

## Agreement for Products and Services

Customer Name and Address:

Pinellas County  
315 Court Street  
Clearwater, FL 33756

Supplier Office Address:

2650 North Military Trail  
Boca Raton, FL 33431

Agreement No.: PIN-0120-APS01

Atos IT Solutions and Services, Inc. (Supplier) is pleased to offer our Customer (you) this Agreement for Products and Services (Agreement). After you have signed this Agreement, Supplier will accept it by signing below and will return it to you. Subject to Supplier's acceptance of your individual orders, you may order: (1) Products and (2) Services.

### 1. DEFINITIONS

**"Cutover Date"** means the date Supplier: (a) installs the original Product(s) as further described in an Ordering Document; or (b) ships the original Product(s) to you for your installation.

**"Enterprise"** means a corporation (or other legal entity) and the subsidiaries that it owns by more than 50% that are located in the United States or Puerto Rico. Such entities may order under this Agreement, provided they agree to the terms of this Agreement.

**"Exhibit"** means supplemental terms and conditions specific to particular Products or Services under the Agreement and which are referenced on an Ordering Document.

**"Implementation Date"** means the date Supplier implements certain Services as further described in an Ordering Document.

**"Installation Date"** means: (a) the date Supplier installs a MAC Product or, if not installed by Supplier, ships it to you; or (b) for other MAC Services, the date on which performance is completed.

**"MAC"** means Products and/or Services that you order after your initial order for Products and Services is installed.

**"Ordering Document"** means a Schedule A, Installation Change Order (Change Order), Supplement, or other Supplier ordering document that incorporates additional terms for specified Products or Services.

**"Part"** is a replacement part.

**"Premises"** means your installation or service location as referenced on an Ordering Document.

**"Product"** means equipment and/or Software.

**"Purchase Order"** means your form of ordering document. Any Purchase Order submitted by you to Supplier for Products, Software and/or Services is issued under the terms of this Agreement. Notwithstanding any terms to the contrary in a Purchase Order, the terms and conditions in any Ordering Document, the Agreement, and its referenced Exhibit(s) are incorporated into any Purchase Order by reference and shall govern the provision and performance of the Products, Software and Services under the Purchase Order.

**"Purchase Price"** means charges for Product(s), including any Software license charge(s), or Services, and any applicable transportation charges.

**"Services"** means professional services including implementation, installation and integration; warranty support; maintenance support, managed services or other services provided to you.

**"Software"** means software, including all copies and documentation, provided to you.

### 2. PURCHASE PRICE, PAYMENT TERMS AND TAXES

The Purchase Price and payment terms for Products and Services you order will be specified on an Ordering Document

or, if your Purchase Order does not require a signature, a Supplier invoice. Products and Services will be provided at Supplier's then-current rates for Products and Services specified on an Ordering Document.

Payments are subject to requirements of the Florida Prompt Payment Act, sections 218.70-218.80. Florida Statutes, as may be amended from time to time.

You agree exempt from payment of all applicable Federal and State taxes and agree to provide a copy of your Tax Exempt Certificate upon execution of this Agreement and upon request if updated at any time.

### 3. TITLE, SECURITY INTEREST AND RISK OF LOSS

Title to each Product, except for Software, passes to you on its shipment date.

In the event the Products are leased, You and Supplier may negotiate an acceptable purchase money security interest (PMSI), as applicable. You agree to sign appropriate documents to permit Supplier to perfect its PMSI. The PMSI will be released upon payment in full.

Supplier bears the risk of loss for each Product until its Cutover Date or Installation Date (except for loss caused by your negligence), after which you will be responsible for all risk of loss.

### 4. SOFTWARE LICENSE

An Exhibit(s) referenced in an Ordering Document describes the Software license applicable to a Product(s).

### 5. WARRANTY

An Exhibit(s) referenced in an Ordering Document describes the warranty terms applicable to a Product(s).

### 6. INDEMNIFICATION

Supplier agrees to indemnify, defend and save you harmless from a claim resulting in a final judgment against you by a court of competent jurisdiction for a direct damage arising from or in connection with a material breach of the Agreement in the following situation:

- willful or negligent misconduct of Supplier
- fraud and/or fraudulent misrepresentation of Supplier
- bodily injury, including death, to the extent such injury is caused by Supplier's negligence or intentional misconduct in the performance of this Agreement and provided you: (a) give Supplier prompt written notice of any such claim promptly after you first receive notification of the claim; (b) allow Supplier control of the defense and all related settlement negotiations; (c) actively participate in the defense and related settlement negotiations; and; and (c) fully cooperate with Supplier.

### 7. LIMITATION OF LIABILITY

This Agreement sets out the entire liability of and exclusion and limitation thereof by the Supplier under and/or in connection with this Agreement. The total liability of Supplier,

its suppliers and subcontractors is for actual damages only, and will not exceed the amount paid to Supplier for Products and Services provided under this Agreement, at the Premises where the damage occurred, for the 12-month period preceding the date the damage occurred. This limitation does not apply to the Supplier's obligations under Section 6, Indemnification, and, if applicable, the Patents and Copyright Section in an Exhibit incorporated by reference into an Ordering Document.

**UNDER NO CIRCUMSTANCES WILL SUPPLIER BE LIABLE FOR DAMAGES RESULTING FROM:**

- (A) LOSS OF STORED, TRANSMITTED OR RECORDED DATA;
- (B) HACKING, UNLAWFUL INTRUSION, ISSUES WITH NETWORK SECURITY, OR LONG DISTANCE OR NETWORKING CHARGES;
- (C) INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF SUPPLIER IS INFORMED OF THEIR POSSIBILITY;
- (D) USE OF PRODUCTS OUTSIDE THE UNITED STATES AND PUERTO RICO;
- (E) LOSS OF CONTRACTS;
- (F) LOSS OF REVENUE;
- (G) LOSS OF GOODWILL;
- (H) LOSS OF BUSINESS;
- (I) LOSS OF THE USE OF THE PRODUCT;
- (J) LOSS OF OR CORRUPTION OF DATA OR SOFTWARE PROGRAMS;
- (K) FINANCING EXPENSES;
- (L) LOSSES ARISING FROM INTERRUPTION IN THE USE OR AVAILABILITY OF DATA;
- (M) LOSSES ARISING FROM STOPPAGE OF OTHER WORK; OR
- (N) ANY LOSS OR DAMAGE ARISING OUT OF ANY FAILURE BY YOU TO KEEP FULL AND UP-TO-DATE SECURITY COPIES OF ANY SOFTWARE AND DATA HELD OR USED BY YOU OR ON YOUR BEHALF.

**THE LIMITATIONS IN THIS SECTION APPLY REGARDLESS OF LEGAL THEORY UPON WHICH THE CLAIM IS BASED, EVEN IF THE REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.**

Notwithstanding the above, Supplier does not limit or exclude its liability (if any) to the Customer:

- for personal injury or death resulting from Supplier's negligence;
- for willful or negligent misconduct of Supplier;
- for fraud or fraudulent misrepresentation of Supplier; or
- for any matter for which it would be illegal for Supplier to exclude or limit or to attempt to exclude or limit its liability.

**8. TERM AND TERMINATION**

The term of this Agreement is five (5) years. Upon expiration of the initial five (5) year Term, you and Supplier agree that a new Agreement will be required for the purchase of Products and Services from Supplier.

If either party is not substantially complying with the terms of this Agreement, the other party will have the right to give prompt written notice of such failure to perform. The non-complying party will have forty-two (42) days after receiving such notice to correct its performance or commence a continuous good faith effort to correct its performance within a reasonable period of time. In the event the non-conforming party is not able to correct its performance or commence a good faith effort to correct its performance in a reasonable period of time within such forty-two (42) day period, the other

party may, at its option, and in addition to any other remedies under the Agreement, choose to terminate the Agreement.

Either party will have the right to terminate the Agreement immediately upon written notice in the event that the other Party: (a) becomes insolvent; (b) files for any form of bankruptcy; (c) makes any assignment for the benefit of creditors or commences voluntary proceedings under any bankruptcy, insolvency, or debtor's relief law; (d) has a receiver, administrative receiver or officer appointed over the whole or a substantial part of its assets; (e) ceases to conduct business; or (f) fails to pay its debts as they become due. Any assignment to a third party as a result of the filing of a petition for bankruptcy by you shall be conditioned upon such assignee (i) affirmatively assuming all of your obligations under the Agreement and (ii) meeting net worth or capital requirements as may be specified by Supplier in its sole discretion, to ensure that the obligations can be fulfilled by such assignee. Failure by Supplier to assert its rights to retain its benefits to the intellectual property (encompassed by the Products, including the Software and applications), pursuant to Sec. 365(n)(1)(B) of the Bankruptcy Code, 11 U.S.C. under an executory contract rejected by the trustee in bankruptcy, shall not be construed as a termination of the contract by Supplier under Sec. 365(n)(1)(A) of the Bankruptcy Code.

**9. FORCE MAJEURE**

Neither party shall be responsible for any failure or delay in performance of its obligations under this Agreement (other than the obligation to make payments of money) due to any force majeure event including Act of God, riots, adverse weather conditions, volcanic eruption, earthquake or other natural disaster, refusal of license (other than as a result of any act or omission of the Supplier), or other Government act or order or restriction, war, threat of war, fire, explosion, embargo, customs and trade regulations, sanctions, breaking off of diplomatic relations, terrorism, civil disturbance, accident, epidemics, pandemics, lightning damage, interruption or failure of utility services, electromagnetic interference, radio interference, strikes, industrial dispute, failure of third-party Hardware or Software, or any other cause beyond its reasonable control and, in the case of the Supplier, the occurrence of any of the aforementioned force majeure events to its subcontractors or suppliers which result in their delay or failure to perform. For the avoidance of doubt, breach of contract by the End User Customer shall not be force majeure unless such party is itself subject to an event of force majeure which directly causes the breach.

**10. EXPORT COMPLIANCE**

Any export of the Products or Services must be made in compliance with the laws and regulation of the U.S. and of the EU or EU member states, where applicable.

You shall introduce and/or take effective measures to assess your end users' requirements for the Products within the country and abroad to ensure compliance with the aforementioned export provisions and upon request advise the Supplier of such measures. In particular, but without limitation, such measures shall include your checking and guaranteeing that: (a) the Products are not intended for use in connection with armaments, nuclear technology or weapons; (b) no companies and persons on the U.S. Denied Persons List (DPL) are supplied with goods, software or technology subject to the U.S. Export Administration Regulations (EAR); (c) no companies and persons on the U.S. Entity List or U.S. Specially Designated Nationals List are supplied with goods, software or technology subject to the U.S. EAR without a license; and (d) no companies and persons, on the Specially Designated

Terrorists List, Foreign Terrorist Organizations List, Specially Designated Global Terrorists List or on the Sanctions List of the EU are supplied.

Supplier will not be obligated to perform any obligations under this Agreement, and will not incur any liability or consequence as a result of such non-performance, to the extent that performance would constitute a violation of, or would result in, the imposition of any sanctions under any law, regulation or other applicable national or international foreign trade and customs requirements or embargos.

## 11. CONFIDENTIALITY

The confidentiality of information exchanged by the parties under the Agreement shall be governed by a non-disclosure agreement executed by the parties. In the absence of an executed non-disclosure agreement between the parties, the following terms will apply.

"Confidential Information" means any information supplied by or obtained from one party ("the Disclosing Party") to or by the other ("the Receiving Party") that is marked confidential if in tangible form, or, if orally disclosed, is reduced to writing and identified as confidential within thirty (30) days of such disclosure. Confidential Information does not include information that: (a) at the time of receipt by the Receiving Party was already published or was otherwise generally available to the public; (b) subsequent to receipt by the Receiving Party is published or becomes generally available to the public otherwise than through the Receiving Party's default hereunder; (c) the Receiving Party can demonstrate was rightfully in its possession prior to the time of receipt from the Disclosing Party; (d) becomes known independently to the Receiving Party from any third party who did not acquire it under pledge of secrecy; or, (e) is independently developed by the Receiving Party.

The Receiving Party shall: (a) treat all such Confidential Information as strictly confidential; (b) not disclose any Confidential Information in any way to any third party without the consent of the Disclosing Party nor to any employee of the Receiving Party except as is necessary in the performance of obligation under this Agreement; (c) ensure that all those of its officers or employees to whom the Confidential Information is disclosed are made aware of the confidentiality of the same and bound in writing to adhere to the provisions in this Section 11; (d) require any third party to whom Confidential Information is disclosed to enter into a written confidentiality and non-disclosure agreement no less restrictive than this Agreement; (e) not use any Confidential Information in any way except in fulfillment of obligations under this Agreement and in particular (without limiting the generality of the foregoing) shall not use any Confidential Information for any purpose competitive with the Disclosing Party or in such a way as to obtain any commercial advantage over the Disclosing Party.

If a Receiving Party is required by law, regulation, or judicial order to disclose Confidential Information of the Disclosing Party, the Receiving Party shall promptly notify the Disclosing Party and reasonably cooperate with Disclosing Party to minimize such disclosure and to otherwise protect the confidentiality of such Confidential Information under the relevant circumstances.

The nondisclosure obligations described herein shall, except with respect to trade secrets, survive termination or expiration of this Agreement for a period of three years. To the extent that Confidential Information constitutes trade secrets, the recipient's obligations under this paragraph shall remain in effect perpetually.

Notwithstanding any other provision in this Agreement, the parties acknowledge that you are subject to the public

records laws of the State of Florida, including but not limited to, Chapter 119, Florida Statutes, and that any request for information or materials covered under this Agreement shall be considered in conjunction with said public records laws. Further, you shall not be liable for any damages suffered by Supplier as a result of any disclosure, of Supplier's materials pursuant to Chapter 119 or any other law relating to public records.

## 12. END-USER CERTIFICATION

You agree you are acquiring each Product to use within your Enterprise and not for reselling, leasing or transferring to a third party except for lease-back financing of the Product.

## 13. SUBCONTRACTING AND ASSIGNMENT

Either party may delegate any or all of its duties to subcontractors, subsidiaries or parent or affiliated companies, provided that each party remains liable for their respective duties. You may not assign this Agreement without the prior written consent of the Supplier. Any attempt to do so is void.

## 14. MARKETING

Supplier shall be entitled to include your name in Supplier marketing and publicity materials, and in Supplier press releases as a Customer of Supplier. The Customer shall permit Supplier to use its tradename and logo solely for this purpose and Supplier's use shall be in accordance with any applicable Customer tradename / trademark / logo guidelines provided by you to Supplier in writing in advance.

## 15. DISPUTE RESOLUTION

Either Party may dispute any payments invoiced by, or owed to, Supplier. All payments shall be made in accordance with the requirements of Section 218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act." The Customer may dispute any payments invoiced by Supplier in accordance with the County's Invoice Payments Dispute Resolution Process established in accordance with Section 218.76, Florida Statutes, any and all disputes arising between the Supplier and Customer shall be resolved in accordance with the County's Dispute Resolution Process.

## 16. LIMITATION OF ACTION

Neither party will bring a legal action more than two (2) years after the cause of action arose.

## 17. GOVERNING LAW

This Agreement is governed by the laws of the State of Florida without regard to its conflicts of laws rules.

## 18. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties, oral or written. Any modifications or changes to the Agreement will only be valid when made by written amendment, signed by each party.

## 19. ORDER OF PRECEDENCE

The following order of precedence, from highest to lowest priority, shall prevail upon the applicable documents under the Agreement: (a) Custom Exhibit or Amendment, the highest precedent to the most recent document in time; (b) End-User License Agreement for Supplier Products and Software; (c) Change Order Ordering Document; (d) Schedule A and/or Supplemental Ordering Document; (e) Services Plan; (f) Supplemental Terms Exhibit; (g) Statement of Work; and (h) the Agreement. Any inconsistent terms on a Purchase Order are void unless specifically agreed to in writing by Supplier in the form of an amendment to this Agreement.



**20. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP**

All intellectual property rights, including the right to patent, copyright, trademarks, mask works and design rights in the Product and documents provided to you in the performance of this Agreement and/or arising and created under and in connection with this Agreement shall remain vested in and/or automatically and immediately upon creation vest in Supplier and/or its licensors as the case may be. You agree to any end user license agreements and any other restrictions imposed by a third party for the use of their Products, software, platform or other intellectual property.

**21. SEVERABILITY**

If any provision of this Agreement is held invalid or unenforceable to any extent: (a) such invalidity shall not affect the validity of all other terms in this Agreement which can be given effect without the invalid provision or application; (b) this

Agreement shall be construed and both Parties shall amend this Agreement, so as to give effect as nearly as possible to the intent of the invalid Clause or application; and (c) to this end, the invalid and/or unenforceable provisions hereof are declared to be severable.

**22. WAIVER**

Failure by either party to enforce or exercise any right under this Agreement shall not amount to a waiver or bar to enforcement of that right.

**23. HEADINGS**

Section headings shall not affect the legal interpretation of this Agreement.

**24. NOTICES**

Notices shall be in writing and sent to the addresses set out herein, or such other address notified in writing.

Accepted By:

**Pinellas County**

By: \_\_\_\_\_

Authorized Signature

Accepted By:

**Atos Solutions and Services, Inc.**

By: Patrick Goodwin \_\_\_\_\_

Authorized Signature

\_\_\_\_\_  
Name (Type or Print)

Date

Patrick Goodwin \_\_\_\_\_ February 4, 2020  
Name (Type or Print) Date

APPROVED AS TO FORM  
Jacina Haston  
JACINA HASTON  
OFFICE OF THE COUNTY ATTORNEY