



**Exhibit to Data Center Services
Service Component Provider
Master Services Agreement**

DIR Contract No. DIR-DCS-SCP-MSA-002

Between

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

and

ACS State & Local Solutions, Inc.

**Exhibit 27
Form of Non-Disclosure Agreement**

December 30, 2011

EXHIBIT 27
FORM OF NON-DISCLOSURE AGREEMENT

Update Methodology for Exhibit 27

The following update methodology is incorporated as part of **Exhibit 27**:

Title	Methodology for Updating Exhibit
<u>Exhibit 27</u> Form of Non-Disclosure Agreement	<u>Exhibit 27</u> may only be modified by formal amendment, in accordance with <u>Section 21.7</u> of the MSA.

FORM OF NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“**NDA**”) is made as of this ___ day of _____, 20___, by and among the State of Texas, acting by and through the Texas Department of Information Resources (“**DIR**”), _____, (“**Service Provider**”) and _____ (“**Receiving Party**”), a third party retained by DIR.

WHEREAS, Service Provider and DIR are parties to that certain Master Services Agreement dated as of [_____], 20___, as amended, supplemented or otherwise modified from time to time (the “**Master Services Agreements**”);

WHEREAS, Service Provider is the owner and licensor of certain Confidential Information (as defined below); and

WHEREAS, DIR wishes to disclose, or have Service Provider disclose, to Receiving Party, and Receiving Party wishes to receive, under the terms and conditions of this NDA, Confidential Information.

NOW, THEREFORE, in consideration of the promises hereinafter set forth, DIR, Receiving Party and Service Provider acknowledge and agree as follows:

1. **Confidential Information.**

a. “**Confidential Information**” shall mean information marked by Service Provider as “Proprietary”, “Confidential” or with a similar legend, or otherwise promptly after disclosure identified in writing as proprietary or confidential.

b. Confidential Information shall not include information Receiving Party can demonstrate (i) is, at the time of disclosure to it, in the public domain, (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of Receiving Party, (iii) is in the possession of Receiving Party at the time of disclosure to it without any obligation of confidentiality, (iv) is received without obligation of confidentiality from a third party having a lawful right to disclose such information or (v) is independently developed by Receiving Party without reference to Confidential Information.

2. **Receiving Party's Duties.**

a. During the term of this NDA and at all times thereafter, Receiving Party shall not disclose, and shall maintain the confidentiality of, all Confidential Information. Receiving Party shall use at least the same degree of care to safeguard and to prevent disclosing to third parties Confidential Information as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care. Receiving Party may disclose Confidential Information to its employees (and those of its Affiliates) as and to the extent such disclosure is necessary for the performance of such person's or entity's obligations or otherwise naturally occurs in such person's or entity's scope of responsibility. Receiving Party assumes full responsibility for the acts or omissions of such person or entity and must take all reasonable measures to ensure that Confidential Information is not disclosed or used in contravention of this NDA.

b. Receiving Party shall not (i) make any use or copies of Confidential Information except as contemplated by this NDA, (ii) acquire any right in or assert any lien against Confidential Information, (iii) sell, assign, transfer, lease, or otherwise dispose of Confidential Information to third parties or commercially exploit such information, including through Derivative Works or (iv) refuse for any reason

to promptly provide Confidential Information (including copies thereof) to Service Provider if requested to do so.

c. Receiving Party shall not be considered to have breached its obligations under this NDA for disclosing Confidential Information as required to satisfy any legal, accounting, or regulatory requirement of a competent government body, provided that, promptly upon receiving any such request and to the extent that it may legally do so, Receiving Party advises Service Provider of the Confidential Information to be disclosed and the identity of the third party requiring such disclosure prior to making such disclosure in order that Service Provider may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

d. Receiving Party shall (i) promptly notify Service Provider of any known possession, use, knowledge, disclosure or loss of Confidential Information in contravention of this NDA, (ii) promptly furnish to Service Provider all known details and assist Service Provider in investigating and/or preventing the reoccurrence of such possession, use, knowledge, disclosure or loss, (iii) reasonably cooperate with Service Provider in any investigation or litigation deemed necessary by Service Provider to protect its rights to or under Confidential Information and (iv) promptly use commercially reasonable efforts to prevent further possession, use, knowledge, disclosure, or loss of Confidential Information in contravention of this NDA. Receiving Party shall bear its own costs in complying with this subsection.

3. **Termination.**

a. Upon completion of Receiving Party's assignment for DIR, Receiving Party shall return or destroy, as Service Provider may direct, all Confidential Information, and retain no copies; provided, however, that if and to the extent that Receiving Party performed audit or Benchmarking functions for DIR, Receiving Party may retain its work papers that are related to such functions.

b. The obligation to maintain confidentiality, the restrictions on use, disclosure, duplication, protection and security of Confidential Information and indemnification for breach thereof by Receiving Party shall survive the rescission, termination, or completion of this NDA, and remain in full force and effect until such Confidential Information, through no fault of Receiving Party, becomes part of the public domain.

4. **General Provisions.**

a. This NDA shall be governed by and construed, and the legal relations between and among the parties shall be determined, in accordance with the laws of the State of Texas, without giving effect to the principles of conflicts of laws.

b. This NDA supersedes all prior understandings and negotiations, oral and written, and constitutes the entire understanding among the parties on this subject.

c. No waiver, modification, or amendment to this NDA shall be binding upon the parties unless it is in writing signed by an authorized representative of the party against whom enforcement is sought.

d. Nothing in this NDA nor any disclosure made hereunder shall be deemed to grant to Receiving Party, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any Confidential Information.

IN WITNESS WHEREOF, the parties have caused this NDA to be executed by their respective duly authorized representatives as of the date first set forth above.

**THE STATE OF TEXAS, acting by and through
THE TEXAS DEPARTMENT OF INFORMATION
RESOURCES**

By: _____
Name: _____
Title: _____
Legal: _____

[SERVICE PROVIDER]

By: _____
Name: _____
Title: _____

[FULL NAME OF RECEIVING PARTY]

By: _____
Name: _____
Title: _____