



Agency # KF4

## **Department of Information Resources Communications Technology Services Division Service Agreement**

**This service agreement is between the Department of Information Resources/Communications Technology Services Division (DIR/CTS) and the Customer. It is the intent of the parties to comply with the provisions of Texas Government Code Chapter 771, Interagency Cooperative Act and/or Chapter 791 Interlocal Cooperation Act as applicable, and Title 10, Subtitle D, Chapter 2170, Telecommunication Services, Texas Government Code.**

### **I. DIR/CTS Responsibilities**

- 1.1 DIR/CTS agrees to provide Customer with connectivity through various transmission methods to the TEX-AN network for specific communications services including, but not limited to, video, voice, routed data, Internet and/or equipment (hereinafter "services").
- 1.2 DIR/CTS will assist and advise the Customer in determining the best and most economical usage of the services.
- 1.3 DIR/CTS will bill monthly for services, as required and respond to inquiries regarding Customer's bill. DIR/CTS shall commence billing for services as they are provisioned.

### **II. Customer Responsibilities**

- 2.1 The Customer will provide Purchase Orders (PO's) to DIR/CTS for services, as ordered, which shall be valid for the entire term of this Service Agreement. Customer shall comply with the DIR rules applicable to the Communications Technology Services Division, 1 TAC Chapter 207, as the same may be amended from time to time.
- 2.2 Customer has the responsibility to cooperate and coordinate with DIR/CTS so as to avoid delaying DIR/CTS in the provisioning of and billing for ordered services. Specifically, it is the Customer's responsibility to designate, in a timely manner, the types of service desired and provide DIR/CTS with information which may affect technical, logistical, engineering, or equipment aspects of service delivery. The Customer is exclusively responsible for any equipment added to their premises for connectivity to TEXAN services. Customer shall keep DIR/CTS promptly informed of its billing contact, address, telephone numbers, Purchase Order numbers, eligibility status and technical contact, and changes to any of the foregoing. Customer understands and agrees that its failure to timely perform its duties, which delay DIR/CTS in the delivery of ordered services, is not a condition of Force Majeure.
- 2.3 Payments will be made in full within 30 days of notification that the TEX-AN invoice is available for retrieval from DIR/CTS's secured website. Customer represents that it possesses sufficient current revenues to satisfy the timely payment of goods and services provided by DIR/CTS hereunder. In all events, Customer shall be billed for and shall pay in a timely manner for all services actually ordered and received up through the effective date of termination of services. Customer shall be responsible for issuing and maintaining the status of PO's. Customer agrees it has no rights to setoff against bills received from DIR/CTS. Customer's covenant to pay survives termination of this Service Agreement.

2.4 Customer is exclusively responsible for the operation and security of its premise equipment. The risk of toll fraud or other unauthorized use of its premise equipment rests with the Customer. Customer accepts this risk and understands that it shall be solely responsible to pay all charges, which may result from toll fraud or unauthorized use of its premise equipment. Customer hereby releases and waives any claim it may have now or in the future against DIR/CTS for the payment of charges arising from toll fraud or other unauthorized use on its premise equipment.

2.5 Customer is a qualified entity to receive goods and services from DIR/CTS. Services will terminate without liability to DIR/CTS should Customer's eligibility status change during the term of this Service Agreement.

### **III. Term**

The term of this Service Agreement begins on the date of the last party to sign and is in effect for the period through the end of the state's current fiscal year. The Service Agreement is annually renewable by the timely issuance of a PO by Customer, received prior to the end of the current contract term. In the event a new PO is not received in a timely manner, services will continue on a month-to-month basis until a new Purchase Order is received or termination of the Service Agreement is effected by compliance with Article V. hereof.

### **IV. Billing**

4.1 DIR/CTS's first month's billing for any circuits provisioned will commence on the date provisioning is completed.

4.2 DIR/CTS will cease billing circuits on the date disconnection is completed.

4.3 All other services shall be billed on an usage basis from the first date of actual service until the service is disconnected.

4.4 In compliance with Title I, Chapter 207, Rule number 207.5, of the Texas Administrative Code: customer's billing dispute timing and payment obligations shall track those found in the Prompt Payment Act, Chapter 2251, Texas Government Code.

### **V. Termination and Amendments**

5.1 DIR/CTS may provide notice of intent to terminate this Service Agreement for convenience by sending a written statement to that effect, which shall be received by Customer no less than thirty (30) days prior to the Effective Date of termination. DIR/CTS may terminate any Service Agreement for cause, with an immediate Effective Date, by issuing written notice to Customer, upon failure of Customer to make timely payment of bills.

5.2 A Customer may provide notice of intent to terminate this Service Agreement for convenience by sending a written statement to that effect, which shall be received by DIR/CTS no less than thirty (30) days prior to the Effective Date of termination. A Customer request to change a service shall not take effect until Customer provides written notice to DIR/CTS of any changes to ordered services. If DIR/CTS does not receive written notification, the Customer will continue to be billed monthly until proper notification is received. No written termination notice shall be effective prior to the expiration of thirty (30) days after receipt by DIR/CTS.

5.3 Amendments to this Service Agreement shall only be effective upon execution of an instrument in writing by authorized representatives of DIR/CTS and the Customer.

## **VI. Other Conditions of Service**

- 6.1 Service rates are subject to change by DIR/CTS upon 30-days written notice to Customer.
- 6.2 No conflicting terms or conditions found in Customer orders or forms shall become a part of this Service Agreement.
- 6.3 If service and/or communications projects are canceled at any time prior to completion, Customer shall be responsible for all actual costs incurred by DIR/CTS up to the date of cancellation. DIR/CTS will bill the Customer for these costs. Customer's covenant to pay shall survive the cancellation of a project.
- 6.4 DIR/CTS relies on third party contractors for the fulfillment of services contracted for hereunder. Therefore, DIR/CTS makes no independent warranties or guarantees, express or implied, regarding said services.
- 6.5 The following terms have the meaning indicated for purposes of this Service Agreement:

"Force Majeure" means the parties' performance under this Service Agreement shall be adjusted or suspended by mutual agreement to the extent performance is beyond the reasonable control of the parties for reasons including, but not limited to: strikes, work stoppages, fire, water, flood, lightning, government action, acts of God or public enemy, delays of power company, local exchange company, or other carrier. Failure of Customer to coordinate and cooperate so as to delay DIR/CTS is not an event of Force Majeure. In the event of Force Majeure, the sole and exclusive remedy to the party suffering the delay shall be an equivalent extension of the time for performance. The parties shall document to one another the onset of events of Force Majeure within three days of their onset.

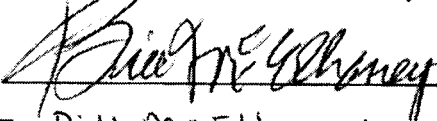
"Provision" and "provisioning" means DIR/CTS has acquired, arranged for or provided at the Customer's site, the equipment, supplies or other items necessary to provide the ordered service(s), but does not mean the actual act(s) of turning up the ordered service(s).

## **VII. Customer Service Resources**

Customer Service Resources may be found at <http://www.dir.state.tx.us/tsd/contact.htm> Inquiries regarding this Service Agreement may be directed to DIR, Service Fulfillment on (512) 463-7800.

**Customer hereby agrees to the terms and conditions of this Service Agreement; represents that the official executing this Service Agreement is authorized to bind the Customer to its terms; and that Customer has completed all of its internal processes to make this a binding undertaking on the part of Customer.**

CUSTOMER: Wise County

BY: 

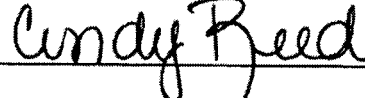
NAME: Bill McElhane

TITLE: County Judge

DATE: August 30, 2010

\_\_\_\_\_

DEPARTMENT OF INFORMATION  
RESOURCES

BY: 

NAME: Cindy Reed

TITLE: Deputy Executive Director - Operations and  
Statewide Technology ..... Sourcing

DATE: 12/3/10

Legal:  11/29/10