



**Exhibit to Data Center Services  
Service Component Provider  
Master Services Agreement  
DIR Contract No. DIR-DCS-SCP-MSA-002**

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Between

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

*and*

**Atos IT Governmental Outsourcing Services, LLC (formerly called XBS  
Disposition Subsidiary Two, LLC)**

**Appendix 6 to Eleventh Amendment  
of**

**Attachment 2.3-A  
Hybrid Cloud Services**

May 31, 2016

## ATTACHMENT 2.3-A

### **Hybrid Cloud Services.**

The services and equipment used to provide the services detailed in Exhibits 2.3 and 2.3.1 include standard cloud services provided by Amazon, Microsoft, and/or similar suppliers (each a “Cloud Services Provider”). As such:

1. The standard cloud services included in Exhibits 2.3 and 2.3.1 (the “Standard Cloud Services”) are supplied subject to the terms and conditions of the relevant Cloud Services Provider as detailed in this Attachment or as otherwise agreed to by the parties (the “Terms and Conditions for Standard Cloud Services”). THE STANDARD CLOUD SERVICES WILL CONFER UPON DIR AND DCS CUSTOMERS ONLY SUCH GUARANTEE, WARRANTIES, INDEMNITIES AND REMEDIES AS IS PROVIDED BY THE RELEVANT CLOUD SERVICES PROVIDER AS SET OUT IN THE RELEVANT TERMS AND CONDITIONS FOR STANDARD CLOUD SERVICES;
2. Upon DIR’s approval, DIR shall sign any required agreement or document detailing any or all of the Terms and Conditions for Standard Cloud Services with Service Provider or the relevant Cloud Services Provider as detailed in this Attachment or as otherwise agreed between DIR and Service Provider and the relevant Cloud Services Provider;
3. The supply of such Standard Cloud Services is subject to DIR and DCS Customers complying with the DIR and DCS Customer approved obligations and requirements for users of those Standard Cloud Services as detailed in the Terms and Conditions for Standard Cloud Services.
4. The Cloud Services Providers are not Subcontractors of the Service Provider; however, Service Provider remains accountable for its responsibilities as provided throughout this Agreement, including but not limited to those responsibilities provided in Exhibits 2.3 and 2.3.1 and to meeting the required SLAs. Service Provider remains liable for any lost data due to any failure on the part of Service Provider.
5. Service Provider shall be entitled to provide the following to Cloud Service Providers: the name and contact information (including, contact name, telephone number, email address, city, state/region, country and zip/postal code) of DIR and each DCS Customer receiving Services from the Cloud Services Provider and such other books and records as are necessary to verify Service Provider’s compliance with its agreement with the Cloud Services Provider.
6. Service Provider is permitted to use DIR agreements to obtain cloud infrastructure. Use of such agreements is contingent upon DIR and DIR Customers agreeing (i) to be bound by all terms of the agreement, including the license rights granted thereunder, and (ii) on expiration of Service Provider’s right to license the relevant products, promptly to delete or otherwise dispose of all copies and contents of those products and/or cloud services which DIR and DIR Customers have received from Service Provider, if licenses acquired for the benefit of DIR and DCS Customers are not transferred to DIR or the relevant DCSD Customer upon termination of the provision of Standard Cloud Services by Service Provider.

7. Service Provider shall ensure that all Cloud Service Providers engaged by it are subject to the following Right to Audit terms (or as otherwise agreed):

1) During the term of this Agreement, the Texas State Auditor's Office or any successor state agency ("SAO"), may conduct an audit or investigation as provided in this section. Cloud Service Provider agrees to cooperate fully with the SAO in the conduct of the audit or investigation, including providing all records requested. Under the direction of the Legislative Audit Committee, if the Cloud Services Provider becomes the subject of an audit or investigation by the SAO, it will provide the SAO with access to any information the SAO considers relevant to the investigation or audit.

2) Cloud Services Provider shall maintain adequate records to establish compliance with the Agreement until the later of a period of four (4) years after termination of the Agreement or until full, final and unappealable resolution of litigation issues that arise under the Agreement. Such records shall include per transaction: Reseller name, invoice date, invoice number, description, quantity, unit price, extended price, contact name, Reseller's complete billing address, and such other documentation as SAO may request relating to the Agreement.

3) Cloud Services Provider will grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items reasonably relevant to the performance of the Agreement to the Texas Department of Information Resources ("DIR") Internal Audit department or DIR Contract Management staff and other such persons appropriately designated by DIR for the purpose of inspecting and/or copying such books and records in each case subject to entry of a non-disclosure agreement between Cloud Services Provider and the relevant auditor. Cloud Services Provider will provide copies and printouts requested by DIR without charge. DIR will provide Cloud Services Provider ten (10) business days' notice prior to inspecting and/or copying AWS's records. Cloud Services Provider's records, whether paper or electronic, shall be made available during regular office hours. AWS personnel familiar with Cloud Services Provider's books and records will be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed.

4) (a) Nothing in this Section grants DIR, SAO, the State of Texas or any entity the right to inspect or audit records solely related to any customer of Cloud Services Provider that is not purchasing through this Agreement. DIR and SAO may only perform a walk-through or visit ("Visit") of Cloud Services Provider's site locations if (1) information and documentation provided by Cloud Services Provider (including, e.g., professional, industry standard security audits such as SOC 2 reports) are not reasonably sufficient assurances under the circumstances, or (2) DIR has reason to believe an emergency or fraudulent situation exists concerning Cloud Services Provider's performance under the Agreement.

(b) Subject to paragraph (3)(a) of this section, upon reasonable advance written notice of not less than ten (10) business days, Cloud Services Provider will allow DIR's auditors or investigators to conduct a Visit of Cloud Services Provider's site location(s) used to provide the services to customers through the Agreement, provided that: (i) such Visit is reasonably designed to provide DIR or its auditors or investigators with information relating to Cloud Services Provider's compliance with the Agreement; (ii) the Visit occurs at a time reasonably specified by Cloud Services Provider in accordance with applicable Cloud Services Provider policies (including investigation and security policies); (iii) no more than ten (10) DIR

representatives who must be certified auditors, IT professionals, or senior management (“Visitors”), may participate in the Visit, while under the supervision and escort of Cloud Services Provider personnel. Visitors may not be employees, representatives or affiliates of Cloud Services Provider’s competitors; (iv) the Visit is performed during Cloud Services Provider’s normal business hours; (v) each auditor or investigator signs a non-disclosure agreement; (vi) the Visit is conducted in a way that avoids any unreasonable or unnecessary disruption to Cloud Services Provider’s operations; and (vii) all Services or features of Cloud Services Provider not being provided to DIR through this Agreement, including “pre-release,” “alpha,” or “beta” services or features designated as such by Cloud Services Provider will not be part of the Visit.

5) Nothing in this section or the Agreement grants Service Provider or any entity, other than SAO or DIR, any audit rights.

8. DIR acknowledges that to the extent it utilizes the Standard Services provided by Amazon Web Services, Inc. (“AWS”) (the “AWS Standard Services”), such usage is subject to the applicable AWS Access Policy – State. DIR confirms that such Standard Services will only be used for DIR’s and DIR Customers’ internal use. The Access Policy contains hyperlinks to other documents. The terms related to those linked documents may change from time to time. In the event of a conflict, any linked documents within this AWS Access Policy may not take precedence over the printed documents comprising this Agreement; however, any update to such linked documents shall only apply after the effective date of the update. In the event that different or additional terms or conditions would otherwise result from accessing a linked document, agreement to said linked document shall be provided by Service Provider to DIR in writing through a Contract Notification. If DIR does not consent to the updated terms, DIR may elect to terminate the AWS Cloud Service.

DIR confirms that it agrees to the following AWS Access Policy:

### **AWS Access Policy – State**

This AWS Public Sector Access Policy (“**Access Policy**”) governs your access to and use of the Services (as defined below) of Amazon Web Services, Inc. (“**AWS**”) provided to you by your systems integrator, reseller, or services provider (“**Provider**”). It sets out the additional rules, conditions and restrictions that apply to you or the entity you represent (“**you**”) for use of the Services. In this Access Policy, “**we**”, “**us**”, or “**our**” means AWS and any of its affiliates. Please see Section 10 for definitions of capitalized terms.

#### **1. Use of the Services.**

**1.1 Generally.** You are provided access to the Services by your Provider. Your use of and access to the Services are governed by the agreement between you and Provider. This Access Policy supplements the terms of such agreement and may be updated by us from time to time. AWS Service Level Agreements do not apply to your use of the Services. Your continued access to and use of the Services is conditioned on your compliance with all laws, rules, regulations, policies and instructions applicable to your use of the Services, including the Policies.

**1.2 Account Keys.** Provider may provide you with AWS account keys which will allow you to directly access the Services via Provider’s account(s). We are not responsible for any activities that occur under these account keys, regardless of whether the activities are undertaken by you, Provider or a third party (including your employees, contractors or agents) and we are also not responsible for unauthorized access to the account.

**1.3 Third Party Materials.** Through the use of Provider's AWS account(s), you may have access to Third Party Materials, such as software applications provided by third parties, which are made available directly to you by other companies or individuals under separate terms and conditions, including separate fees and charges. Your use of any Third Party Materials is at your sole risk.

## **2. Your Responsibilities**

**2.1 Your Materials.** You are solely responsible for the development, content, operation, maintenance, and use of Your Materials with the Services. For example, you are solely responsible for:

(a) the technical operation of Your Materials, including ensuring that calls you make to any Service are compatible with then-current application program interfaces for that Service;

(b) compliance of Your Materials with the Acceptable Use Policy, the other Policies, and the law;

(c) any claims relating to Your Materials;

(d) properly handling and processing notices sent to you (or any of your affiliates) by any person claiming that Your Materials violate such person's rights, including notices pursuant to the Digital Millennium Copyright Act;

(e) any action that you permit, assist or facilitate any person or entity to take related to this Access Policy, Your Materials or use of the Services; and

(f) End Users' use of Your Materials and the Services and ensuring that End Users comply with your obligations under this Access Policy and that the terms of your agreement with each End User are consistent with this Access Policy.

**2.2 Other Security and Backup.** You or Provider are solely responsible for properly configuring and using the Services and taking steps to maintain appropriate security, protection and backup of Your Materials, including using encryption technology to protect Your Materials from unauthorized access and routinely archiving Your Materials.

**2.3 End User Violations.** If you become aware of any violation of your obligations under this Access Policy by an End User, you will immediately terminate such End User's access to Your Materials and the Services.

## **3. Service Interruption.**

**3.1 General.** We may suspend the AWS account(s) through which you access the Services immediately if we determine your or an End User's use of the Services (i) violates the terms of this Access Policy (including the Acceptable Use Policy or Service Terms); (ii) poses a security risk to the Services or any other AWS customer, (iii) may harm our systems or the systems or Materials of any other AWS customer; or (iv) may subject us to liability as a result of any of the foregoing. We will provide notice of any suspension as soon as practicable to Provider, who is solely responsible for providing any notices to you under your agreement with them.

**3.2 Scope of Interruption.** To the extent practicable, we will (i) suspend your right to access or use only those instances, data, or portions of the Services that caused the suspension, and (ii) limit the suspension to those accounts that caused the suspension. If commercially feasible, access to the Services will be restored once the conditions or circumstances giving rise to the suspension have been removed or corrected. Nothing in this Section 3 will operate to limit your rights or remedies otherwise available to you against Provider under your agreement with them or applicable law.

## **4. Proprietary Rights**

**4.1 Services.** As between you and us, we or our licensors own and reserve all right, title, and interest in and to the Services. You have the right to use the Services solely as a licensee of Provider in accordance with this Access Policy and the agreement between you and Provider. We have no obligation to provide the Services to you under this Access Policy, so you must look exclusively to Provider and your agreement with Provider regarding such obligation. Except as expressly provided in this Section 4, you obtain no rights to the Services, the AWS Materials or any Third Party Materials.

**4.2 Materials.** As a part of the Services, you may have access to AWS Materials and Third Party Materials, which may be subject to additional terms and conditions (including the Terms of Use and Apache Software License). By using those materials, you are subject to such additional terms. You are solely responsible for securing any necessary approvals for the download and use of such materials.

**4.3 Restrictions.** Neither you nor any End User may use the Services in any manner or for any purpose other than as expressly permitted by this Access Policy and the agreement between you and Provider. Neither you nor any End User may, or may attempt to, (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the Services (except to the extent software included in the Services are provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the software included in the Services or apply any other process or procedure to derive the source code of any software included in the Services, or (c) access or use the Services in a way intended to avoid incurring fees or exceeding usage limits or quotas. All rights and access granted to you with respect to the Services are conditioned on your continued compliance with this Access Policy, and you will immediately discontinue your use of the Services if you cannot comply with this Access Policy.

**4.4 Suggestions.** If you provide any Suggestions to us when using the Services, you hereby grant to AWS and its affiliates a perpetual, irrevocable, non-exclusive, worldwide, royalty-free right and license to reproduce, distribute, make derivative works based upon, publicly display, publicly perform, make, have made, use, sell, offer for sale, and import the Suggestions, including the right to sublicense such rights through multiple tiers, alone or in combination.

**4.5 Government Rights.** In accordance with Federal Acquisition Regulation (FAR) Sections 12.211 and 12.212 and Defense Federal Acquisition Regulation Supplement (DFARS) Sections 227.7201-1 and 227.72012-3, the Services are provided (as applicable) to the U.S. Government as “commercial items,” “commercial computer software,” “commercial computer software documentation,” and “technical data” with the same rights and restrictions generally applicable to the Services. If you are using the Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government’s needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Services (including any AWS Materials).

**5. Representations and Warranties.** You represent and warrant that (a) you and your End Users’ use of the Services (including any use by your employees and personnel) will not violate this Access Policy; (b) you or your licensors own all right, title, and interest in and to Your Materials; (c) Your Materials (including the use, development, design, production, advertising, or marketing of your Materials) or the combination of your Materials with other applications, content or processes, do not and will not violate any applicable laws or infringe or misappropriate any third-party rights; and (d) your use of the Services will not cause harm to any End User.

**6. Disclaimers.** WE PROVIDE THE SERVICES ON AN "AS IS" BASIS TO PROVIDER. WE AND OUR LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND TO YOU, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES OR ANY THIRD PARTY MATERIALS, INCLUDING ANY WARRANTY THAT

THE SERVICES OR THIRD PARTY MATERIALS WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY MATERIALS, INCLUDING YOUR MATERIALS OR THE THIRD PARTY MATERIALS, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

**7. Limitations of Liability.** YOU MUST LOOK SOLELY TO PROVIDER AND YOUR AGREEMENT WITH THEM REGARDING ANY CLAIMS OR DAMAGES RELATED TO THE SERVICES. WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER NEITHER WE NOR ANY OF OUR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (I) SUSPENSION OF YOUR USE OF OR ACCESS TO THE SERVICES, (II) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR (III) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON; OR (B) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR MATERIALS OR OTHER DATA THAT YOU OR ANY END USER SUBMITS OR USES IN CONNECTION WITH THE SERVICES (INCLUDING AS A RESULT OF YOUR OR ANY END USER'S ERRORS, ACTS OR OMISSIONS).

## **8. Definitions.**

**“Acceptable Use Policy”** means the policy currently available at <http://aws.amazon.com/aup>, as it may be updated by AWS from time to time.

**“AWS Materials”** means Materials we make available in connection with the Services or on the AWS Site to allow access to and use of the Services, including WSDLs; Documentation; sample code; software libraries; command line tools; and other related technology. AWS Materials does not include the Services.

**“AWS Service Level Agreement”** means all service level agreements that we offer with respect to the Services and post on the AWS Site, as they may be updated by us from time to time.

**“AWS Site”** means <http://aws.amazon.com> and any successor or related site designated by us.

**“Documentation”** means the developer guides, getting started guides, user guides, quick reference guides, and other technical and operations manuals, instructions and specifications for the Services currently located at <http://aws.amazon.com/documentation>, as such documentation may be updated by us from time to time.

**“End User”** means any individual or entity that directly or indirectly through another user: (a) accesses or uses Your Materials; or (b) otherwise accesses or uses the Services through you.

**“Materials”** means software (including machine images), data, text, audio, video, images or other content.

**“Policies”** means the Acceptable Use Policy, the Terms of Use, the Service Terms, all restrictions described in the AWS Materials and on the AWS Site, and any other policy or terms referenced in or

incorporated into this Access Policy.

**“Services”** means, collectively or individually (as applicable), the web services made commercially available by us to Provider for use under this Access Policy, including (as applicable) those web services described in the Service Terms.

**“Services Terms”** means the rights and restrictions for particular Services located at <http://aws.amazon.com/serviceterms>, as they may be updated from time to time.

**“Suggestions”** means all suggested improvements to the Services or AWS Materials that you provide to us.

**“Terms of Use”** means the terms of use located at <http://aws.amazon.com/terms/>, as they may be updated by us from time to time.

**“Third Party Materials”** means Materials made available to you by any third party on the AWS Site or in conjunction with the Services.

**“Your Materials”** means Materials you or any End User (a) run on the Services, (b) cause to interface with the Services, or (c) upload to the Services or otherwise transfer, process, use or store in connection with the Services.