



**Exhibit to Texas Open Data Portal
Master Services Agreement**

DIR Contract No. DIR-ESS-ODP-428

Between

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

and

Socrata, Inc.

**Exhibit 3
Subscription Services Agreement**

June 26, 2018

Subscription Services Agreement

This agreement is between Socrata, Inc., a Washington corporation (**Socrata**), and the customer agreeing to these terms (**Customer**). It is dated as of the date of last signature below.

1. **PLATFORM SERVICE.** Under an order, Socrata will provide access to and usage by a of Socrata's cloud-based software service and related services and support (**Service**). Setup, implementation, configuration, coaching, or training services (collectively, **Implementation Services**) may also be provided by Socrata if specified under an order or statement of work.
2. **USE OF SERVICE.**
 - a. **Customer Owned Data.** All data, files, information, content and links uploaded or provided by Customer through the use of the Service remains the property of Customer, as between Socrata and Customer (**Customer Data**). Customer grants Socrata the right to use the Customer Data solely for purposes of perming under by this agreement. During the term of this agreement, Customer may export its Customer Data as allowed by functionality within the Service.
 - b. **Access and Usage by Users and Contractors.** Customer may allow its users and third-party contractors to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its users and contractors.
 - c. **Public Users.** The Service provides Customer with functionality to publish all or part of Customer Data to the general public through one or more public facing websites. Customer is responsible for determining the online terms of use and license relative to a public user's (**Public User**) use of Customer Data, and the enforcement thereof. Once a user publicly publishes Customer Data using the Service, Socrata has no control over a Public User's use or misuse of Customer Data. Users have the ability within the Service to remove the public setting applied to Customer Data and revert it back to a private setting.
 - d. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible all activity occurring under its account; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account and notify Socrata promptly of any such unauthorized access; (iv) may use the Service only in accordance with the Service's technical documentation (**Documentation**); (v) comply with all federal, state and local laws, regulations and policies of Customer, as to its use of the Service, Customer Data, and instructions to Socrata regarding the same.
 - e. **Socrata Support.** Socrata will provide customer support for the Service under the terms of Socrata's Customer Support Policy (**Support**) which is located at support.socrata.com Socrata will report scheduled maintenance windows, outages or other events affecting on Socrata's support site.
 - f. **Customer Data Backup.** Customer is providing Socrata a copy of Customer Data and Socrata is *not* the system of record of Customer Data. Any laws and regulations governing Customer for retention of Customer Data remains Customer's responsibility. CUSTOMER IS SOLELY RESPONSIBLE FOR BACKING UP CUSTOMER DATA.

- g. **API.** Socrata will provide access to its application-programming interface (**API**) as part of the Service if purchased under an order. Subject to the other terms of this agreement, Socrata grants Customer a non-exclusive, nontransferable, terminable license to interact only with the Service as allowed by the API.
- Customer may not use the API in a manner--as reasonably determined by Socrata--that exceeds the capacity limits in the order, constitutes excessive or abusive usage, or fails to comply with any part of the API. If any of these occur, Socrata can suspend or terminate Customer's access to the API on a temporary or permanent basis.
 - Socrata may change or remove existing endpoints or fields in API results upon at least 30 days' notice to Customer, but Socrata will use commercially reasonable efforts to support the previous version of the API for at least 6 months. Socrata may add new endpoints or fields in API results without prior notice to Customer.
 - The API may be used to connect the Service to hosted or on premise software applications not provided by Socrata (**Non-Socrata Applications**). Customer is solely responsible for development, license, access to and support of Non-Socrata Applications, and Customer's obligation under this agreement are not contingent on access to or availability of any Non-Socrata Application.

3. **SERVICE LEVEL AGREEMENT & WARRANTY.**

- a. **Service Warranty.** Socrata warrants to Customer that the functionality or features of the Service and Support policies may change but will not materially degrade during any paid term.
- b. **Uptime Service Level.** Socrata will use commercially reasonable efforts maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (*excluding* maintenance scheduled downtime, outages beyond Socrata's reasonable control, and outages that result from any issues caused by Customer, Customer's technology or its suppliers or contractors, Service is not in the production environment, Customer is in breach of this agreement, or has not pre-paid for subscription fees for the Service in the month in which the failure occurred).

Availability SLA

Credit

99.9%
outage that adversely impacted Customer's access or use of the Service (beyond the warranty).

3% of monthly fee for each full hour of an outage that adversely impacted Customer's access or use of the Service

Maximum amount of the credit is 100% of the prorated subscription fee for such month, or \$1,800.00, whichever is less, and the minimum credit cannot be less than \$100.00.

LIMITED REMEDY. Customer's exclusive remedy and Socrata's sole obligation for its failure to meet the warranty under 3(b) will be for Socrata to provide a credit for the applicable month, as provided in the chart above (if an order is not renewed then a refund in the amount of the credit owed), for the month; provided that Customer notifies Socrata of such breach within 30 days of the end of that month.

Implementation Services Warranty. For Implementation Services, Socrata warrants that (i) it will conduct pre-employment criminal background and e-verify checks on its personnel performing the Implementation Services, and (ii) for a period of 30 days from delivery, it has performed such services in conformance with generally accepted practices within the software services industry. Customer must notify Socrata of any breach of the warranty in no later than 30 days after delivery of the services. CUSTOMER'S EXCLUSIVE REMEDY AND SOCRATA'S ENTIRE LIABILITY UNDER THE WARRANTY IN (II) WILL BE FOR SOCRATA TO RE-PERFORM ANY NON-CONFORMING PORTION OF THE IMPLEMENTATION SERVICES, OR IF SOCRATA CANNOT REMEDY THE BREACH THEN REFUND THE PORTION OF THE FEE ATTRIBUTABLE TO SUCH NON-CONFORMING PORTION OF THE SERVICES. THIS WARRANTY WILL NOT APPLY TO THE EXTENT CUSTOMER, ITS CONTRACTORS OR AGENTS HAVE MODIFIED ANY ITEM.

- c. **DISCLAIMER. SOCRATA DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE SOCRATA TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, SOCRATA DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED. ANY SERVICE OFFERED AS A TRIAL SERVICE IS OFFERED AS-IS ONLY WITHOUT ANY WARRANTY WHATSOEVER.**
4. **PAYMENT.** Customer must pay all fees as specified on the order or statement of work, but if not specified then within 30 days of receipt of an invoice. Unless otherwise stated in an order, fees (a) for the Service are payable up front for the initial term and each renewal term as described in the order; and (b) for Implementation Services are payable monthly in arrears as the work is performed. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. Socrata may suspend the Customer's access to the Service due to non-payment with ten (10) days' prior written notice. Customer's access will be restored upon receipt of the outstanding amounts.
5. **MUTUAL CONFIDENTIALITY.**
 - a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally, visually, or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances

of disclosure (**Confidential Information**). Socrata's Confidential Information includes without limitation the Service, its user interface design and layout, and pricing information.

- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance notice to seek a protective order.
- d. **Data Security Measures.**
- **Security Measures.** In order to protect Customer's Confidential Information, Socrata will (i) implement and maintain all reasonable security measures appropriate to the nature of the Confidential Information including without limitation, technical, physical, administrative and organizational controls, and will maintain the confidentiality, security and integrity of such Confidential Information; (ii) implement and maintain industry standard systems and procedures for detecting, preventing and responding to attacks, intrusions, or other systems failures and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designate an employee or employees to coordinate implementation and maintenance of its Security Measures (as defined below); and (iv) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Customer's Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks (collectively, **Security Measures**).
 - **Notice of Data Breach.** If Socrata knows that Customer Confidential Information has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this agreement, Socrata will alert Customer of any such data breach within two business days, and immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. Socrata will

give highest priority to immediately correcting any data breach and devote such resources as may be required to accomplish that goal. Socrata will provide Customer with all information necessary to enable Customer to fully understand the nature and scope of the data breach. To the extent that Customer, in its sole reasonable discretion, deems warranted Customer may provide notice to any or all parties affected by any data breach. In such case, Socrata will consult with Customer in a timely fashion regarding appropriate steps required to notify third parties. Socrata will provide Customer with information about what Socrata has done or plans to do to minimize any harmful effect or the unauthorized use or disclosure of, or access to, Confidential Information.

- **Exclusion.** Socrata is not responsible for any data breach caused by Customer, its users or contractors, or otherwise arising from their technology or systems or networks (including but not limited to Non-Socrata Applications), or relative to Customer Data used with a Trial Service.

6. SOCRATA PROPERTY.

- Reservation of Rights.** The software, services, workflow processes, user interface, designs, and other technologies provided by Socrata as part of the Service or Implementation Services are the proprietary property of Socrata and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Socrata. Customer may not remove or modify any proprietary marking or restrictive legends in the Service. Socrata reserves all rights unless expressly granted in this agreement.
- Restrictions.** Customer *may not* (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service (including without limitation, vulnerability scanning, penetration testing or other manual or automated simulations of adversarial actions, without Socrata's prior written consent); (iv) attempt to gain unauthorized access to the Service or its related systems or networks; (v) reverse engineer the Service; or (vi) access the Service to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
- Aggregate Anonymized Data.** During and after the term of this agreement, Socrata may use and owns all aggregate anonymized data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes.

7. TERM AND TERMINATION.

- a. **Term.** This agreement continues until all orders have expired or are terminated for material breach under **Section 7(b)**.
 - b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period if the breach has not been cured. If this agreement (or an order) is terminated by Customer due to uncured breach by Socrata In the event of breach by Customer, Socrata agrees to provide Customer a refund of any pre-paid, unused fees as of the effective date of termination.
 - c. **Termination by Customer for Non-Appropriation of Funds.** Customer may terminate any order or statement of work for non-appropriation of funds if required by law or executive order by providing Socrata notice. Any financial commitments made under an order prior to the effective date of termination are neither cancellable or refundable if terminated under this Section.
 - d. **Return of Customer Data.**
 - *Within 60-days after termination*, upon request Socrata will make the Service available for Customer to export Customer Data as provided in **Section 2(a)**.
 - *After such 60-day period*, Socrata has no obligation to maintain the Customer Data and may destroy it.
 - d. **Return Socrata Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay Socrata for any unpaid amounts, and destroy or return all property of Socrata. Upon Socrata's request, Customer will confirm in writing its compliance with this destruction or return requirement.
 - e. **Suspension for Violations of Law.** Socrata may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law, or activity under Customer's account threatens the safety, security and stability of the platform, network, or systems of Socrata or others. Socrata will attempt to contact Customer in advance.
 - f. **Termination of Trial Service.** Any no cost Trial Service to which Customer has access can be terminated at any time by either party with fifteen (15) days' prior notice.
8. **LIABILITY LIMIT.**
- a. **EXCLUSION OF INDIRECT DAMAGES.** Socrata is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss or if the damage or loss is foreseeable.

- b. **TOTAL LIMIT ON LIABILITY.** Socrata's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 12-month period prior to the event that gave rise to the liability.
 - c. **Federal Government Application.** This Section shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. 3729-3733. Furthermore, this clause shall not impair nor prejudice the U.S. Government's right to express remedies provided in the GSA Schedule contract (e.g., clause 552.238-75 – Price Reductions, clause 52.212-4(h) – Patent Indemnification, and GSAR 552.215-72 – Price Adjustments – Failure to Provide Accurate Information).
9. **INDEMNITY - DEFENSE OF THIRD PARTY CLAIMS.**
- a. **By Socrata.** Socrata will defend or settle any third-party claim against Customer to the extent that such claim alleges that Socrata technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if Customer, promptly notifies Socrata of the claim in writing, cooperates with Socrata in the defense, and allows Socrata to solely control the defense or settlement of the claim. **Costs.** Socrata will pay infringement claim defense costs it incurs in defending Customer, and Socrata negotiated settlement amounts, and court awarded damages. **Process.** If such a claim appears likely, then Socrata may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Socrata determines that none of these are reasonably available, then Socrata may terminate the Service and refund any prepaid and unused fees. **Exclusions.** Socrata has no obligation for any claim arising from: Socrata's compliance with Customer's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; use of Customer Data; or technology or aspects not provided by Socrata. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND SOCRATA'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.
 - b. **By Customer.** Customer will defend or settle any third-party claim against Socrata to the extent that such claim alleges that Customer Data or Customer's use of the Customer Data with the Service violates a copyright, patent, trademark or other intellectual property or the privacy and publicity right of anyone, if Socrata promptly notifies Customer of the claim in writing, cooperates with Customer in the defense, and allows Customer to solely control the defense or settlement of the claim. **Costs.** Customer will pay claim defense costs it incurs in defending Customer, and Customer negotiated settlement amounts, and court awarded damages.
 - c. **Government Application.** This Section shall only apply to the extent it is permitted by sovereign immunity or other similar laws regarding indemnification by government customers.

10. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the state where Customer's headquarter is located (without regard to conflicts of law principles) for any dispute between the parties under this agreement or relating in any way to this agreement. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

11. **OTHER TERMS.**
 - a. **Third-Party Platform Service.** Customer may be provided with access to certain third-party web-based components as part of the Service (*example without limitation*, third-party stock photos, public datasets, and third-party maps) (**Third-Party Services**). Customer must agree to such Third-party Service contracts if it chooses to use those third-party services. Such Third-Party Services will be solely governed by such third-party service contracts, and are provided AS-IS.
 - b. **Open Source Code with the API.** Socrata does not own any open source code that may be provided with the API and it is provided as a convenience to Customer. Such opens source code is provided AS IS and is governed by the applicable open source license that applies to such code.
 - c. **Federal Application.** The Service and Documentation is a "commercial item," as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government End Users acquire only those rights in the Service and the Documentation that are provided under this agreement.
 - d. **State and Local Government Application.** To the extent Customer is required to incorporate terms required by state or local laws relative to purchase of the Service, the parties will work in good faith to mutually execute an addendum or other attachment that incorporates those terms as applicable to Socrata and the Service.
 - e. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it. No waiver is effective unless the party waiving the right signs a waiver in writing.
 - f. **No Assignment.** Except for subcontractors authorized in advance under an order or statement of work, neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.
 - g. **Independent Contractors.** The parties are independent contractors with respect to each other.
 - h. **Future Functionality.** Customer agrees that orders under this agreement are not contingent on the delivery of any future functionality or features, or dependent on any oral or written comments made by Socrata regarding future functionality or features.

- i. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.
- j. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.
- k. **Order of Precedence; No Additional Terms.** If there is an inconsistency between this agreement and an order, the agreement prevails, unless there is a written amendment signed by the parties. Socrata rejects additional or conflicting terms of any non-Socrata form-purchasing or solicitation award documents.
- l. **Survival of Terms.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including without limitation, the confidentiality, limitation of liability, and indemnity terms). The UN Convention on Contracts for the International Sale of Goods does not apply.
- m. **Feedback.** If Customer provides feedback or suggestions about the Service, then Socrata (and those it allows to use its technology) may use such information without obligation to Customer.
- n. **Authority to Enter into Agreement.** The individual signing on behalf of Customer represents and warrants that he/she has the full right, power, and authority to execute and deliver this agreement and bind Customer to its obligations hereunder.

Socrata, Inc.	Customer Name:
By:	By:
Print Name	Print Name:
Title:	Title:
Date:	Date: