the obligations described in the following sentence.

(b) 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 12.3 Continued Performance, or its obligation to provide access to computers or files containing DIR Data in accordance with Section 6.4 File Access, 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).

12.2 Jurisdiction

The laws of the State of Texas shall govern the construction and interpretation of this Agreement. Except as otherwise expressly provided in this Section, each Party irrevocably agrees that any legal action, suit, or proceeding brought by it in any way arising out of this Agreement must be brought solely and exclusively in the state courts of Travis County, Texas, or the State Office of Administrative Hearings, as applicable, and irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in personam, generally and unconditionally with respect to any action, suit, or proceeding brought by it or against it by the other Party. 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.

12.3 Continued Performance

12.3.1 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.

12.3.2 Non-Interruption of Service

Successful Respondent acknowledges and agrees that any interruption to the Service may cause irreparable harm to DIR and/or the DIR Customers and may adversely impact the ability of the State to carry out vital public safety and other governmental functions (including homeland security matters), in which case an adequate remedy at Law would not be available. Except to the extent expressly permitted under Chapter 2251, Texas Government Code, 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.

12.4 Governing Law

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

13 TERMINATION

13.1 Termination for Cause

13.1.1 By DIR

(a) 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 Successful Respondent:

- (i) commits a material breach of its obligations with respect to the Transition Services or the Transformation Services as provided in **Exhibit 1 SOW, Section 2.5.10 Remedies for Transition Failure** as applicable and such breach is not cured within the applicable timeframe for cure provided in such provision;
- (ii) commits a material breach of this Agreement, which breach is not cured within thirty (30) days after notice of the breach from DIR;
- (iii) commits a material breach of this Agreement which is not capable of being cured within the period specified pursuant to (2) above;
- (iv) commits numerous breaches of its duties or obligations (excluding Service Level Defaults) which collectively constitute a material breach of this Agreement and Successful Respondent fails to do both of the following:
  - A. cure each such breach within thirty (30) days of notice thereof; and
  - B. develop within fifteen (15) days following written notice of breach from DIR a complete plan reasonably acceptable to DIR for curing the breach and correcting the deficiencies causing such breaches on a permanent basis; provided, however, this Section shall in no manner limit:
    1. DIR's right of termination pursuant to any other provision of this Section 13.1.1 By DIR; or
    2. Successful Respondent's obligation to cure individual nonmaterial breaches of this Agreement;
- (v) becomes liable for or incurs Service Level Credits under this Agreement that, in the aggregate, exceed seventy-five percent (75%) of the cumulative At Risk Amount during any rolling six (6) month period (exclusive of any earnback during such period);
- (vi) fails to perform in accordance with the Minimum Service Level for same Critical Service Level for three (3) consecutive Measurement Windows or during four (4) of any six (6) consecutive Measurement Windows (provided that the applicable Measurement Window is at least one (1) month in duration); or
- (vii) commits a material breach of Section 8.8 Inducements; Code of Ethics of this Agreement

(b) The express acknowledgment that a certain amount of Service Level Credits or number of Service Level Defaults constitutes grounds for termination under items (5) and (6) above does not imply that a lesser amount or number cannot constitute a material breach of this Agreement and therefore grounds for termination under other Subsections. For the period beginning on the Commencement Date and ending twelve (12) months from such date, Successful Respondent's failure to perform in accordance with item (6) will not constitute a breach of this Agreement.

13.1.2 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 exceeding in the aggregate two (2) months of monthly base charge by the specified due date 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 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.

13.2 Termination for Convenience

DIR may, upon at least six (6) months 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; provided, however, DIR shall be responsible for: a) assuming any facility leases dedicated exclusively to DIR or DIR's Customers; and b) payment of any accepted and unrecovered milestone Charges set forth in tab 3 of **Exhibit 2 Pricing Attachment 2.1 Transition**.

13.3 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.

13.4 Termination for Insolvency

Subject to relevant law, if Successful Respondent (1) 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, (2) passes a resolution for its voluntary liquidation, (3) has a receiver or manager appointed over all or substantially all of its assets, (4) makes an assignment for the benefit of all or substantially all of its creditors, or (5) 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 continues or otherwise remains open or unresolved), terminate this Agreement, in whole or in part, as of the termination date specified in the notice.

13.5 DIR Rights Upon Successful Respondent's Bankruptcy

13.5.1 General Rights

In the event of Successful Respondent's bankruptcy or other formal procedure referenced in Section 13.4 Termination for Insolvency 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 Equipment, DIR owned Materials, DIR-owned Developed Materials, and all other Materials, Equipment, or Systems to which DIR and/or the DIR Customers are or would be entitled during the Term or upon the expiration or any termination of this Agreement. Successful Respondent shall cooperate fully with DIR and the DIR Customers and assist DIR and the DIR Customers in identifying and taking possession of the items listed in the preceding sentence. DIR shall have the right to hold such DIR Data, Confidential Information, Materials, Equipment, and Systems until such time as the trustee or receiver in bankruptcy or other appropriate insolvency office holder can provide adequate

assurances and evidence to DIR that they shall be protected from sale, release, inspection, publication, or inclusion in any publicly accessible record, document, material, or filing. 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.

13.5.2 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 referred to in Section 7.6 Ongoing DIR Rights, 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 set forth in Section 7.6 Ongoing DIR Rights unless and to the extent required by applicable Law.

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

If (1) Successful Respondent receives a "going concern" qualification from its external auditor or (2) Standard & Poor's lowers Successful Respondent's long term credit rating to lower than BB- and in the reasonable opinion of DIR such change in the financial condition of Successful Respondent may impair or otherwise compromise the ability of Successful Respondent to perform its obligations under this Agreement, then DIR may, in its sole discretion, terminate this Agreement by giving Successful Respondent at least thirty (30) days prior notice. With respect to the events described in (2) above, prior to exercising its right to terminate, DIR shall meet with Successful Respondent within ten (10) 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.

13.7 Critical Services

Without limiting DIR's rights under Section 13.1 Termination for Cause, if Successful Respondent commits a material breach which has a significant impact on the ability of DIR or any DIR Customer to conduct a material aspect of its operations, and Successful Respondent is unable to cure such breach within forty-eight (48) hours, DIR may, in addition to its other remedies at Law and in equity, obtain from a third party or provide for itself comparable services which shall allow DIR and the DIR Customers to conduct their operations until Successful Respondent has cured the breach or this Agreement is terminated. Successful Respondent shall reimburse DIR for all costs and expenses of obtaining or providing such services up to the Charges actually paid to Successful Respondent for the Services with respect to the period of non-performance but in no event longer than the earlier to occur of (1) one hundred twenty (120) days from the start of such delay or (2) the remaining Term, provided that DIR continues to pay Successful Respondent for such Charges. The express inclusion of this remedy in this Section does not limit DIR's right to use a similar remedy for other breaches by Successful Respondent of this Agreement.

13.8 Absolute Right

If (1) 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 (2) 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.

13.9 Lack of Sufficient Funds or Statutory Authority

If funding for DIR's and/or the DIR Customers' 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 in accordance with **Exhibit 2 Pricing**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Successful Respondent shall not be providing to the extent that **Exhibit 2 Pricing** does not provide for such reduction. 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 and many of the DIR Customers are State agencies whose authority is subject to the actions of the State legislature. Some DIR Customers may additionally be subject to the actions of the United States Congress or other governmental authorities. If funds sufficient to pay DIR's and/or the DIR Customers' obligations under this Agreement are not appropriated by applicable governmental authorities or if DIR's statutory authority to enter into this Agreement is repealed by the State legislature or ruled unconstitutional by a court of competent jurisdiction, then DIR may, upon notice to Successful Respondent, terminate this Agreement, in whole or in part, as of the termination date specified in the notice. If DIR, any DIR Customer(s), and/or the subject matter of this Agreement become subject to a legislative or regulatory change or the revocation of statutory or regulatory authority that would (1) render the continued provision of the Services impossible or unnecessary, (2) render this Agreement invalid, illegal, or otherwise unenforceable, (3) substantially decrease the amount and types of the Services, or (4) 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.

13.10 General Termination Rights

13.10.1 Partial Terminations

If DIR chooses to terminate only a portion of this Agreement, the Charges and applicable Termination Charges, if any, shall be adjusted downward in accordance with **Exhibit 2 Pricing**, to the extent applicable, or equitably adjusted downward in proportion to the portion of the Services that Successful Respondent shall not be providing to the extent that **Exhibit 2 Pricing** does not provide for such reduction.

13.10.2 Termination Charges

Notwithstanding any other provision of this Agreement, if DIR elects to terminate this Agreement for any reason, including without limitation, a termination under this Article 13, there shall be no Termination Charge or other costs, claims, damages, or expenses payable to Successful Respondent in connection with such termination of this Agreement. Except as expressly set forth in this Section, there shall be no Termination Charge or other costs, claims, damages or expenses payable to Successful Respondent in connection with the expiration or any other termination of this Agreement.

13.10.3 Other Terminations

In addition to the provisions of this Section, DIR may terminate this Agreement as expressly provided in this Agreement or under Law.

14 GENERAL

14.1 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.

14.2 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.

14.3 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.

14.4 Abandonment or Default

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.

14.5 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.

14.6 Binding Nature and Assignment

14.6.1 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 14.6.2 Assignment, the assigning Party shall remain liable for the performance of any assigned or transferred obligations hereunder.

14.6.2 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.

14.6.3 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.

14.7 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 undertaking, 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.

14.8 Notices

14.8.1 Primary Notices

Any notice, notification, request, demand, or determination provided by a Party pursuant to the following:

(i) **Exhibit 1 SOW, Section 12.2 Termination Assistance Services**;
(ii) Section 4.2.1 DIR (and DIR Customer) Right of Use;

(iii) Section 5.2 Savings Clause;
(iv) **Exhibit 2 Financial Provisions and Pricing, Section 2.1.4 Extraordinary Events;**
(v) Section 6.1.4 Loss of Confidential Information;
(vi) Section 8.14 Previous and Outside Contracts;
(vii) Section 10.3 Indemnification Procedures;
(viii) Section 11.2 Force Majeure;
(ix) Section 12.1 Informal Dispute Resolution;
(x) Article 13 TERMINATION; and
(xi) Section 14.6 Binding Nature and Assignment

shall be in writing and shall be delivered in hard copy using one (1) of the following methods and shall be deemed delivered upon receipt by hand; by an express courier with a reliable system for tracking delivery; or 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 West 15th Street, Suite 1300
Austin, Texas 78701
Attention: Director of Planning and Governance
Telephone: 512.475.4700

With a copy to:

Texas Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Attention: General Counsel
Facsimile Number: 512.475.4759
Email Address: DIRLegal@dir.texas.gov

and

Texas Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Attention: Director of Contract Management
Telephone: 512.475.4700
Email Address: sharedservicescontractoffice@dir.texas.gov

In the case of Successful Respondent:

Atos Governmental IT Outsourcing Services, LLC
4851 Regent Boulevard
Irving, Texas 75063
Attention: General Counsel
Email Address: amy.chipperson@atos.net

With Copy to:

Atos Governmental IT Outsourcing Services, LLC
4851 Regent Boulevard
Irving, Texas 75063
Attention: Legal Department
Email Address: ryan.parrent@atos.net

and

Atos Governmental IT Outsourcing Services, LLC
4851 Regent Boulevard
Irving, Texas 75063
Attention: Head of Public Sector
Email Address: beth.howen@atos.net

14.8.2 Other Notices

All notices, notifications, requests, demands, or determinations required or provided pursuant to this Agreement, other than those specified in Section 14.8.1 Primary Notices, may be sent in hard copy in the manner specified in Section 14.8.1 Primary Notices, 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 West 15th Street, Suite 1300
Austin, Texas 78701
Attention: Director of Planning and Governance
Telephone: 512-475-4700

With a copy to:

Texas Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Attention: General Counsel
Facsimile Number: 512.475.4759
Email Address: DIRLegal@dir.texas.gov

and

Texas Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Attention: Director of Contract Management
Telephone: 512.475.4700
Email Address: sharedservicescontractoffice@dir.texas.gov

In the case of Successful Respondent:

Atos Governmental IT Outsourcing Services, LLC
4851 Regent Boulevard
Irving, Texas 75063
Attention: General Counsel
Email Address: amy.chipperson@atos.net

With Copy to:

Atos Governmental IT Outsourcing Services, LLC
4851 Regent Boulevard
Irving, Texas 75063
Attention: Legal Department
Email Address: ryan.parrent@atos.net

and

Atos Governmental IT Outsourcing Services, LLC
4851 Regent Boulevard
Irving, Texas 75063
Attention: Head of Public Sector
Email Address: beth.howen@atos.net

14.8.3 Written Complaints

In addition to other remedies contained in this Agreement, Successful Respondent may direct its written complaints regarding DIR to the following office:

Texas Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Attention: Director of Contract Management
Telephone: 512.475.4700
Email Address: sharedservicescontractoffice@dir.texas.gov

14.8.4 Notice of Change

A Party may from time to time change its address or designee for notification purposes by giving the other party prior written notice of the new address or designee and the date upon which it shall become effective.

14.9 Counterparts

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

14.10 Headings

The 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.

14.11 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.

14.12 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.

14.13 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.

14.14 Waiver of Default; Cumulative Remedies

14.14.1 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.

14.14.2 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.

14.15 Survival

Any provision of this Agreement that 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.

14.16 Publicity

(a) Except as provided in the paragraph 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.

14.17 Service Marks

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

14.18 Export

The Parties acknowledge that certain Equipment, Materials, and technical data to be provided hereunder and certain transactions hereunder may be subject to export controls under the Laws of the United States, the European Union, the United Nations, and other jurisdictions. Without limiting the Parties' respective obligations under Section 8.11 Compliance with Laws, no Party shall export or re-export any such items or any direct product thereof or undertake any transaction or service in violation of any such Laws and, to the extent within Successful Respondent's control, Successful Respondent shall be responsible for, and shall coordinate and oversee, compliance with such export Laws in respect of such items exported or imported hereunder.

14.19 Third Party Beneficiaries

The Parties acknowledge and agree that DIR Customers that are agencies or other Entities of the State are intended third party beneficiaries of this Agreement and are entitled to enforce the terms of this Agreement to the extent provided in and in accordance with the SMM (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. DIR Customers are neither authorized to direct or instruct Successful Respondent nor to act for or on behalf of DIR (including by providing notices, approvals, consents, waivers, or the like), in each case unless otherwise expressly provided in the Service Management Manual or to the extent DIR has otherwise notified Successful Respondent that a DIR Customer is so authorized.

14.20 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.

14.21 Hiring of Employees

14.21.1 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.

14.21.2 Publication

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 14.21 Hiring of Employees, 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.

14.22 Further Assurances

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

14.23 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.

14.24 Covenant of Good Faith

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

14.25 Acknowledgment

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

14.26 References

Unless otherwise directed by DIR, Successful Respondent may use DIR as a reference for all prospective Successful Respondent customers interested in purchasing services that include the same or substantially similar services to the Services. The Parties anticipate that, unless otherwise directed by DIR, Successful Respondent may use DIR as a reference for all major state and local sector efforts within the United States and not less than one (1) major non-state and local sector pursuit per year. Notwithstanding Section 6.1 Confidentiality, 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.

14.27 Guaranty

As a material condition to the effectiveness of this Agreement, Successful Respondent shall cause to be executed and deliver to DIR the guaranty set forth in Attachment 4.

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

Signature on file

Amanda Crawford

Executive Director

3-16-2020

Date

Signature on File

Legal

Successful Respondent

Signature on file

Simon Walsh

Chief Executive Officer

Atos North America

3-12-2020

Date