



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

DIR Contract No. DIR-DCS-SCP-MSA-003

Between

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

and

Xerox Corporation

**Exhibit 24
Insurance and Risk of Loss**

January 23, 2012

EXHIBIT 24
INSURANCE AND RISK OF LOSS

Update Methodology for Exhibit 24

The following update methodology is incorporated as part of **Exhibit 24**:

Title	Methodology for Updating Exhibit
<u>Exhibit 24</u> Insurance and Risk of Loss	<u>Exhibit 24</u> may only be modified by formal amendment, in accordance with <u>Section 21.7</u> of the MSA.

EXHIBIT 24
INSURANCE AND RISK OF LOSS

1. **Insurance.**

(a) **Requirements.** Service Provider agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance with the specified minimum limits of liability during the Term of the Agreement:

- (i) Workers' Compensation and Employer's Liability Insurance in full compliance with the applicable Laws of the State and, as applicable, such other state in which the work is to be performed. Each such policy shall contain a waiver of subrogation endorsement against the State, DIR and DIR Customers and their respective officers, directors, employees, agents, successors and assigns.

The limits of liability of Workers' Compensation Insurance shall be not less than the limits required by applicable Law.

The limits of liability of Employer's Liability Insurance shall not be less than \$1,000,000 per employee by accident / \$1,000,000 per employee by disease / \$1,000,000 policy limit by disease (or, if higher, the policy limits required by applicable Law).

- (ii) Commercial General Liability Insurance (including coverage for Contractual Liability assumed by Service Provider under this Agreement, Premises-Operations, Completed Operations-Products and Independent Contractors and, to the extent commercially reasonable, coverage for explosion, collapse, and underground property damage hazards) providing coverage for bodily injury, personal injury and property damage with limits of not less than \$5,000,000 per occurrence. This coverage may be provided with a combination of primary and excess insurance policies.
- (iii) Commercial Business Automobile Liability Insurance including coverage for all owned, non-owned, leased, and hired vehicles providing coverage for bodily injury and property damage liability with combined single limits of not less than \$1,000,000 per occurrence, except as may otherwise be required by Law.
- (iv) Professional Liability (also known as Errors and Omissions Liability) and, as and to the extent becoming commercially available, Cyber Risk Insurance covering negligent acts, errors and omissions arising out of Service Provider's operations or Services in an amount not less than \$5,000,000 per occurrence.
- (v) Comprehensive Crime Insurance including Employee Dishonesty Insurance and Computer Fraud Insurance, covering the loss of money, securities, and other property belonging to DIR or a DIR Customer resulting from any fraudulent or dishonest acts committed by Service Provider employees, acting alone or with others, in an amount not less than \$5,000,000 per occurrence.
- (vi) All-risk property insurance covering loss or damage to Service Provider owned or leased Equipment and other tangible assets used to provide the Services in an amount not less than the full replacement cost of such Equipment and assets.

- (b) **Approved Companies.** All such insurance shall be procured with reputable insurance companies and in such form as is usual and customary to Service Provider's business. Such insurance companies shall maintain a rating at least "A-" and be at least a Financial Size Category VIII as both criteria are defined in the most current publication of Best's Policyholder Guide or comparable rating agency equivalent where applicable.
- (c) **Endorsements.** Service Provider shall obtain the following endorsements to its policy or policies of insurance (or so reflect in appropriate policy certificate(s)) as are necessary to cause the policy or policies to comply with the requirements stated herein.
- (i) Service Provider's insurance policies as required herein under **Sections 1(a)(ii)** and **(iii)** of this **Exhibit 24** shall name DIR and DIR Customers and their respective officers, directors and employees as Additional Insureds thereunder for liability (subject to the terms of this Agreement) arising at any time in connection with the performance of Service Provider or Service Provider Personnel under this Agreement. The policy required under **Section 1(a)(ii)** shall have no cross-suits exclusion, or any similar exclusion that excludes coverage for claims brought by one insured under the policy against another insured under the policy.
 - (ii) The Service Provider insurance policies required under **Sections 1(a)(ii), (iii) and (v)** must provide coverage on a per occurrence basis (i.e. not claims-based). If the insurance described in Section 1(a)(iv) is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than 36 months following completion of the contract and acceptance by DIR. The Service Provider shall use best efforts to ensure that coverage, including any renewals, shall have the same retroactive date "or a prior retroactive date" as the original policy applicable to this contract.
 - (iii) The Service Provider insurance policy required under **Section 1(a)(v)** of this **Exhibit 24** shall name DIR and DIR Customers and their respective officers, directors and employees as joint loss payees as their interests may appear.
 - (iv) Each policy or Contractor shall provide that it shall not be canceled or non-renewed except after at least thirty (30) days advance written notice to DIR that any such policy is canceled or non-renewed (or, to the extent such policy does not so provide, Service Provider shall provide notice or shall cause the applicable insurance company to agree to provide such notice). Should any policy expire or be canceled during the Term and should Service Provider thereafter fail to immediately procure replacement insurance as specified, DIR reserves the right (but not the obligation) to procure such insurance and to deduct the cost thereof from any sums due Service Provider under this Agreement.
 - (v) All insurance required under this **Section 1** shall be primary insurance and any other valid insurance existing for DIR's benefit shall be excess of such primary insurance as respects the scope of this Agreement and as respects Service Provider's liability.
- (d) **Minimum Amounts, Self-Insurance.** These insurance provisions set forth the minimum amounts and scopes of coverage to be maintained by Service Provider and are not to be construed in any way as a limitation on Service Provider's liability under this Agreement.

. Any and all deductibles and self-insured retentions in the above-referenced insurance policies shall be assumed by, for the account of, and at the sole risk of the Service Provider.

- (e) **Certificates.** Service Provider shall provide DIR with certificates of insurance evidencing compliance with this **Exhibit 24** (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect.
- (f) **No Implied Limitation.** The obligation of Service Provider to provide the insurance specified herein shall not limit or expand in any way any obligation or liability of Service Provider provided elsewhere in this Agreement. The rights of DIR and DIR Customers to insurance coverage under policies issued to or for the benefit of one or more of them are independent of this Agreement shall not be limited by this Agreement.
- (g) **Waiver of Subrogation.** With respect to insurance coverage to be provided by Service Provider pursuant to **Sections 1(a)(ii)**, and **(iii)** herein, the General Liability and Automobile Liability insurance policies shall provide that the insurance companies waive all rights of subrogation against Service Provider, the State, DIR, the DIR Customers and their respective Affiliates, officers, directors and employees. Service Provider waives its rights to recover against DIR and DIR Customers and their respective officers, directors, employees, agents, successors and assigns in subrogation or as subrogee for another party and shall, to the extent available on a commercially reasonable basis, similarly arrange for such waiver with respect to the coverage provided by Service Provider pursuant to **Section 1(a)(i)** herein.

2. Risk of Loss

- (a) **General.** Each Party shall be responsible for risk of loss of, and damage to, any Equipment, Materials, or other items in its possession or under its control. Service Provider shall be deemed to possess and control of all Equipment, Materials, and other items located in Service Provider Facilities or in DIR Facilities used by Service Provider to provide the Services. Each Party shall promptly notify the other of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of any such Equipment, Materials, and other items in the possession or under the control of such Party, whether or not insured against by such Party, whether partial or complete, which is caused by any act, omission, fault or neglect of such Party (an “**Event of Loss**”). Each Party shall promptly notify the other Party of any damage (except normal wear and tear), destruction, loss, theft, or governmental taking of such other Party’s tangible property or real property (whether owned or leased).
- (b) **Waiver.** Service Provider and DIR each waive all rights to recover against the other Party for damage, destruction, loss, theft, or governmental taking of their respective real or tangible personal property (whether owned or leased) from any cause to the extent covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions. Service Provider shall cause its insurers to issue appropriate waivers of subrogation rights endorsements to all property insurance policies.