

STATE OF VERMONT
Department of Information and Innovation

It is hereby agreed by the State of Vermont, Department of Information and Innovation (hereafter called the "State") and Citrix Online, LLC, with its principal place of business at 7414 Hollister Ave, Goleta, CA 93117 (hereafter called the "Contractor") that the contract between them commencing 10/2/2014, Contract # 23452, is hereby amended as follows:

All Contract Provisions in Contract 23452 has been transferred to Contract 27831.

- I. Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Except as modified by this File memo, all provisions of the original contract and amendments will remain in full force and effect.

Peter J Kipp
Contracts Specialist-DII
State of Vermont Gov.

STATE OF VERMONT CONTRACT SUMMARY AND CERTIFICATION ----- Form AA-14 (8/22/11)

Note: All sections are required. Incomplete forms will be returned to department.

I. CONTRACT INFORMATION:

Agency/Department: AOA/DII Contract #: 27831 Amendment #:
 Vendor Name: Citrix SYSTEMS INC VISION Vendor No: 17454
 Vendor Address: 851 W Cypress Creek Rd, Ft Lauderdale FL
 Starting Date: 10/21/14 Ending Date: 10/31/2016 Amendment Date:

Summary of agreement or amendment: Audio Services. The following describes the Audio Services offered by Citrix Online Audio and shall apply to any Audio Services ordered by Customer under this Agreement as subscribed to in the Audio Services Order: HiDef Corporate Audio Service; HiDef Corporate Audio Service with Integrated Toll-Free; and Training (In connection with the Audio Services subscribed to hereunder, Citrix Online Audio will make available to Customer remote training session(s) via telephone and the Internet for all administrators and end users of the Audio Services).

II. FINANCIAL INFORMATION

Maximum Payable: \$240,000.00 Prior Maximum: \$ Prior Contract # (If Renewal):
 Current Amendment: \$ Cumulative amendments: \$ % Cumulative Change: %
 Business Unit(s): ; - [notes:] VISION Account(s): ;

III. PERFORMANCE INFORMATION

Does this Agreement include Performance Measures tied to Outcomes and/or financial reward/penalties? Yes No
 Estimated Funding Split: G-Fund % S-Fund % F-Fund % GC-Fund % Other 100.00 %

IV. PUBLIC COMPETITION

The agency has taken reasonable steps to control the price of the contract or procurement grant and to allow qualified organizations to compete for the work authorized by this contract. The agency has done this through:
 Standard bid or RFP Simplified Bid Sole Sourced Qualification Based Selection Statutory

V. TYPE OF AGREEMENT & PERFORMANCE INFORMATION

Check all that apply: Service Personal Service Architect/Engineer Construction Marketing
 Information Technology Other, describe:

VI. SUITABILITY FOR CONTRACT FOR SERVICE

Yes No n/a If this is a Personal Service contract, does this agreement meet all 3 parts of the "ABC" definition of independent contractor? (See Bulletin 3.5) If NO, then contractor must be paid through Payroll

VII. CONTRACTING PLAN APPLICABLE:

Are one or more contract or terms & conditions provisions waived under a pre-approved Contracting Plan? Yes No

VIII. CONFLICT OF INTEREST

By signing below, I certify that no person able to control or influence award of this contract had a pecuniary interest in its award or performance, either personally or through a member of his or her household, family, or business.
 Yes No Is there an "appearance" of a conflict of interest so that a reasonable person may conclude that this party was selected for improper reasons: (If yes, explain)

IX. PRIOR APPROVALS REQUIRED OR REQUESTED

Yes No Agreement must be approved by the Attorney General under 3 VSA §311(a)(10) (personal service)
 Yes No I request the Attorney General review this agreement as to form
 No, already performed by in-house AAG or counsel: _____ (initial)
 Yes No Agreement must be approved by the Comm. of DII; for IT hardware, software or services and Telecommunications over \$100,000
 Yes No Agreement must be approved by the CMO; for Marketing services over \$15,000
 Yes No Agreement must be approved by Comm. Human Resources (privatization and retiree contracts)
 Yes No Agreement must be approved by the Secretary of Administration

X. AGENCY/DEPARTMENT HEAD CERTIFICATION; APPROVAL

I have made reasonable inquiry as to the accuracy of the above information:
 E-SIGNED by Darwin Thompson
 on 2012-Nov-05

Date	Agency / Department Head	Date	Agency Secretary or Other Department Head (if required)
	E-SIGNED by Jaye Johnson		
	on 2012-Nov-05		
Date	Approval by Attorney General	Date	Approved by Commissioner of Human Resources
	D.T.		
Date	CIO	Date	CMO
			Secretary of Administration



Vendor ID 0000017454
Citrix Systems, Inc
851 W Cypress Creek Rd
Ft Lauderdale FL 33309
USA

Contract ID 000000000000000000027831		Page 1 of 2
Contract Dates 10/02/2014 to 10/31/2016		Origin DII
Description: Citrix Audio Online Services		Contract Maximum \$240,000.00
Buyer Name Kipp, Peter J	Buyer Phone	Contract Status Approved

Phone #:

Line #	Item ID	Item Desc	UOM	Unit Price	Max Qty	Max Amt
1		Contractor's hosted Audio Services (the 'Audio Services'). Detailed Audio Services to be provided by the Contractor are described in Attachment A and Attachment E, Exhibit A.	JOB	1.00000	0.00	240,000.00

CONTRACT TERMS AND ADDITIONAL INFORMATION

Old Contract 23452 transferred to this new Audio Contract and added additional funds through 2016 with option to extend provided dollars available by State.

MASTER AUDIO AGREEMENT FOR CITRIX ONLINE AUDIO SERVICES

1. Parties. This is a contract for services (the 'Audio Contract' or 'Master Audio Agreement' or 'Audio Agreement') between the State of Vermont, Department of Information and Innovation (hereafter called 'State' or 'Customer'), and Citrix Online, LLC, with its principal place of business 499 Washington Boulevard, Suite 1401, Jersey City, NJ, 07310, (hereafter called 'Contractor' or 'Citrix Online Audio'). The Offices, Agencies or Departments within the State of Vermont (each a 'Contracting Agency') shall be entitled to place orders and receive Services under this Master Audio Agreement. Contractor's form of business organization is a Limited Liability Corporation. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter. The subject matter of this contract is services generally on the subject of the subscription of Contractor's hosted Audio Services (the 'Audio Services'). Detailed Audio Services to be provided by the Contractor are described in Attachment A and Attachment E, Exhibit A.

3. Maximum Amount. In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$ 240,000.00.

4. Contract Term. The period of Contractor's performance shall begin on October 2, 2014, and end on October 31, 2016. The State may elect to extend this contract if State funding is available.

5. Prior Approvals. If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.
 - Approval by the Attorney General's Office is required.
 - Approval by the Secretary of Administration is not required.
 - Approval by the CIO/Commissioner DII is required.

6. Amendment. This Audio Contract represents the entire agreement between the parties; No changes, modifications, or amendments in the terms and conditions of this Audio Contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. Cancellation. This contract may be canceled by the State upon thirty days prior written notice to the Contractor.

8. Attachments. This contract consists of 37 pages including the following attachments which are incorporated herein (collectively the 'Contract Documents'):
 Attachment A - Specifications of Work to be Performed and Other Provisions
 Attachment B - Payment Provisions
 Attachment C - 'Standard State Provisions for Contracts and Grants' a preprinted form (revision date 7/1/2012).
 Attachment D - Other Terms and Conditions
 Attachment E - Citrix Online Audio Master Subscription Agreement Terms and Conditions
 Attachment F - Audio Services Order Form for Audio Services
 Attachment G - Audio Service Level Agreement

ATTACHMENT A

SPECIFICATIONS OF WORK TO BE PERFORMED

Purpose. This Audio Contract sets forth the terms and conditions under which Contractor agrees to provide the Audio Services, as further set forth in Attachment E to this Audio Contract (“Contractor’s Document”). The Offices, Agencies or Departments within the State of Vermont (each a “Contracting Agency”) may prepare a request for Audio Services in the form attached hereto as Attachment F. (“Audio Services Order”) The cost of each Contracting Agency subscription shall be specified in the respective Audio Services Order. All Audio Services Orders shall be subject to the terms of this Audio Contract.

Authorized Users. All Contracting Agencies that have a need to use the Audio Services for the benefit of the State shall have the right to operate and use the same. As a part of the Audio Services, each Contracting Agency shall be responsible for all assigned user identification and password change management.

Audio Services. The Contractor shall make three (3) different Audio Services subscription options available for the use of each Contracting Agency, including:

- (1) HiDef Corporate Audio Service with Integrated Toll-Free (“ITF”)
- (2) HiDef Corporate Audio Service
- (3) Unlimited Integrated Toll-Free

The following describes the Audio Services offered by the Contractor and shall apply to any Audio Services ordered by a Contracting Agency under this Audio Contract as subscribed to in the Audio Services Order:

HiDef Corporate Audio Service. The HiDef Corporate Audio Service is a conferencing solution that provides Moderators with 24/7 access to full-featured, reservationless audio conferencing at the price per minute per line rates listed on the Audio Services Order. The HiDef Corporate Audio Service is accessed via touchtone telephone and supports both traditional, land-line dial in and mobile phone access for up to 500 audio conferencing connections in a single meeting. Each Contracting Agency shall be provided access to the administrative account/billing, management web portal, each Moderator (as defined in Attachment E) will receive a unique conference room number, Moderator PIN and access to their meeting management web portal, with no limit on the number of Moderator accounts that can be provisioned by the Contracting Agency. For purposes of this Audio Service, the term Moderator(s) means a Contracting Agency authorized user of the HiDef Corporate Audio Service who can initiate audio conference calls and invite conference call attendees.

HiDef Corporate Audio Service with Integrated Toll-Free. The HiDef Corporate Audio Service with Integrated Toll-Free is an additional service made available by Citrix Online Audio for integrated use with GoToMeeting, GoToWebinar and GoToTraining. By subscribing to this Audio Service, Contracting Agency may use toll-free phone numbers as an additional audio option for its online meetings and webinars. Each Contracting Agency must separately subscribe to the

GoToMeeting, GoToWebinar and/or GoToTraining Service(s) in order to use this additional Audio Service.

Contracting Agency Access. During the Term of this Audio Contract, a Contracting Agency may access and use the Audio Services subscribed to hereunder pursuant to and in accordance with the provisions of this Audio Contract. The Contractor will enable each Contracting Agency to access and utilize the Audio Services as contemplated by this Audio Contract. Thereafter, each Contracting Agency shall be solely responsible for selecting and managing its users and providing each of them with the information necessary for access to and use of the Audio Services. The State may inform its users, customers and employees that the Audio Services are powered by Citrix Online Audio. The State understands that the Audio Services do not allow calls to the emergency services numbers (e.g. in the United States 911, or in the United Kingdom 999 and 112). If the State's broadband connection fails, the Audio Services and some related voice service will also fail. The Audio Services may cease to function if there is a power cut or failure. These failures may be caused by reasons outside of the control of the Contractor.

Training. In connection with the Audio Services subscribed to hereunder, the Contractor will make available to the State remote training session(s) for all administrators and end users of the Audio Services.

Fees. Rates for each of the Audio Services Options are set forth in Attachment B to this Audio Contract. The State acknowledges that, in the event the State terminates this Audio Contract for any reason or no reason, it shall make payment to Contractor of all undisputed fees due and payable through the date of termination.

ATTACHMENT B

PAYMENT PROVISIONS

The maximum dollar amount payable under this Audio Contract is not intended as any form of a guaranteed amount. The Contractor will be paid for Audio Services specified in Attachment A, or services actually performed, up to the maximum allowable amount specified in this Audio Contract. The payment schedule for delivered products, or rates for services performed, and any additional reimbursements, are included in this Attachment B. Contractor acknowledges and agrees that there is no monthly Fee Commitment (as defined in Attachment E). The State shall pay Contractor a sum not to exceed \$240,000 in the aggregate as follows:

1. A certificate of insurance must be submitted prior to commencement of work and release of payments (Attachment C, Section 7).
2. Invoices must be rendered on Contractor's standard billhead or official letterhead. Contractor shall submit invoicing on a monthly basis in arrears. Invoices shall be submitted to the contact for each Contracting Agency specified in the respective Audio Services Order.

Payment terms shall be Net 30.

3. Contractor shall be paid based on documentation and itemization of work performed and included in invoicing as required by 32 VSA §463. Invoicing must contain a detail of services. The State shall not be responsible for any expenses of the Contractor.
4. SERVICES - Contractor shall be paid for Audio Services based on the following rates:

Audio Conferencing Rates:

HiDef Corporate Audio Service with Integrated Toll-Free and HiDef Corporate Service will be charged at the following rates:

(i) Toll (caller pays any long distance charge that may be applicable, plus a fee at the rate below for use of the bridging system).
\$0.00 / minute per connection. No cost to Citrix Systems ODS

(ii) Toll Free
\$0.029/ minute per connection

(iii) VoIP (available with all web conferencing options)
\$0.00 / minute per connection

(iv) Contracting Agencies may elect unlimited integrated toll free for a flat rate of \$19.95/month/license for GoToMeeting only. This Audio Service option cannot be combined with any other Citrix Online or Citrix Online Audio service.

Captioning Services:

Captioning Services: Captioning Services are available to Contracting Agencies for any webinar or training option through Caption Colorado.

Early Termination:

In the event of termination of this Audio Contract prior to the full term, or any extension thereof, Contractor will refund to the State or any applicable Contracting Agency any prepaid but unused Subscription Fees (as defined in Attachment E).

ATTACHMENT C
CUSTOMARY PROVISIONS FOR CONTRACTS AND GRANTS

1. **Entire Agreement.** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law.** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If appropriations are insufficient to support this Agreement, the State may cancel on a date agreed to by the parties or upon the expiration or reduction of existing appropriation authority. In the case that this Agreement is funded in whole or in part by federal or other non-State funds, and in the event those funds become unavailable or reduced, the State may suspend or cancel this Agreement immediately, and the State shall have no obligation to fund this Agreement from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The Party shall notify its insurance company and the State within 10 days of receiving any claim for damages, notice of claims, pre-claims, or service of judgments or claims, for any act or omissions in the performance of this Agreement.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverage is in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
 Products and Completed Operations
 Personal Injury Liability
 Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
 \$1,000,000 General Aggregate
 \$1,000,000 Products/Completed Operations Aggregate
 \$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and if this Subrecipient expends \$500,000 or more in federal assistance during its fiscal year, the Subrecipient is required to have a single audit conducted in accordance with the Single Audit Act, except when it elects to have a program specific audit.

The Subrecipient may elect to have a program specific audit if it expends funds under only one federal program and the federal program's laws, regulating or grant agreements do not require a financial statement audit of the Party.

A Subrecipient is exempt if the Party expends less than \$500,000 in total federal assistance in one year.

The Subrecipient will complete the Certification of Audit Requirement annually within 45 days after its fiscal year end. If a single audit is required, the sub-recipient will submit a copy of the audit report to the primary pass-through Party and any other pass-through Party that requests it within 9 months. If a single audit is not required, the Subrecipient will submit the Schedule of Federal Expenditures within 45 days. These forms will be mailed to the Subrecipient by the Department of Finance and Management near the end of its fiscal year. These forms are also available on the Finance & Management Web page at: <http://finance.vermont.gov/forms>

10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
12. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
13. **Taxes Due to the State:**
 - a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

- c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. Child Support: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- a. is not under any obligation to pay child support; or
- b. is under such an obligation and is in good standing with respect to that obligation; or
- c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of his Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

Notwithstanding the foregoing, the State agrees that the Party may assign this agreement, including all of the Party's rights and obligations hereunder, to any successor in interest to the Party arising out of the sale of or reorganization of the Party.

16. No Gifts or Gratuities: Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

17. Copies: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

19. Certification Regarding Use of State Funds: In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

Attachment D**Other Terms and Conditions**

- a. Order of Precedence; Contractor Documentation. The parties specifically agree that any language or provisions contained in any “shrinkwrap” or “clickwrap” or other paper or electronic version of any Contractor Document which may accompany the Audio Services, including any Audio Services Order, is of no force and effect if such language or provisions conflict with the terms of this Audio Contract. Further, in no event shall any Contractor Documents, including any paper or electronic version thereof which may be required in connection with the performance of the Services contemplated by the terms of this Audio Contract (a) require indemnification by the State of the Contractor; (b) waive the State’s right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Washington County Division; (d) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State’s sovereign status or under the Eleventh Amendment to the United States Constitution; or (e) limit the time within which an action may be brought hereunder.
- b. Term of Contractor’s Documents; Payment Provisions. Notwithstanding anything to the contrary in the Contractor’s Documents, the Contractor’s Documents shall run concurrently with the term of this Audio Contract. Upon termination of this Audio Contract, the State agrees to immediately stop using the Audio Services. Further, the payment provisions set forth in Attachment B to this Contract shall take precedence over any and all payment terms in the Contractor Documents. Any modification of the Payment Provisions shall require an amendment to this Audio Contract.
- c. Indemnification. The Contractor acknowledges and agrees that the laws and the public policy of the State of Vermont prohibit the State from agreeing to indemnify contractors and other parties. The Contractor agrees that, to the extent the Contractor’s Documents expressly provide for or imply indemnification of the Contractor and/or other third parties by the State, such sections shall be waived and have no force and effect with respect to the State.
- d. Limitation on Disclaimer. Notwithstanding anything to the contrary set forth in Contractor’s Documents, the express warranties set forth in this Audio Contract and the Contractor’s Documents shall be in lieu of all other warranties, express or implied.
- e. Liability. Notwithstanding anything to the contrary in Attachment C or in the Contractor’s Document:
- (i) The Contractor shall defend the State and its officers and employees against all third party claims or suits and any damages or losses from such third party claims or suits which arise in whole or in part from any negligent act or omission or intentional misconduct of the Contractor. The State shall promptly notify the Contractor in the event of receipt of notice of any such claim or suit, and the Contractor shall promptly

retain counsel and, at its option, either provide a complete defense against or settle the third party claim or suit.

(ii) After a final judgment or settlement the Contractor may request recoupment of specific defense costs and may file suit in the Superior Court of the State of Vermont, Washington Civil Division requesting recoupment. The Contractor shall be entitled to recoup costs upon a showing that such costs were entirely unrelated to the defense of any claim arising from a negligent act or omission or intentional misconduct of the Contractor.

(iii) The Contractor shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any third party claims or suits for which the Contractor is obligated to defend the State and its officers and employees pursuant to subparagraph (a) above.

(iv) THE CONTRACTOR'S LIABILITY TO THE STATE UNDER THIS CONTRACT FOR ALL CLAIMS MADE RELATING TO BREACH OR NON-PERFORMANCE OF THIS AUDIO CONTRACT OR ANY AUDIO SERVICES ORDER SHALL BE LIMITED TO THREE TIMES THE MAXIMUM AMOUNT OF THIS AUDIO CONTRACT. THIS LIMITATION SHALL NOT APPLY TO CLAIMS OR LIABILITY ARISING OUT OF (A) CONTRACTOR'S INDEMNIFICATION OBLIGATION REGARDING INFRINGEMENT, AS SET FORTH IN SECTION 6 OF THE CONTRACTOR DOCUMENT; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT; OR (E) THIRD PARTY CLAIMS AGAINST THE STATE REGARDLESS OF CAUSE WHICH ARE TO BE INDEMNIFIED BY THE CONTRACTOR UNDER THIS AUDIO CONTRACT.

THE CONTRACTOR SHALL NOT BE LIABLE TO THE STATE FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING OR WHICH ARE NOT PROXIMATELY CAUSED BY THE ACTS OR OMISSIONS OF THE CONTRACTOR OR LOSS OF ANTICIPATED PROFITS IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS AUDIO CONTRACT.

(v) The provisions of this Section shall apply notwithstanding any other provisions of this Audio Contract or any other agreement. The provisions of this Section shall survive the expiration or termination of this Audio Contract.

- f. Trial by Jury. The Contractor acknowledges and agrees that notwithstanding anything to the contrary in the Contractor's Documents, the State shall not agree to arbitration. Further, the State is prohibited by policy, and shall not waive any right to a trial by jury.

- g. Confidentiality of Contractor Information. Notwithstanding anything to the contrary in the Contractor's Documents, the State will not disclose information for which a reasonable claim of exemption can be made, including, but not limited to, trade secrets and confidential information that is exempt from public disclosure by the State of Vermont pursuant to 1 VSA § 317(c), subject to the following terms and conditions:

The term "confidential information" means information, whether presented orally or in writing, and whether or not marked as "confidential" or "proprietary," which could provide a competitive advantage to the party possessing such information and which either embodies trade secrets or is confidential technical, business, or financial information, provided that such information:

- a. is not generally known, or is not available from other sources without obligations concerning its confidentiality;
- b. has not been made available by the owners to others without obligations concerning its confidentiality;
- c. is not already available to the public without obligations concerning its confidentiality; or,
- d. has not been developed independently by persons who have had no access to the information.

The State agrees to use the confidential information received from the Contractor only for the purposes of and in accordance with this Audio Contract. The State shall promptly notify the Contractor of any request or demand by any court, governmental agency or other person asserting a demand or request for confidential information of the Contractor supplied pursuant to this Audio Contract, so that the Contractor may seek an appropriate protective order. The Contractor acknowledges that the State is subject to the terms of the Vermont Access to Public Records Law, 1 VSA 315 et seq, and the Contractor agrees that it will not make any claim against the State if the State makes available to the public any information it receives from the Contractor in response to a binding order from a court or governmental body or agency compelling its production.

- h. Sovereign Immunity. The Contractor acknowledges that State reserves all immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Audio Contract.
- i. Jurisdiction. Notwithstanding anything to the contrary in the Contractor's Documents, the Contractor agrees that any action or proceeding brought by either the State or the Contractor in connection with this Audio Contract shall be brought and enforced in the Washington County Superior Court of the State of Vermont. The Contractor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorney's fees in any proceeding.

- j. Governing Law. Notwithstanding anything to the contrary in the Contractor's Documents, the Contractor agrees that this Audio Contract, including the Contractor's Documents, shall be governed by and construed in accordance with, the laws of the State of Vermont.
- k. Warranty of Law. Contractor represents and warrants that to the best of Contractor's knowledge: (i) there is no claim, litigation or proceeding pending or threatened against Contractor with respect to the Audio Services or any component thereof alleging infringement of any patent or copyright or any trade secret or any proprietary right of any person; (ii) the Audio Services complies in all material respects with applicable laws, rules and regulations; (iii) Contractor has full authority to enter into this Audio Contract and to consummate the transactions contemplated hereby; and (iv) this Audio Contract is not prohibited by any other contract to which Contractor is a party or by which it may be bound.
- l. Service Warranties. Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform services hereunder shall have training, background and skills reasonably commensurate with the level of performance reasonably expected for the tasks to which he or she is assigned.
- m. Virus Protection. Contractor warrants and represents that any time the Audio Services are delivered to the State, whether delivered via electronic media or the internet, no portion of the Audio Services or the media upon which the Audio Services are stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
- n. Effect of Breach of Warranty. If, at any time during the term of this Audio Contract, the Audio Services or the results of Contractor's work fail to perform according to any warranty of Contractor under this Audio Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall provide at no additional cost of any kind to the State, the maintenance required.
- o. Trade Secret, Patent, and Copyright Infringement. Notwithstanding anything to the contrary in the Contractor's Documents regarding Intellectual Property and Infringement Claims, the State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.
- p. Taxes: Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Audio Contract.

- q. Limits on Actions Prohibited. The Contractor acknowledges and agrees that 12 V.S.A. 465 renders any contractual provision which limits the time in which an action may be brought under the Audio Contract, or waives the statute of limitations, null and void.
- r. Notice. Notwithstanding anything to the contrary in the Contractor Documents, all notices must be given in accordance with the terms of this Paragraph and shall be sent to the address of the Contractor set forth below and the applicable address of the Contracting Agency as set forth in an Audio Services Order (or such other addresses as may be provided from time to time). Each of the parties agree that if any notices are sent to State via electronic mail or facsimile transmission, and such notices require a consent, express or implied, or other affirmative action from State (as opposed to notices of events such as meetings, internet presentations, reports and the like), then, in addition, the parties shall provide a hard copy of such notice to State, either via hand delivery, certified mail or overnight courier. All notices to the Contractor required by this Audio Contract shall be directed to:

Global Customer Support
7414 Hollister Avenue
Goleta, CA 93117

With a copy to:
Legal Department
7414 Hollister Avenue
Goleta, CA 93117

(s) Marketing. Neither party to this Audio Contract shall refer to the other party in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of such party prior to release.

(t) Confidentiality of State Information. Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Audio Contract ("State Data") unless otherwise instructed by the State. The Contractor agrees not to publish, reproduce, or otherwise divulge any such State Data in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to those employees on his/her staff who must have the information on a "need to know" basis. The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order. With respect to the State Data it receives, maintains and/or transmits, in electronic media or in any other form or medium, Contractor shall, in good faith, exercise due diligence using generally accepted commercial business practices for information technology security, to ensure that systems are operated and maintained in a secure manner, and that management, operational and technical controls will be employed to ensure security of systems and data. The Contractor shall:

- (a) Implement administrative, physical and technical safeguards that protect the confidentiality, integrity and availability of State Data;
- (b) Protect against any reasonably anticipated threats or hazards to the security or integrity of State Data;
- (c) Ensure that any employee, officer or agent to whom Contractor provides State Data agrees to implement reasonable and appropriate safeguards to protect such records; and
- (d) Within the most expedient time possible, but in not more than twenty-four (24) hours, report to the State any unauthorized acquisition or access of computerized data, or a reasonable belief of an unauthorized acquisition of State Data that compromises the security, confidentiality or integrity of State Data (a "security breach"), caused or contributed to by the Contractor or its agents once the Contractor has determined that a breach has occurred. A "security breach" may include compromise by malware, search engine web crawler, password compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures. Contractor shall make reasonable efforts to promptly cure such breach, and if cure of the breach is infeasible, Contractor shall immediately notify the State.

Contractor's report shall identify: (i) the nature of the security breach, (ii) the State Data used or disclosed, (iii) who made the unauthorized use or received the unauthorized disclosure, (iv) what Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and (v) what corrective action Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. Contractor shall provide such other information, including a written report, as reasonably requested by the State.

Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personally-identifiable information, including, but not limited to Chapter 62 of Title 9 of the Vermont Statutes or other event requiring notification. In the event of a breach of any of Contractor's security obligations or other event requiring notification under applicable law ("Notification Event"), Contractor agrees to assume responsibility, and all associated costs, for informing all such individuals in accordance with applicable law. Contractor acknowledges and agrees that, by execution of this Audio Contract, it acknowledges it is acting or conducting business in the State of Vermont.

Notwithstanding anything herein, or in Contractor's Documents to the Contrary, Contractor shall fully indemnify and save harmless the State from any loss or damage to the State resulting from the disclosure by the Contractor, its officers, agents, employees, and subcontractors of such State Data.

(u) Data Transfer. Contractor agrees to store and process State Data only in the continental United States.

(v) Ownership of State Data; User Name Contractor acknowledges and agrees that all State Data and the State User Name or Names belongs to the State and that the Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State

Data for its own purposes. In no event shall the Contractor claim any security interest in the State Data.

(w) Access to State Data. Within ten (10) business days of a request by State and within sixty (60) days after the effective date of termination of this Audio Contract, Contractor will make available to State a complete and secure (i.e. encrypted and appropriately authenticated) download file of State Data in a format acceptable to State including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however,* in the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Data to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Data.

The Contractor's policies regarding the retrieval of data upon the termination of services shall be made available to the State upon execution of this Audio Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies. The parties agree that upon termination of this Audio Contract, the Contractor shall, at the choice of the State, either return all the State Data transferred and the copies thereof to the State or shall destroy all the State Data and certify to the Security Office of the State that it has done so.

(x) Service Level Agreement. During the Term of this Audio Contract, the Services provided hereunder will be operational and available to the State at least 99.9% of the time in any calendar month in accordance with the terms of the Audio Service Level Agreement (the "Contractor SLA") attached hereto as Exhibit G.

(y) Back-Up Policies: The Contractor's back-up policies shall be made available to the State upon execution of this Audio Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

(z) Data Format: Encryption. The Contractor agrees to maintain State Data in a format acceptable to the State, utilizing the Federal Information Processing Standards Publication 140-2, "Security Requirements For Cryptographic Modules."

(aa) Contractor Bankruptcy. Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Audio Contract, the State may elect to retain its rights under this Audio Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Audio Contract, including the right to obtain the State Data.

Attachment ECITRIX ONLINE AUDIO SERVICES MASTER SUBSCRIPTION AGREEMENTTERMS AND CONDITIONS**Master Subscription Agreement
TERMS AND CONDITIONS****Citrix Online
Audio**

By signing the Master Subscription Agreement Audio Services Order, each Party confirms that it has read, understands and agrees to the provisions set out in the Audio Services Order and all documents checked on the Audio Services Order including these Terms and Conditions, the combination of which comprises the Master Subscription Agreement (collectively the "Agreement"). All capitalized terms not otherwise defined in the Agreement shall have the meaning set forth in Section 9 below.

TERMS AND CONDITIONS**1. Customer Restrictions.**

1.1. Reverse Engineering. Except to the extent permitted by applicable law, Customer may not modify, distribute, prepare derivative works of, reverse engineer, reverse assemble, disassemble, decompile or otherwise attempt to decipher any code used in connection with the Audio Services and/or any other aspect of Citrix Online Audio's technology.

1.2. Abuse. Customer shall not access and/or engage in any use of the Audio Services (i) in a manner that abuses or materially disrupts the networks, security systems, Audio Services and/or websites of Citrix Online Audio, and/or (ii) to communicate any message or material that is deemed harassing, threatening, indecent, obscene, slanderous, or otherwise unlawful.

1.3. Illegal Purposes. Customer shall not use the Audio Services for fraudulent or illegal purposes. Furthermore Customer shall not use the Audio Services to record phone communications without notifying the concerned persons and/or participants that Customer is recording such communications.

1.4. No Resale. Customer shall not market, offer to sell, sell and/or otherwise resell the Audio Services to any third party.

1.5. No Representation by Customer. Neither Customer nor any of its users, customers, employees or representatives shall make any representations with respect to Citrix Online Audio, the Audio Services or this Agreement (including, without limitation, that Citrix Online Audio is a warrantor or co-seller of any of Customer's products and/or services).

2. Fees.

2.1. Payment/Rates. Customer shall be billed monthly in arrears for the greater of (i) the monthly Fee Commitment, or (ii) Customer's actual usage at the price per minute per line rate(s) as provided in the Audio Services Order. Customer shall pay to Citrix Online Audio all Fees as stated on the Audio Services Order(s). Customer shall pay all Fees within thirty (30) days of date of receipt of the invoice. Citrix Online Audio reserves the right to revise Customer's pricing once per year at any time after the Initial Commitment Term and upon thirty (30) days' prior written notice to Customer.

2.2. Additional Audio Services. Customer may add-on additional Audio Services at anytime. Any additional Audio Services authorized by Customer by submission of an Audio Services Order shall be subject to this Agreement and shall be co-terminus with the Term of this Agreement, in accordance with Section 3, below.

2.3. Late Payments. Payments of Fees which are due hereunder and not received by Citrix Online Audio on or before the applicable due date will accrue interest from such due date through the date paid at the lesser of the rate of (i) 10% per year or (ii) the highest rate permissible under applicable law.

2.4. Taxes and Withholding. Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Contract.

2.5. Ramp Up Period. Citrix Online Audio shall waive the Fee Commitment payment obligation for the Ramp Up Period and Customer shall pay for the actual minutes utilized instead of the Fee Commitment as set forth in the Audio Services Order. Following the Ramp Up Period, Customer shall pay all Fees in accordance with the Fee Commitment as set forth on the Audio Services Order and the terms of this Agreement.

2.6. Customer Responsible for Voice and Data Charges. Customer shall be responsible for all fees and charges imposed on Customer by Customer's telephone carriers, wireless providers, and other voice and/or data transmission providers for voice and/or data transmission used by Customer to access and use the Audio Services.

3. Term and Termination.

3.1. Audio Agreement Term. This Audio Agreement shall commence on the Effective Date and shall continue for twelve (12) months. Thereafter this Audio Agreement shall automatically renew for successive one-year Audio Agreement Renewal Terms. In the event Customer terminates this Audio Agreement, the terms shall remain in full force and effect as to any Audio Services Order not otherwise terminated until termination of such Audio Services Order.

3.2. Termination by Non-Renewal. Customer may elect to not renew and to terminate this Agreement by providing Citrix Online Audio with written notice of non-renewal at least thirty (30) days prior to the end of the Term. Such written notice of non-renewal must be submitted to Citrix Online Audio at corporatecancellations@citrixonline.com.

3.3. Termination for Convenience. Following the Initial Commitment Term, Customer may terminate this Agreement during any subsequent Renewal Term for any reason or no reason by providing Citrix Online Audio at least forty-five (45) days' written notice, and Citrix Online Audio will refund to Customer any prepaid but unused Subscription Fees (if any). Such written notice of termination must be submitted to Citrix Online Audio at corporatecancellations@citrixonline.com.

3.4. Termination of HiDef Corporate Audio Service with Integrated Toll-Free in Conjunction with GoTo Services. In the event Customer terminates its subscription of the GoTo Services including GoToMeeting, GoToWebinar and/or GoToTraining in accordance with the terms of Customer's applicable master subscription agreement with Citrix Online LLC, Customer's HiDef Corporation Audio Service with Integrated Toll-Free Audio Services shall also terminate. Upon such termination, Citrix Online Audio will refund to Customer any prepaid but unused Fee Commitment, if any, and in no event shall Customer be charged an early termination fee.

3.5. Termination for Cause. At any time, either Party may terminate this Agreement immediately upon written notice to the other Party (i) if the other Party breaches any of its material obligations under this Agreement and such breach is not cured within thirty (30) days of receipt of written notice from the non-breaching Party, or (ii) if the other Party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business, or (iii) in the event of a breach by the other Party of Section 4. In addition, Citrix Online Audio may terminate this Agreement immediately upon written notice to Customer in the event Customer breaches Section 1.

3.6. Effect of Termination. Upon termination of this Agreement, Customer will immediately discontinue all access and use of the Audio Services and cease to represent in any form that it is a user of the Audio Services. Neither Party shall be liable for any damages resulting from a termination of this Agreement in accordance with this Section 3; provided, however, the termination of this Agreement shall not affect any claim arising prior to such termination.

4. Confidentiality. Unless expressly authorized in writing by the other Party, neither Party shall disclose to any third party Confidential Information of the other Party, nor use such Confidential Information in any manner other than to perform its obligations under this Agreement. The foregoing restrictions do not apply to any information that (i) is publicly disclosed through no fault of the receiving Party, (ii) is already lawfully in the

receiving Party's possession and not subject to a confidentiality obligation to the disclosing Party, (iii) becomes known to the receiving Party from a third party having an apparent bona fide right to disclose the information, (iv) is Confidential Information that the receiving Party is required to produce pursuant to an order of a court of competent jurisdiction or a valid administrative subpoena, provided receiving Party supplies disclosing Party with timely notice of such court order or subpoena. Furthermore, Customer will keep in confidence all passwords and/or other access information related to the Audio Services. Customer acknowledges that Citrix Online Audio, and its licensors, retain all intellectual property rights and title, in and to, all of their Confidential Information and/or other proprietary information. This shall include, but not be limited to: products, services, and the ideas, concepts, techniques, inventions, processes, software or works of authorship developed, embodied in, or practiced in connection with the Audio Services provided by Citrix Online Audio hereunder.

5. **Warranties.** Each Party hereby warrants to the other Party that it has all necessary authority to enter into and perform its obligations under this Agreement without the consent of any third party or breach of any contract or agreement with any third party. CITRIX ONLINE AUDIO WARRANTS THAT (i) ANY AUDIO SERVICES PROVIDED HEREUNDER WILL BE PERFORMED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH PREVAILING INDUSTRY STANDARDS; (ii) THE AUDIO SERVICES WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH ANY APPLICABLE CITRIX ONLINE AUDIO DOCUMENTATION PROVIDED WITH THE AUDIO SERVICES UNDER NORMAL USE AND CIRCUMSTANCES and, (iii) THE FUNCTIONALITY OF THE AUDIO SERVICES WILL NOT BE MATERIALLY DECREASED DURING THE TERM. CUSTOMER'S EXCLUSIVE REMEDY FOR ANY BREACH OF THESE WARRANTIES SHALL BE TO TERMINATE IN ACCORDANCE WITH SECTION 3.3 (TERMINATION FOR CONVENIENCE). TO THE EXTENT PERMITTED BY APPLICABLE LAW, CITRIX ONLINE AUDIO DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT EXCEPT FOR THE INFRINGEMENT INDEMNIFICATION EXPRESSLY PROVIDED IN SECTION 6 BELOW.

6. **Indemnification.**

6.1. **Defense or Settlement of Claims.** Subject to Sections 6.2 and 6.3 below, Citrix Online Audio shall hold harmless, indemnify and defend Customer against any Infringement Claim brought against Customer, provided Customer promptly notifies Citrix Online Audio in writing of its notification of an Infringement Claim such that Citrix Online Audio is not prejudiced by any delay of such notification. Citrix Online Audio shall pay reasonable attorney's fees, court costs, and damages finally awarded with respect to such Infringement Claim and the reasonable costs associated with any settlement of any Infringement Claim by Citrix Online Audio. Citrix Online Audio will have sole control over the defense and any settlement of any Infringement Claim and Customer will provide reasonable assistance in the defense of same. Citrix Online Audio will reimburse Customer for reasonable expenses incurred in providing such assistance. Citrix Online Audio shall not enter into any settlement agreement which imposes any obligation on Customer without Customer's prior written consent. Customer may participate in the defense or settlement of an Infringement Claim with counsel of its own choice and at its own expense, however, Customer shall not enter into any settlement agreement or otherwise settle any such Infringement Claim without Citrix Online Audio's express prior written consent or request.

6.2. **Infringement Cures.** Following notice of an Infringement Claim, and in the event an injunction is sought or obtained against use of the Audio Services subscribed to hereunder or in Citrix Online Audio's opinion is likely to be sought or obtained, Citrix Online Audio shall, at its option and expense, either (i) procure for Customer the right to continue to use the Audio Services as contemplated herein, or (ii) replace or modify the Audio Services to make their use non-infringing while being capable of performing the same function without degradation of performance. In the event the options set forth in subsections (i) and (ii) herein above are not reasonably available, Citrix Online Audio may in its sole discretion, upon written notice to Customer, terminate this Agreement, cancel access to the Audio Services and refund to Customer any prepaid, but unused Fees, if any.

6.3. **Limitation.** Citrix Online Audio assumes no liability, and shall have no liability, for any Infringement Claim based on (i) Customer's access to and/or use of the Audio Services after notice that Customer should cease use of such Audio Services due to an Infringement Claim; (ii) any unauthorized modification of the Audio Services by Customer or at its direction; (iii) Customer's unauthorized combination of the Audio Services with third party programs, data, hardware, or other materials; or (iv) any trademark infringement involving any

marking or branding not applied by Citrix Online Audio or involving any marking or branding applied at Customer's request.

6.4. EXCLUSIVE REMEDY. THE FOREGOING STATES CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY INFRINGEMENT CLAIM HEREUNDER.

7. LIMITATION ON LIABILITY. EXCEPT FOR (i) CITRIX ONLINE AUDIO'S INDEMNIFICATION OBLIGATION UNDER SECTION 6, or (ii) A BREACH BY CUSTOMER OF SECTION 1, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW:

7.1. LIABILITY CAP. THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY, THEIR RESPECTIVE LICENSORS AND SUPPLIERS ARISING OUT OF THIS AGREEMENT AND/OR THE TERMINATION THEREOF SHALL BE LIMITED TO THE SUM OF THE AMOUNTS PAID DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS TO PAY ANY FEES AND/OR OTHER SUMS DUE UNDER THE AUDIO SERVICES ORDER; and

7.2. EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY OR OTHER DAMAGES OR WHETHER DIRECT OR INDIRECT: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, (iv) LOST PROFITS, (v) COSTS OF RECOVERY OR ANY OTHER DAMAGES, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), VIOLATION OF STATUTE, OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

8. Additional Terms.

8.1. Relationship of Parties. Citrix Online Audio and Customer are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties.

8.2. Assignment. Neither Party may assign its rights or delegate its duties under this Agreement, either in whole or in part, without the prior written consent of the other Party (which consent shall not be unreasonably withheld), except that either Party may assign this Agreement in whole, as part of a corporate reorganization, consolidation, merger, or sale of all or substantially all of its assets. Any attempted assignment or delegation without such consent shall be void. This Agreement will bind and inure to the benefit of each Party's successors and permitted assigns.

8.3. Force Majeure. Neither Party will be responsible for any delay, interruption or other failure to perform under this Agreement due to acts beyond its reasonable control, but only for so long as such conditions persist. Force majeure events include, but are not limited to: natural disasters (e.g., lightning, earthquakes, hurricanes, floods); wars, riots, terrorist activities, and civil commotions; activities of local exchange carriers, telephone carriers, wireless carriers, Internet service providers, and other third parties; explosions and fires; embargoes, strikes, and labor disputes; governmental decrees; and any other cause beyond the reasonable control of a Party.

8.4. Notice. Any and all business notices, requests and communications to the Parties shall be in writing (including fax, email or similar writing) and shall be given to the Parties at their respective address identified on the Audio Services Order or to such other address, fax number or email address as either Party may hereinafter specify by notice to the other Party. All legal notices required under this Agreement shall be delivered by a recognized commercial overnight carrier to the address last designated on the Audio Services Order for Customer and the Citrix Online Audio contracting entity as specified in Exhibit B to these Terms and Conditions or such other address as either Party may hereinafter specify by notice to the other Party as provided in this Section 8.4. Each such legal notice shall be effective upon receipt or attempted delivery if rejected, provided that if the day of receipt is not a business day, then the notice shall be deemed to have been received on the next succeeding business day. Notwithstanding the foregoing, any termination of Audio Services pursuant to Section 3.2 or Section 3.3 shall be provided as stated therein.

8.5. Customer/Technical Support. Citrix Online Audio shall provide, at no additional charge to Customer, customer/technical support services as further described in Exhibit C to these Terms and Conditions. Customer acknowledges it will be required, from time to time, to accept Audio Service(s) updates at no additional charge to Customer, as part of Citrix Online Audio's ongoing Audio Services enhancement and customer/technical support

8.6. High-Risk Use. Customer hereby acknowledges that the Audio Services are not designed or intended for access and/or use in or during high-risk activities including, but not limited to: medical procedures; on-line control of aircraft, air traffic, aircraft navigation or aircraft communications; or the design, construction, operation or maintenance of any nuclear facility. Citrix Online Audio hereby expressly disclaims any express or implied warranty of fitness for such purposes.

8.7. Compliance with Laws. Both Parties agree to comply with all applicable local, state, national and foreign laws, rules and regulations including, but not limited to, all applicable export and import laws and regulations, in connection with their performance, access and/or use of the Audio Services under this Agreement. Customer shall comply with all legal duties applicable to Customer including obligations as data controller by virtue of Customer's role as meeting organizer and/or user. Specifically, Customer must provide the relevant persons and/or participants with all information Customer is required by law to provide and, if necessary, must obtain the consent of these persons and/or participants. Notwithstanding any other provision in this Agreement, Citrix Online Audio shall have the right to terminate this Agreement immediately upon the determination by Citrix Online Audio that Customer is not in compliance with US export laws or violates any government privacy and/or data protection laws.

8.8. No Waiver. The failure of either Customer or Citrix Online Audio in any one or more instance(s) to insist upon strict performance of any of the terms of this Agreement will not be construed as a waiver or relinquishment of the right to assert or rely upon any such term(s) on any future occasion(s).

8.9. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision shall be severed from this Agreement and the other provisions shall remain in full force and effect and the Parties agree to comply with the remaining terms of this Agreement in a manner consistent with the original intent of the Agreement.

8.10. No Third Party Beneficiaries. No person or entity not a Party to this Agreement will be deemed to be a third party beneficiary of this Agreement or any provision hereof.

8.11. Survival. The termination of this Agreement shall not relieve either Party of any liability or obligation incurred prior to such termination. In addition, the provisions of Sections 1 (Customer Restrictions), 2 (Fees), 3 (Termination), 4 (Confidential Information), 5 (Warranties), 6 (Indemnification), 7 (Limitation of Liability), 8 (Additional Terms) and 9 (Definitions) shall survive any termination of this Agreement.

8.12. Entire Agreement. This Audio Agreement, (with all Attachments attached hereto), together with the Audio Services Orders, sets forth the entire agreement and understanding between Citrix Online, Customer and authorized Contracting Agencies relating to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and understandings with respect to the same. No other rights are granted hereunder except as expressly set forth in this Agreement.

8.13. Modifications and Remedies. This Agreement may only be modified by a writing that is executed by an authorized representative of both Parties. Customer's subsequent purchase orders or other standard business forms will not constitute a modification of this Agreement, whether or not received, accepted, approved or signed by Citrix Online Audio and any contradictory terms or conditions therein shall have no force or effect. Unless otherwise specified, remedies are cumulative.

8.14. Captions and Headings. Captions and headings are used herein for convenience only, are not a part of this Agreement, and shall not be used in interpreting or construing this Agreement.

8.15. Controlling Language. The English language version of this Agreement shall be the controlling version and is incorporated by reference into any translation of this Agreement. Any translation or other language version of this Agreement shall be provided for informational purposes only.

8.16. References. Pronouns contained in this Agreement shall apply equally to the feminine, neuter and masculine genders. The singular shall include the plural, and the plural shall include the singular.

8.17. Counterparts. This Agreement may be executed in one or more counterparts and by facsimile or electronic signature, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument.

8.18. Contracting Party, Choice of Law and Location for Resolving Disputes. This Agreement is between Customer and the Citrix Online Audio entity identified in Exhibit B to these Terms and Conditions. Additionally, Exhibit B sets forth the choice of law and the location for resolving disputes (including non-contractual disputes and claims) with such Citrix Online Audio entity. Notwithstanding the foregoing, in the event of any such dispute/claim, the Parties may agree to mediate the dispute/claim on such terms and conditions as may be agreed to in writing by the Parties.

9. Definitions. As used in this Agreement and in any Audio Services Order now or hereinafter associated herewith, the following defined terms shall apply:

9.1. Agreement Effective Date means the date as set out in the opening paragraph of the Audio Agreement

9.2. Agreement Renewal Term means each successive one (1) year renewal period following the Audio Agreement Term.

9.3. Agreement Term means the twelve (12) month period commencing with the Audio Agreement Effective Date together with the Audio Agreement Renewal Term(s), if any.

9.4. Audio Service(s) means Citrix Online Audio's corporate audio service products consisting of the audio services set forth in Exhibit A to these Terms and Conditions and as subscribed to by Customer pursuant to the Audio Services Order.

9.5. Audio Service(s) Order means the initial Audio Services Order and any subsequent Audio Services Order(s) Only entered into by Customer for Audio Services.

9.6. Authorized Signatory means a person legally authorized by a Party to enter into the Agreement on behalf of the Party and to bind that Party to all terms and conditions contained in the Agreement.

9.7. Billing Cycle means the period of time between invoices issued for Audio Services.

9.8. Billing Frequency means the frequency that Customer receives invoices for Audio Services as stated on the initial Audio Services Order.

9.9. Citrix Online Audio means the Citrix Online contracting entity designated in the Audio Services Order and as specified in Exhibit B to these Terms and Conditions.

9.10. Confidential Information means any non-public information and/or materials provided by a Party under this Agreement to the other Party and reasonably understood to be confidential.

9.11. Contracting Agency means any Offices, Agencies or Departments within the Customer's Organization regardless of location which Customer authorizes to receive the Services by way of a Services Order. Upon receipt of a Services Order, Citrix Online shall provide the requested Services and thereafter submit invoices to Customer per the terms of the Agreement.

9.12. Customer means the legal entity or individual that enters into the Agreement as set forth in the Audio Services Order.

9.13. Fees means the fees, including but not limited to the Subscription Fee(s), payable by Customer for the Audio Services as set forth in the Audio Services Order(s).

9.14. Fee Commitment means the minimum periodic Subscription Fee(s) Customer shall pay Citrix Online Audio for Audio Services as set forth in the Audio Services Order.

9.15. Infringement Claim means any claim, suit or proceeding brought against a Customer based on an allegation that the Audio Services, as used by Customer in accordance with this Agreement, infringes upon any copyright of any third party.

9.16. Initial Commitment Term means the initial term of each Audio Services Order which shall commence on the Audio Services Order Effective Date and continue for twelve (12) months thereafter.

9.17. **Party** means individually Customer, Contracting Agency or Citrix Online Audio and **Parties** means Customer, Contracting Agency and Citrix Online Audio collectively.

9.18. **Privacy Policy** means Citrix Online Audio's Privacy Policy which can be viewed at www.hidefcorporate.com/privacy.htm.

9.19. **Renewal Term** means each successive one-year renewal period following the Initial Commitment Term.

9.20. **Subscription Fee(s)** means the fee for Customer's use of and access to the Audio Services as set forth in an Audio Services Order and, which shall be due and payable throughout the Term according to the Billing Frequency selected by Customer as stated on the Audio Services Order.

9.21. **Term** means the Initial Commitment Term together with the Renewal Term(s), if any.

EXHIBIT A

AUDIO SERVICES

1. **Audio Services.** The following describes the Audio Services offered by Citrix Online Audio and shall apply to any Audio Services ordered by Customer under this Agreement as subscribed to in the Audio Services Order:

1.1. **HiDef Corporate Audio Service.** The HiDef Corporate Audio Service is a conferencing solution that provides Moderators with 24/7 access to full-featured, reservationless audio conferencing at the price per minute per line rates listed on the Audio Services Order. The HiDef Corporate Audio Service is accessed via touchtone telephone and supports both traditional, land-line dial in and mobile phone access for up to 500 audio conferencing connections in a single meeting. Customer shall be provided access to the administrative account/billing, management web portal, each Moderator will receive a unique conference room number, Moderator PIN and access to their meeting management web portal, with no limit on the number of Moderator accounts that can be provisioned by the Customer. For purposes of this Audio Service, the term Moderator(s) means a Customer authorized user of the HiDef Corporate Audio Service who can initiate audio conference calls and invite conference call attendees.

1.2. **HiDef Corporate Audio Service with Integrated Toll-Free.** The HiDef Corporate Audio Service with Integrated Toll-Free is an additional service made available by Citrix Online Audio for integrated use with GoToMeeting, GoToWebinar and GoToTraining. By subscribing to this Audio Service, Customer may use toll-free phone numbers as an additional audio option for its online meetings and Webinars. Customer must separately subscribe to the GoToMeeting, GoToWebinar and/or GoToTraining Service(s) from Citrix Online LLC in order to use this additional Audio Service.

2. **Customer Access.** During the Term of this Agreement, and upon payment of all applicable Fees, Customer may access and use the Audio Services subscribed to hereunder pursuant to and in accordance with the provisions of this Agreement. Citrix Online Audio will enable Customer to access and utilize the Audio Services as contemplated by the Agreement. Thereafter, Customer shall be solely responsible for selecting and managing its users and providing each of them with the information necessary for access to and use of the Audio Services. Customer may inform its users, customers and employees that the Audio Services are powered by Citrix Online Audio. Customer understands that the Audio Services do not allow calls to the emergency services numbers (e.g. in the United States 911, or in the United Kingdom 999 and 112). If Customer's broadband connection fails, the Audio Services and some related voice service will also fail. The Audio Services may cease to function if there is a power cut or failure. These failures may be caused by reasons outside of the control of Citrix Online Audio.

3. **Training.** In connection with the Audio Services subscribed to hereunder, Citrix Online Audio will make available to Customer remote training session(s) via telephone and the Internet for all administrators and end users of the Audio Services.

4. **Privacy Policy.** Citrix Online Audio's Privacy Policy may be viewed at www.hidefcorporate.com/privacy.htm. Citrix Online Audio reserves the right to modify the Privacy Policy in its reasonable discretion from time to time.

EXHIBIT B**CITRIX ONLINE AUDIO CONTRACTING ENTITY**

The Citrix Online Audio contracting entity under this Agreement, the applicable notice address, governing law and jurisdiction to resolve disputes (including non-contractual disputes and claims) will depend on where Customer is domiciled. Please refer to the chart below to identify the Citrix Online Audio contracting entity:

If Customer is domiciled in:	Customer is contracting with:	Notices should be addressed to**:	The governing law is:	The courts having exclusive jurisdiction are:
A Country in North, South or Central America or the Caribbean	Citrix Online Audio, LLC 499 Washington Boulevard Suite 1401 Jersey City, NJ 07310, U.S.A.	Global Customer Support 7414 Hollister Avenue Goleta, CA 93117, U.S.A With a copy to: Legal Department 7414 Hollister Avenue Goleta, CA 93117, U.S.A	California and controlling United States federal law	Santa Clara County, California, U.S.A.
A Country in Europe, the Middle East or Africa*	Citrix Online UK Limited registered in England and Wales under registration number: <u>646972</u> Registered address: Chalfont Park House, Chalfont Park, Gerrards Cross, Bucks SL9 0DZ VAT number: <u>GB928999931</u>	Global Customer Support Chalfont Park House, Chalfont Park, Gerrards Cross, Bucks SL9 0DZ With a copy to: Legal Department 7414 Hollister Avenue Goleta, CA 93117, U.S.A.	England and Wales	England and Wales
A Country in Asia or the Pacific region	Citrix Online Aus Pty Ltd Level 3, 1 Julius Avenue, North Ryde, NSW 2113 ABN# <u>47 130 063 642</u>	Global Customer Support Level 3, 1 Julius Avenue, North Ryde, NSW 2113 With a copy to: Legal Department 7414 Hollister Avenue Goleta, CA 93117, U.S.A.	New South Wales	New South Wales

*For customers from the United Kingdom, if Citrix Online UK Limited is unable to resolve any Customer complaint satisfactorily, Customer may be able to make a complaint through the Office of the Telecommunications Ombudsman (Otelco, <http://www.otelco.org.uk>), an independent alternative dispute resolution scheme of which Citrix Online UK Limited is a registered member. In such circumstances Otelco will conduct a detailed case review and make an independent third-party decision or recommendation.

* For customers from France, the following language is added to the Audio Services Order and the Terms and Conditions: "All requested Customer information on the Audio Services Order and in the Agreement is compulsory and necessary for processing Customer's file. Customer is hereby informed that its personal data is subject to automatic processing by Citrix Online UK Limited for the management of Customer's file. Customer may ask for access to and rectification of Customer's personal data."

* For customers from Germany, Customer agrees that it shall utilize the Audio Services only for business or professional use and shall enter into a legal transaction with Citrix Online UK Limited only in such capacity. If Customer wants to initiate out-of-court dispute resolution mechanisms according to the provisions of the Telecommunications Act and its executive regulations Customer may submit an application to the German Federal Network Agency, Bonn, Germany.

** Notwithstanding the notice provisions above, all termination notices for non-renewal shall be sent in accordance with Section 3.2 of the Agreement with a copy to the mailing addresses set forth above.

EXHIBIT C**CUSTOMER/TECHNICAL SUPPORT**

Citrix Online Audio will provide customer/technical support to Customer, as follows:

Designated Contacts: Customer-designated administrator(s) and Moderators.

Case Limit: Unlimited for Customer-designated administrator(s).

Availability: Citrix Online Audio customer/technical support is available twenty-four (24) hours per day, seven (7) days per week.

Access: Customer/technical support is available via telephone and email, as set forth below:

Telephone: 1+ (888) 259-8414

Email: support@citrixonline.com

Response Time: Not greater than two (2) days. Citrix Online Audio will use commercially reasonable efforts to respond and to resolve the issue as soon as practical, but cannot guarantee resolution in a particular time period.

Price: Customer/technical support (as described herein) is provided at no additional charge.

Attachment FCITRIX ONLINE AUDIO SERVICES MASTER SUBSCRIPTION AGREEMENTAUDIO SERVICES ORDER FORM

**STATE OF VERMONT
CONTRACTING AGENCY
AUDIO SERVICES ORDER FOR
CITRIX ONLINE AUDIO SERVICES**

**Citrix Online
Audio**

COL OID #:

Please fax ALL PAGES of the signed AUDIO Services Order to:
+1(805) 690-6471 OR scan and email to Citrix Online Audio Account
Executive

I. CUSTOMER DATA SUMMARY:

CONTACT INFORMATION	BILLING INFORMATION
Customer: State of Vermont Address: Main Contact: Telephone: Fax: Email: <i>Citrix Online Audio Account Executive</i> <i>Name: Jim Weed</i> <i>Email: jim.weed@citrix.com</i>	Purchase Order #: Not Applicable Billing Address: (if different) Billing Contact: Telephone: Fax: Email: Billing Frequency: Monthly Billing Method: Invoices shall be delivered to Customer via email. Insert "X" here if Customer requires paper invoice Payment Process: Citrix Online Audio will invoice Customer in accordance with Section 2.1. of the Master Subscription Agreement Terms and Conditions and Customer shall pay to Citrix Online Audio all Fees set forth therein via check/cheque.

II. AUDIO SERVICES: (check applicable audio services)

<input type="checkbox"/>	HIDEF CORPORATE AUDIO SERVICE WITH INTEGRATED TOLL-FREE ("ITF")
<input type="checkbox"/>	HIDEF CORPORATE AUDIO SERVICE
<input type="checkbox"/>	UNLIMITED INTEGRATED TOLL FREE

TABLE A: AUDIO SERVICE & FEE SUMMARY:

Audio Service Type	Location*	Currency**	Rate*** (Per Minute)	Fee Commitment (Per Month)
HiDef with ITF	U.S. and Canada	USD	0.029 USD	No Commit
		CUR		
		CUR		
Options		CUR		

Other

* Location means the geographic location from which a conference participant originates a call utilizing the Audio Services.

** Standard rates applicable to the Audio Services shall be billed in the currency denoted above.

TABLE B: AUDIO SERVICE & FEE SUMMARY-UNLIMITED INTEGRATED TOLL-FREE (“UITF”) WITH GoToMEETING¹:

Audio Service Type	Location ²	Number of Named Authorized Audio Users (NAAU) ³	Monthly Rate per NAAU	Total Monthly UITF Fee	Total Annual UITF Fee
Unlimited ⁴ Integrated Toll-Free with GoToMeeting®	U.S.		19.95 USD	USD	USD

GoToMeeting is a registered trademark of Citrix Online, LLC

² Unlimited Integrated Toll-Free Audio Service is available for purchase and use only in the United States

³ The Number of Named Authorized Audio Users must equal the number of Named Authorized Users of the GoToMeeting Service purchased separately by Customer from Citrix Online, LLC

⁴ Unlimited usage is based on normal customer usage as determined by Citrix Online Audio in comparison with overall customer usage patterns and subject to Citrix Online Audio’s Master Subscription Agreement, and other restrictions as defined herein.

The Fees specified in the Service and Fee Summary Tables above are exclusive of VAT, GST, USF and any other applicable taxes and/or fees.

III. DEFINITIONS AND AUDIO SERVICES

A. Definitions. The following definitions shall apply to this Audio Services Order:

1. **Agreement** means that certain Master Audio Agreement entered into between Citrix Online, LLC and State of Vermont, Department of Information and Innovation dated as of November 1, 2012.

2. **Audio Services** mean Citrix Online’s Audio Services consisting of the services set forth in Attachment A and Attachment B of the Agreement.

3. **Audio Services Order** means the initial Audio Services Order and any subsequent Audio Services Order entered into by Customer for Audio Services.

4. **Audio Services Order Effective Date** means the earlier of the (i) date Customer submits the initial Audio Services Order, or (ii) as stated on the signature block of the initial Audio Services Order.

5. **Billing Frequency** means the frequency that Customer or Customer Contracting Agency, as applicable, receives invoices for Audio Services as stated on the Initial Audio Services Order.

6. **Customer** means State of Vermont, Department of Information and Innovation and any Contracting Agency as set forth in this Services Order.

7. **Contracting Agency** means any agency within Customer’s organization regardless of location which Customer authorizes to receive the Services by way of a Services Order.

8. **Fees** mean the fees payable by Customer for the Audio Services as set forth in the Audio Services Order and the Pricing Schedule set forth in Attachment B of the Master Audio Agreement.

9. **Initial Commitment Term** means the initial term of each Audio Services Order which shall commence on the Audio Services Order Effective Date and continue for twelve (12) months thereafter.

10. **Renewal Term** means each successive one-year renewal period following the Initial Commitment Term.

11. **Subscription Fee** means the fee for Customer's use of and access to the Audio Services as set forth in the Audio Services Order and, which shall be due and payable throughout the Term according to the Billing Frequency selected by Customer as stated on the Audio Services Order.

12. **Term** means the Initial Commitment Term together with the Renewal Term(s), if any.

IV. FEES:

1. **Payment.** Customer shall pay to Citrix Online all Fees in accordance with the Billing Frequency as stated on this Audio Services Order.

2. **Add-On Audio Services Order.** Customer may add-on additional Audio Services at any time. Any additional Audio Services authorized by Customer by submission of an additional Audio Services Order shall be subject to the Agreement and shall be co-terminus with the Term of the initial Audio Services Order, in accordance with Section V, below. Should a request for additional Audio Services be submitted by Customer with pricing different than that contained in an existing Audio Services Order, Citrix Online shall apply the lower pricing to the applicable Audio Services going forward. In the event Customer has prepaid Subscription Fees at a higher rate, Citrix Online shall issue a credit with the next regularly scheduled invoice.

3. **Taxes and Withholding.** Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Contract.

4. **Customer Responsible for Voice and Data Charges.** Customer shall be responsible for all fees and charges imposed on Customer by Customer's telephone carriers, wireless providers, and other voice and/or data transmission providers for voice and/or data transmission used by Customer to access and use the Application Solutions,

V. TERM AND TERMINATION:

1. **Term.** The Initial Commitment Term shall commence on the Audio Services Order Effective Date. Following the Initial Commitment Term, Customer's subscription to the Audio Services shall automatically renew for successive one-year Renewal Terms.

2. **Termination by Non-Renewal.** Customer may elect to not renew and to terminate the Audio Services by providing Citrix Online with written notice of non-renewal at least thirty (30) days prior to the end of the Term. Such written notice of non-renewal must be submitted to Citrix Online at corporatcancellations@citrixonline.com.

3. **Termination for Convenience.** Customer's right to termination for convenience shall not accrue until the completion of the Initial Commitment Term, at which time Customer may terminate this Agreement during any subsequent Renewal Term for any reason or no reason by providing Citrix Online at least forty-five (45) days' written notice, and Citrix Online will refund to Customer any prepaid but unused Subscription Fees (if any). Such written notice of termination must be submitted to Citrix Online at corporatcancellations@citrixonline.com.

4. **Effect of Termination.** Upon termination of the Audio Services subscribed to under this Audio Services Order, Customer will immediately discontinue all access and use of the Audio Services and cease to represent in any form that it is a user of the Application Solutions. Neither party shall be liable for any damages resulting from a termination in accordance with this Section V; provided, however, the termination hereunder shall not affect any claim arising prior to such termination.

UNLIMITED INTEGRATED TOLL-FREE TERMS

1. UITF Pilot Program

Customer acknowledges and agrees that the UITF Service is being offered by Citrix Online Audio as a pilot program ("UITF Pilot"). The UITF Pilot shall be made available to Customer for a term of twelve (12) months only, commencing on the Effective Date. Notwithstanding the foregoing, Citrix Online Audio reserves the right to revise the UITF Pilot program, pricing and terms at any time, including the right to terminate the UITF Pilot on notice to Customer.

2. **Customer Restrictions. Section 1.2. (Abuse)** of the Terms and Conditions is hereby deleted and replaced with the following:
- 1.2. **Abuse.** Customer shall not access and/or engage in any use of the Audio Services (i) in a manner that abuses or materially disrupts the networks, security systems, Audio Services and/or websites of Citrix Online Audio; (ii) to communicate any message or material that is deemed harassing, threatening, indecent, obscene, slanderous, or otherwise unlawful; and/or (iii) that, for purposes of the UITF Service, results in usage of the Audio Service in excess of 5x the overall average customer usage, as determined by Citrix Online Audio in accordance with Section 2.1.2. below.
3. **Fees. Section 2. (Fees)** of the Terms and Conditions is hereby modified to add Section 2.1.1., and Section 2.1.2., and to delete and replace Section 2.5. as follows:
- 2.1.1. **Billing Frequency and UITF Fee(s).** Customer shall be billed monthly in advance for the Monthly UITF Fee(s) set forth in Table B above.
- 2.1.2. **Customer UITF Service Usage.** Citrix Online Audio reserves the right to review Customer's usage of the UITF Service to determine if such usage violates Section 1.2. of the Agreement, as modified above, limits other customers' ability to use the Audio Service, or otherwise adversely affects Citrix Online Audio's operations. Citrix Online Audio may determine abnormal usage through comparisons with overall customer usage patterns, including minutes used, number of unique numbers connected, usage patterns, and other factors. If Citrix Online Audio determines that Customer is engaging in abnormal or impermissible usage, Citrix Online Audio will use commercially reasonable efforts to inform Customer and provide Customer with an opportunity to correct the improper usage. If Customer fails to conform UITF usage to normal use, Citrix Online Audio may exercise its right to transfer Customer to a more appropriate service plan, charge applicable rates, or suspend or terminate Customer's UITF Service with or without notice. If Citrix Online Audio believes that Customer has used the UITF Service for an unlawful purpose, Citrix Online Audio may immediately terminate Customer's UITF Service with or without notice and/or forward the relevant communication and other information to the appropriate authorities for investigation and prosecution.
- 2.5. **Ramp Up Period.** There shall be no Ramp Up Period applicable to the UITF Service.
4. **Definitions. Section 9.13. (Fees)** of the Terms and Conditions is hereby modified to add Section 9.13.1., Section 9.22., and Section 9.22.1., as follows:
- 9.13.1. **UITF Fee(s)** means the monthly fee charged to Customer for its use of Unlimited Integrated Toll-Free with GoToMeeting Service as set out in Table B, Audio Service and Fee Summary above.
- 9.22. **Named Authorized Audio User(s)** (sometimes referenced as "NAAU") means (i) those Customer-designated individuals who may access and use the UITF Service in accordance with the Agreement. Each Named Authorized Audio User must have a unique identifier (i.e. "Named User ID"), and (ii) shall be issued on a 1:1 ratio for use with the GoToMeeting service purchased separately by Customer from Citrix Online, LLC.
- 9.22.1. **Named User ID** means the unique identifier of each Customer-designated individual authorized to use the UITF Service. A Named User ID may not be of a generic nature (e.g., john.doe@company.com is a unique Named User ID; whereas support@company.com, user1@company.com, trainer@company.com, etc., are examples of generic user identifiers).
5. **Description of Services. Exhibit A** of the Terms and Conditions is hereby modified to add Section 1.3. as follows:
- 1.3. **Unlimited Integrated Toll-Free with GoToMeeting.** The Unlimited Integrated Toll-Free with GoToMeeting Service is an additional service made available by Citrix Online Audio for integrated use with GoToMeeting only. By subscribing to this Service, Customer may use

toll-free phone numbers as an additional audio option of its online meetings with unlimited usage for a set monthly fee. Customer must separately subscribe to GoToMeeting from Citrix Online, LLC in order to use this additional service. The number of Named Authorized Audio Users must equal the number of Named Authorized Users of GoToMeeting. Unlimited Integrated Toll-Free Audio Service is available for purchase and use only in the United States.

BY SIGNING BELOW, CITRIX ONLINE AUDIO AND CUSTOMER EACH CONFIRM THAT IT HAS READ, UNDERSTANDS AND AGREES **(I)** THAT EACH IS SUBJECT TO THE AGREEMENT; **(II)** SUBJECT TO THE PROVISIONS OF THIS AUDIO SERVICES ORDER; **(III)** CITRIX ONLINE AUDIO AGREES TO PROVIDE THE AUDIO SERVICES AS ORDERED; AND **(IV)** CUSTOMER AGREES TO PAY ALL FEES AS SPECIFICALLY DESIGNATED IN THIS AUDIO SERVICES ORDER.

CUSTOMER:		CITRIX ONLINE AUDIO	
Signature:		Signature:	
Name:		Name:	
Title:	Authorized Signatory for Customer	Title:	Authorized Signatory for Citrix Online Audio
Date:		Date:	

ATTACHMENT G

CITRIX ONLINE AUDIO SERVICES MASTER SUBSCRIPTION AGREEMENT

AUDIO SERVICE LEVEL AND SUPPORT AGREEMENT

1. Purpose

This Service Level Agreement (SLA) details the service availability, support levels, escalation procedures, and response times provided by Contractor for the Citrix Online Audio conferencing solution (the "Audio Service") that has been agreed to by Contractor and State.

2. Service Level Definitions

- 2.1. "Availability" is measured as the time in a relevant Calendar Quarter, less Unscheduled Downtime, less Scheduled Downtime, with the result expressed as a percentage of the time in the Calendar Quarter period.
- 2.1.1 "Availability Percentage" is represented as follows

$$\frac{[\text{Time in Period} - \text{Unscheduled Downtime} - \text{Scheduled Downtime}]}{[\text{Time in Period} - \text{Scheduled Downtime}]}$$
- 2.2. "Calendar Quarter" means any three (3) month period comprised of January 1 - March 31; April 1 - June 30; July 1 - September 30; or October 1 - December 31.
- 2.3. "Critical Error" occurs when the Audio Service fails to function according to its documentation provided to Customer at the time Customer ordered the Audio Service and Customer is unable to proceed without a fix to the problem or a work-around solution provided by Citrix Online Audio.
- 2.4. "Downtime" occurs when the Audio Service is not accessible by Multiple Callers. Downtime may be Scheduled Downtime or Unscheduled Downtime.
- 2.5. "Error" occurs when the Audio Service or documentation contains incorrect logic, incorrect descriptions, or functional problems which Customer is able to work around or where a temporary correction has been implemented (full functionality but needs improvement).
- 2.6. "Force Majeure Failure" occurs when there is a failure of the telephone grid/service on which the Audio Service relies, or any other hardware and software used by Citrix Online Audio to provide the Audio Service due to fires, flood, storm, explosions, earthquakes, strikes or acts of God.
- 2.7. "Level 1 Support" and "Level 2 Support" shall have the meanings set out in Sections 4.1 and 4.2 below.
- 2.8. "Multiple Callers" means ten (10) or more persons who are attempting to attend a conference or conference attendees utilizing the Audio Service.
- 2.9. "Scheduled Downtime" means Downtime which is planned and communicated to Customer in writing least fifteen (15) days in advance, and which shall occur between the hours of 3 AM and 6 AM Eastern time on any day of the week, not to exceed sixty (60) minutes, and not to occur more than once per week.
- 2.10. "Severe Error" occurs when the Audio Service contains major functional problems against the Audio Service documentation provided to Customer at the time Customer ordered the Audio Service which Customer is able to work around. For the avoidance of doubt, in the event of a Severe Error callers may not be able to utilize all functionality of the Audio Service, however, callers are able to meaningfully use the Audio Service and participate in calls.

- 2.11. "Time in Period" means from the beginning of the first day of the Calendar Quarter to the end of the last day of the Calendar Quarter.
- 2.12. "Unscheduled Downtime" occurs when the Audio Service is not accessible by Multiple Callers as the result of a Critical Error or any other reason other than a Force Majeure Failure or Scheduled Downtime.

3. **Service Availability.**

3.1. Downtime.

- 3.1.1 Scheduled Downtime shall be coordinated with Customer.
- 3.1.2 In the event of Unscheduled Downtime, Citrix Online Audio will notify Customer immediately and communicate a recovery plan and timeframe.

- 3.2. Availability. Excluding a force majeure event the Audio Service shall be Available for use by end users 99.9% of the Time in Period during each Calendar Quarter.

- 3.3. Remedies. If Availability drops below 99.9% as a result of Critical Error(s) or any other reason (excluding a Force Majeure Failure) for any Calendar Quarter, Citrix Online Audio will issue a credit to Customer on Customer's next invoicing cycle, as liquidated damages (not as a penalty) the amount of five hundred dollars (\$500) for (i) each hour that Availability drops below 99.9% during the applicable Calendar Quarter, or (ii) each Critical Error affecting Multiple Callers that cause Availability to drop below 99.9% during the applicable Calendar Quarter.

- 3.3.1 For the purposes of clarification, any subsequent Critical Errors induced to resolve an initial Critical Error shall not be counted (for example if an inability to hear by Multiple Callers requires a re-boot of the machine, it shall be treated as a single event for the purposes of these calculations).

- 3.3.2 Notwithstanding the foregoing, the parties agree that regardless of the total amount of Unscheduled and Scheduled Downtime in the applicable Calendar Quarter, the total amount of liquidated damages credit that Citrix Online Audio shall be required to issue to Customer for non-conformance with the Availability requirements in such Calendar Quarter shall not exceed two thousand dollars (US\$2,000). The parties agree that such credit, without further proof of the same, will be deemed to represent damages reasonably and actually sustained by Customer by reason of the Audio Service not conforming to the Availability requirements.

4. **Levels of Support.**

- 4.1. Level 1 Support. "Level 1 Support" means support services provided by Citrix Online Audio to Customer and Customer's end users, which includes: direct contact with end users to define the problem statement and locking it in a customer relationship management system, understanding the business impact to the Customer and/or end user, and gathering supporting files for research. Simple problems and inquiries concerning performance, functionality, and operation of the Audio Service are diagnosed and resolved by Level 1 Support when they can be answered by consulting the Citrix Online Audio service manual, technical knowledge databases, or out-of-the-box samples. Complex problems are escalated to Level 2 Support.

- 4.2. Level 2 Support. "Level 2 Support" means support that researches suspicious problems and performance deficiencies, such as dependencies to third-party products and end user data and customization, including reproducing the issue in a controlled environment, and proposes solutions or work-arounds to the reported problem.

5. **Support Responsibilities.**

5.1. Citrix Online Audio and Customer Support Representative Contact Process

- 5.1.1 Citrix Online Audio personnel will familiarize Customer on the aspects regarding contacting Citrix Online Audio Support.
- 5.1.2 Citrix Online Audio will provide Customer support staff with 3 points of contact: (i) phone, (ii) email, and (iii) web.
- 5.1.3 Citrix Online Audio will provide a toll free number for Customer that will route incoming: trouble calls, indications of interest, existing end user questions and requests to Citrix Online Audio representatives that are trained on the Audio Service.
- 5.1.4 Citrix Online Audio will use commercially reasonable efforts to respond to all Audio Service customer support requests as follows:
- Priority 1: Customer cannot start a conference or Customer's users are dropped from an active conference: Response time – 3-5 minutes
- Priority 2: Some audio conference attendees are having issues starting a conference or using the web interface during an active conference: Response time – 15 minutes
- Priority 3: Customer inquiries after the conference has been completed: Response time – 4-6 hours

5.2. Citrix Online Audio Support

- 5.2.1 Citrix Online Audio will provide 24/7 Level 1 Support and Level 2 Support for the Audio Service and will handle all aspects of its audio service.
- 5.2.2 Citrix Online Audio will respond to and handle service calls as outlined below:
- (a) Citrix Online Audio will be responsible for all Audio Service Customer inquires/complaints regarding Audio Service.
- (b) Citrix Online Audio will be solely responsible for determining the cause of the complaint and determining a resolution.
- (c) If applicable, Citrix Online Audio will train Customer's designated support care representatives on how to triage end user complaints and communicate such complaints to Citrix Online Audio for investigation and resolution.
- 5.2.3 To provide customer Level 1 Support and Level 2 Support, Citrix Online Audio shall maintain a Network Operations Center and a Technical Support Line, both staffed by personnel with expert knowledge of the Audio Service. Customer can receive Level 1 Support and Level 2 Support through the Technical Support Line, which also connects to the Network Operations Center, 24 hours a day, 365 days a year.
- 5.2.4 Citrix Online Audio shall provide service under this Service Level Agreement solely to Customer through central support locations established and maintained by Citrix Online Audio with adequate number of personnel trained in the technical support aspects of the Audio Service, and shall not be responsible to support Customer's individual sites or those of its end users.
- 5.2.5 Should Citrix Online Audio receive calls in regards to any third-party service, Citrix Online Audio will transfer end users to a support queue at Customer, as well as provide the telephone number and email address to the Customer for future support requests.