

**AMENDMENT NUMBER 1  
TO  
CONTRACT NO. DIR-TSO-2736  
BETWEEN  
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES  
AND  
SUNGARD AVAILABILITY SERVICES, LP**

This Amendment Number 1 to Contract Number DIR-TSO-2736 (“Contract”) is between the Department of Information Resources (“DIR”) and Sungard Availability Services, LP. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract**, is hereby amended as follows:

The term of this Contract is extended for one (1) year through February 5, 2017. Prior to the expiration date of the term, DIR and Vendor may extend the Contract upon mutual agreement, for up to the remaining two (2) additional one-year terms.

2. **Appendix A, Standard Terms and Conditions for Services Contracts dated 8/9/13**, is hereby replaced in its entirety with **Appendix A, Standard Terms and Conditions for Services Contracts dated 9/24/15**.
3. **Contract, Section 4. Pricing**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Services Contracts, **Section 7. Pricing, Purchase Orders, Invoices, and Payments**.
4. **Contract, Section 8. Intellectual Property Matters**, is hereby removed from the Contract and transitioned in its entirety to Appendix A, Standard Terms and Conditions for Services Contracts, **Section 4. Intellectual Property Matters**.
5. **Contract, Sections 5 - 7** are hereby re-numbered **Sections 4 – 6**.
  - A. **Section 5. DIR Administrative Fee** is re-numbered as **Section 4. Administrative Fee**;
  - B. **Section 6. Notification** is re-numbered as **Section 5. Notification**;
  - C. **Section 7. Statement of Work, Service Agreement and Shrink/Click-wrap Agreements** is re-numbered as **Section 6. Statement of Work, Service Agreement and Shrink/Click-wrap Agreements**;

6. **Contract, Section 5. Notification,** is hereby replaced with the following:

If sent to the State:

Shannon Kelley  
Manager, Enterprise Contract Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759

If sent to the Vendor:

Contract Administration - Legal  
Sungard Availability Services, LP  
East Swedesford Road  
Wayne, PA 19087  
Phone: (484) 582-2000  
Facsimile: (610) 225-1125  
Email: [contract.admin@sungardas.com](mailto:contract.admin@sungardas.com)

7. **Contract Section 9. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts** is replaced by **Section 8 below; Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts dated 9/24/15.**
8. **Authorized Exceptions to Appendix A, Standard Terms and Conditions for Services Contracts dated 09/24/15.**

The following exceptions to Appendix A, Standard Terms and Conditions for Services Contracts dated 9/24/15 have been agreed to by Vendor and DIR.

- A. **Section 2. Definitions, H. Acceptable Use Policy,** was hereby added to the Contract and is hereby restated in its entirety:

“Acceptable Use Policy” (AUP), found at <http://www.sungardas.com>, means the policy governing transmissions through, and use of, the network over which the Services are provided.

- B. **Section 4. Intellectual Property Matters,** previously agreed upon in the Contract, is hereby restated in its entirety and replace Section 4 in Appendix A:

No development of new code other customization or other Intellectual Property is contemplated under this Contract. If Vendor and Customer determine that new code development is necessary for Customer’s purchase of Infrastructure as a Service, then Vendor and Customer will negotiate applicable Intellectual Property provisions.

- C. **Section 6. Contract Fulfillment and Promotion, D. DIR Logo**, previously agreed upon in the Contract, is hereby restated in its entirety:

Vendor may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Vendor logo, (iii) the DIR logo is only used to communicate the availability of services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR. DIR will not use Vendor's logo without Vendor's prior written consent.

- D. **Section 6. Contract Fulfillment and Promotion, H. DIR Cost Avoidance**, previously agreed upon in the Contract, is hereby restated in its entirety:

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon request by DIR, Vendor shall provide DIR with a detailed report of a representative sample of service sold under the Contract. The report shall contain: service description, list price and price to Customer under the Contract.

- E. **Section 7. Pricing, Purchase Orders, Invoices, and Payments, G. Changes to Prices**, is hereby replaced in its entirety with the following:

Vendor may revise its pricing (but not its discount rate, if any, and not the products or services on its pricing list) by posting a revised pricing list. Such revised pricing lists are subject to review by DIR. If DIR finds that a product's or service's price has been increased unreasonably, DIR may request Vendor to reduce its pricing for the product or service to the level published before the revision. If Vendor does not reduce its pricing for the relevant product or service, DIR may notify customers and/or potential customers that the products or services in question are not authorized for purchase under the DIR contract. Alternatively, DIR may terminate the contract.

- F. **Section 7. Pricing, Purchase Orders, Invoices, and Payments, K. Customer Price, Subsection 3)** previously agreed upon in the Contract, is hereby restated in its entirety:

If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or services quoted by Vendor for a quantity of one (1) under like terms and conditions, and does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

**G. Section 9. Vendor Responsibilities, A. Indemnification. 4. Property Damage,** previously agreed upon in the Contract, is hereby restated in its entirety:

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY PROPERTY OF CUSTOMER OR THE STATE DUE TO THE NEGLIGENCE OR, WILLFULL MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S SOLE ELECTION. SUCH COST SHALL BE DETERMINED BY THE CUSTOMER AND SHALL BE DUE AND PAYABLE BY THE VENDOR NINETY (90) CALENDAR DAYS AFTER THE DATE OF THE VENDORS RECEIPT FROM THE CUSTOMER OF A WRITTEN NOTICE OF THE AMOUNT DUE.

**H. Section 9. Vendor Responsibilities, H. Confidentiality,** previously agreed upon in the Contract, is hereby restated in its entirety:

To the extent authorized by the Texas Public Information Act and other applicable laws, each party will hold the other party's Confidential Information in confidence and will take all reasonable security measures to protect the other's Confidential Information against unauthorized disclosure. All Confidential Information transmitted, or made available by Customer to Vendor which contains personal information or other sensitive Customer data will be encrypted by Customer so that it is unintelligible before Customer transmits, or makes available, such Confidential Information to Vendor.

Each party will give the other prompt written notice if it learns of any unauthorized use, disclosure, theft, or other loss of the other's Confidential Information; or, to the extent legally permitted, if disclosure of the other's Confidential Information is being sought by legal process.

Customer agrees that as the data controller, it is entitled to transfer its Confidential Information, including relevant personal data to Vendor, the data processor, so that it, its Affiliates and third party contractors may process the Confidential Information for purposes of providing the Services under the Contract.

Customer shall be responsible for maintaining secure and complete back-up of its data, except with respect to any Services provided by Vendor that specifically include data back-up.

**I. Section 9. Vendor Responsibilities, K. Limitation of Liability,** previously agreed upon in the Contract, is hereby restated in its entirety:

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, except for the exclusions set forth below, none of the parties shall be liable to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such

damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action.

The limitations of liability in Section K will not apply to damages claims for:

(a) Vendors' infringement indemnity obligations set forth in Section 9A3, in which case the aggregate direct or consequential liability for all such claims under a Schedule will be unlimited;

(b) Breach of Vendor's obligations concerning security or confidentiality, in which case the aggregate direct or consequential liability for all such claims under a Schedule shall be limited to the lesser of: (A) thirty-six times the average monthly amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action; or (B) \$20,000,000. CUSTOMERS SHOULD EVALUATE THEIR RISK FOR EACH PURCHASE; IF NEEDED, CUSTOMERS MAY NEGOTIATE HIGHER LIMITATIONS OF LIABILITY;

(c) Breach of Intellectual Property, in which case the aggregate direct or consequential liability for all such claims under a Schedule will be unlimited;

(d) Bodily injury, death, or damage to real or tangible property caused by Vendor's negligence or willful misconduct, in which case the aggregate direct liability will be unlimited.

**J. Section 9. Vendor Responsibilities, N. Required Insurance Coverage,** is hereby replaced in its entirety with the following:

The parties do not contemplate Vendor coming on-site for any Customer work. If but only if the Vendor comes on-site, the following insurance requirements will apply.

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that are A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Texas. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

**1) Commercial General Liability**

Commercial General Liability must include a combined single limit of \$1,000,000 per occurrence for coverage A, B, & C including products/completed operations, where

appropriate, with a separate aggregate of \$2,000,000. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) 30-day Notice of Termination in favor of DIR and/or Customer; and
- e) Waiver of Transfer Right of Recovery Against Others in favor of DIR and/or Customer.

**2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury disease policy limit and \$1,000,000 per disease per employee.

**3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternative acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation;
- b) 30-day Notice of Termination; and
- c) Additional Insured.

**K. Section 10. Contract Enforcement, B. Termination, 4) Termination for Cause,** previously agreed upon in the Contract, is hereby restated in its entirety:

**a) Contract**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

**b) Purchase Order**

Customer or Order Fulfiller may terminate a Schedule and related Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Purchase Order in accordance with Section 9.B.2 above, upon the

following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Schedule and related Purchase Order.

Notwithstanding the foregoing, if the breach is Customer's noncompliance with the AUP or with a law or regulation, Vendor may immediately, without liability, interrupt or suspend the Services as necessary to avoid a violation of law or regulation, to prevent a service interruption by an Internet service provider or other network services provider, or to protect the integrity of Vendor's network or the security of the Services.

- L. **Section 13. Warranties**, previously added to the Contract, is hereby restated in its entirety:

**Warranties**. Vendor warrants that it will use qualified personnel, and will perform the Services in accordance with the Contract and Purchase Orders/Schedules.

OTHER THAN THE EXPLICIT WARRANTIES AND THOSE WHICH CANNOT BE EXCLUDED BY APPLICABLE LAW, AND ANY WARRANTIES SPECIFICALLY PROVIDED IN AN ORDER, VENDOR PROVIDES THE SERVICES "AS IS," AND DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESSED, IMPLIED AND STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

- M. **Section 14. Acceptable Use Policy**, previously added to the Contract, is hereby restated in its entirety:

**Acceptable Use Policy (AUP)**. Customer and DIR will comply with the AUP in its use of Services and also will require its agents, contractors, customers, and employees to do so.

Any changes to the AUP will be consistent with the purpose of the AUP to encourage responsible use of Vendor's networks, systems, services, Web sites, and products. If any such change materially and adversely affects Customer's legitimate use of the Services, Customer may terminate the affected Service without incurring any liability.

N. **Section 15. Construction**, previously added to the Contract, is hereby restated in its entirety:

**Construction.** The construction and interpretation of this Contract will be in accordance with its explicit language and excluding the Parties' course of dealing or to usage of trade. The Parties acknowledge that the Contract and any Order are the result of negotiation between the Parties which are represented by sophisticated counsel and therefore none of the Contract's or Order's provisions will be construed against the drafter.

O. **Section 16. Regulatory Compliance**, previously added to the Contract is hereby restated in its entirety:

**Regulatory Compliance.** Each party will comply with all laws applicable to it under this Contract and any Purchase Order/Schedule, including, but not limited to Laws related to data privacy, data protection, anti-corruption and export control.

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All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment 1 and then Contract DIR-TSO-2736.

**IN WITNESS WHEREOF**, the parties hereby execute this Amendment Number 1 to be effective upon the date of the last signature but in all events, not later than February 5, 2016.

**Sungard Availability Services, LP**

**Authorized By: signature on file**

**Name: Bradley Parly**

**Title: SVP Sales**

**Date: 02/05/16**

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

**Authorized By: signature on file**

**Name: Dale Richardson**

**Title: Chief Operations Officer**

**Date: 03/04/16**

**Office of General Counsel: DR Brown 03/03/16**