

**TENTH AMENDMENT TO THE  
MASTER SERVICES AGREEMENT**  
**between**  
**THE STATE OF TEXAS, ACTING BY AND THROUGH**  
**THE TEXAS DEPARTMENT OF INFORMATION RESOURCES**  
**and**  
**INTERNATIONAL BUSINESS MACHINES CORPORATION**

This Tenth Amendment is to the Master Services Agreement (“**Agreement**”), executed November 22, 2006, between the State of Texas, acting by and through the Texas Department of Information Resources (“**DIR**”), with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and International Business Machines Corporation, a New York corporation (“**Service Provider**”), with a principal place of business at Route 100, Somers, New York 10589.

**RECITALS**

WHEREAS, the Parties desire to amend the Agreement to: (1) modify Sections 7.6(a) and 8.8(c) of the Agreement; (2) replace Exhibit 2.8, Co-Location Services; (3) modify Exhibit 3, Service Levels; (4) replace Attachment 3-A, Service Level Matrix; (5) modify Attachment 3-B, Critical Service Levels and Key Measures; (6) modify Attachment 3-C, Critical Deliverables; (7) modify Exhibit 4, Charges; (8) replace Attachment 4-D, Resource Baselines; (9) replace Attachment 4-J.1, Service Provider Pricing Forms – Co-Location Services; (10) replace Attachment 4-J.2, Co-location Services Baselines; (11) modify Attachment 5-E, Key Service Provider Personnel; and (12) modify Exhibit 14, Customer Satisfaction Surveys.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to amend the Agreement as follows:

1. Section 7.6(a), General, is replaced with the following:

“(a) **General.** No later than sixty (60) days after the Effective Date, Service Provider shall identify and submit to DIR for its approval the identity of an independent third party that shall conduct a baseline customer satisfaction index survey(s) of the Services to be provided under this Agreement in accordance with the scope, survey protocols and procedures specified in **Exhibit 14**. Prior to the Commencement Date, such independent third party shall conduct the baseline customer satisfaction index survey(s) and shall submit the results within thirty (30) days to DIR for its approval. Such baseline customer satisfaction index survey(s) shall thereafter become the baseline for measuring performance improvements and conducting other satisfaction surveys hereunder. Twenty-five (25) months following the Commencement Date and thereafter at the intervals specified in **Exhibit 14**, Service Provider shall complete satisfaction surveys in accordance with the survey protocols and procedures specified

in **Exhibit 14**. Service Provider shall engage independent third parties (such third parties to be approved in advance by DIR) to conduct the aforementioned satisfaction surveys. Service Provider shall be responsible for the expenses of all such surveys conducted pursuant to this **Section 7.6(a)**. In addition to the satisfaction survey(s) conducted through such independent third parties, Service Provider shall conduct itself such satisfaction surveys as described in **Exhibit 14**.”

2. Section 8.8(c), Personnel Projection Matrix, is amended to replace paragraph 2 with the paragraph below:

“In calculating any percentage decrease for purposes of the foregoing, the numbers in the Personnel Projection Matrix shall be adjusted appropriately to account for any material and sustained increase or decrease in the required level of Services above or below the Resource Baselines as of the Effective Date (including New Services). The Parties agree that the review and approval of the Personnel Projection Matrix and changes in the Personnel Projection Matrix by DIR shall not be construed as joint employment of the Service Provider Personnel. During the first twelve (12) months following the Commencement Date, any changes, material or otherwise, to the deployment of Service Provider Personnel shall be reported by Service Provider to DIR within five (5) days following the end of each month in which such changes occurred, and after such twelve (12) month period, Service Provider shall report all material changes in the number of Service Provider Personnel by the tenth (10<sup>th</sup>) Business Day following the end of each month in which such changes occurred. In addition, for a period of twenty-four (24) months following the Commencement Date, Service Provider shall provide DIR with a report by the tenth (10<sup>th</sup>) Business Day following the end of each month identifying the Transitioned Employees who were terminated for cause or performance during that month or who otherwise left Service Provider’s employment during that month.”

3. Exhibit 2.8, Statement of Work Co-Location Services, is deleted and replaced with the attached Exhibit 2.8 dated March 20, 2009.

4. Exhibit 3, Service Levels, Section 14.0, Continuous Improvement – Service Levels, is amended to replace item 4 with the following:

“4. For ease of administration, beginning with the third anniversary of the Commencement Date and continuing with every anniversary of the Commencement Date thereafter, the process described in this Section will be performed as of the applicable anniversary of the Commencement Date, utilizing the previous twelve (12) months’ data, replacing the Critical Service Level or Key Measurement unique dates that were based upon the commencement of obligations dates specific to each Critical Service Level or Key Measurement.”

5. Attachment 3-A, Service Level Matrix, is deleted and replaced with the attached Attachment 3-A dated March 20, 2009.

6. Attachment 3-B, Critical Service Levels and Key Measures, is amended to replace Section 2.7.5, Resolution of Invoice Disputes, with the following:

**“2.7.5 Resolution of Invoice Disputes:**

The Service Level for “Resolution of Invoice Disputes” measures the percentage of invoice disputes that are resolved within twenty (20) Business Days. A dispute must be acknowledged in writing within one (1) Business Day and is resolved when the Parties have agreed to a resolution in writing.

The Service Level calculation for Resolution of Invoice Disputes is the total number of invoice disputes during the applicable Measurement Window that are submitted to dispute resolution in accordance with **Section 19** of the Agreement and that are resolved within twenty (20) Business Days of submission, divided by the total number of all invoice disputes during the applicable Measurement Window that are submitted to dispute resolution in accordance with **Section 19** of the Agreement and that should have been resolved during the applicable Measurement Window, with the result expressed as a percentage.”

7. Attachment 3-C, Critical Deliverables, is amended to replace Section 14.0, Customer Satisfaction Surveys, with the following:

**“14.0 CUSTOMER SATISFACTION SURVEYS**

Service Provider shall be prepared to conduct customer satisfaction surveys in accordance with **Exhibit 14** to determine the satisfaction of DIR and the DIR Customers concerning the Services. The survey questions, formats and surveying methodology are to be approved by DIR and distributed to appropriate DIR and DIR Customer personnel. These surveys shall be conducted and a results report shall be provided by Service Provider to DIR twenty-five (25) months after the Commencement Date.”

8. Attachment 3-C, Critical Deliverables, is amended to replace Section 23.0, Availability of Self Service Web Portal, with the following:

**“23.0 AVAILABILITY OF SELF SERVICE WEB PORTAL**

Service Provider shall deliver the Web Portal in stages. The first stage of the functionality (Delivery 1) that shall be delivered two (2) months prior to the Commencement Date will provide DIR with a Web Portal Implementation Plan. The second stage of the functionality (Delivery 2) that shall be delivered on the Commencement Date will provide the DIR Customers with online access to invoice and chargeback detail and provide a mechanism for DIR to load data necessary for cost category mapping into the Web Portal in advance of Service Provider’s first invoice. The next delivery (Delivery 3) will be delivered three (3) months after the Commencement and provide the functionality required by **Exhibit 20 – Part A**. The last delivery (Delivery 4) will be delivered twenty-four (24) months after the

Commencement Date and will provide the functionality in accordance with the requirements agreed to by DIR and Service Provider.”

9. Exhibit 4, Charges, is amended to insert the following new Section 4.1, ASU Volumes and Allowance for ASU Services, at the end of Section 4, Annual Base Charges:

**“4.1 ASU Volumes and Allowance for ASU Services**

In exchange for the use of the State Data Center, an allowance for services in support of Angelo State University shall be calculated each month in accordance with this Section. Charges for services in excess of such allowance shall be calculated after the completion of each month as follows:

$$\text{ASU Billable Charges} = (\text{ASU Charges} - \text{ASU Allowance})$$

Where:

“**ASU Billable Charges**” is the total monthly amount of the Resource Unit-based services provided to ASU in excess of the ASU Allowance;

“**ASU Charges**” is the total monthly amount of the ASU Resource Volumes multiplied by the Chargeback Blended Rates for each applicable Resource Unit Category; and

“**ASU Allowance**” is the total monthly amount of the ASU Allowance Volumes multiplied by the Chargeback Blended Rates for each applicable Resource Unit Category.

For purposes of calculating the ASU Charges and ASU Allowance, the following shall apply:

“**ASU Allowance Volumes**” is the pre-defined Resource Unit allowance volumes for certain Resource Unit Categories set forth in the “ASU” tab of **Attachment 4-D**;

“**ASU Resource Volumes**” is the number of Resource Units for each Resource Unit Category actually used by ASU during the month for which ASU Charges are calculated; and

“**Chargeback Blended Rate**” is the unit rate for each Resource Unit Category calculated by dividing the actual chargeback charges for each Resource Unit Category by the quantity of Resource Units actually used for each Resource Unit Category, excluding the ASU Resource Volumes. The actual chargeback charges for each Resource Unit Category are the Monthly Base Charges, excluding ASU Charges, plus Additional Resource Charges minus Reduced Resource Charges.

Service Provider shall only invoice DIR for the ASU Billable Charges that are greater than zero. In the event that the ASU Billable Charges are less than zero, no charges, adjustments or credits shall be issued by the Service Provider to DIR. For any additional services requested by ASU which meet the definition of New Services, Service Provider shall submit a proposal in accordance with **Section 11.5** of the Agreement.

The following example for calculating the ASU Billable Charges is provided for illustrative purposes.

Resource Unit Category	Chargeback Blended Rate	ASU Allowance Volumes (Attachment 4-D)	ASU Resource Volumes
Data Center: UNIX: High Complexity Service Level	\$937.60	6	7
Data Center: UNIX: Medium Complexity Service Level	\$849.06	9	15
Server Storage: Allocated Disk Storage - Shared GB	\$1.30	6,000	3,000
Server Storage: Allocated Disk Storage – Dedicated GB	\$1.60	0	2,000

1. Calculate the ASU Allowance  
 $\$21,067.14 = (\$937.60 * 6) + (\$849.06 * 9) + (\$1.30 * 6,000)$
2. Calculate the ASU Charges  
 $\$26,399.10 = (\$937.60 * 7) + (\$849.06 * 15) + (\$1.30 * 3,000) + (\$1.60 * 2,000)$
3. Calculate the ASU Billable Charges  
 $\$5,331.96 = \$26,399.10 - \$21,067.14.$

In the event that DIR makes changes to its Chargeback Blended Rate methodology which would adversely impact the amounts collected by Service Provider under this provision, the Parties will mutually agree to equitably modify this provision.”

10. Exhibit 4, Charges, is amended to replace Section 5.2(d), New Application Server Hardware Service Charges, with the following:

“(d) **New Application Server Hardware Service Charges**

The Charges include a monthly “**New Application Server Hardware Service Charge,**” which shall be calculated in accordance with this Section. The New Application Server Hardware Service Charge shall be determined based on the Capital Expenditures, OTC Capital Expenditures, Maintenance Costs and Software Costs where payment was made by Service Provider for amounts approved in advance by DIR. Service Provider will use commercially reasonable efforts to obtain the lowest possible discounted prices for such Capital Expenditures, OTC

Capital Expenditures, Maintenance Costs and Software Costs, including through DIR contracts under **Section 11.3** of the Agreement.

For purposes of this Section, the following terms shall have the following meanings:

**“Capital Expenditures”** means the Instance Allocation of the amounts where payment was made by Service Provider for amounts approved in advance by DIR for Application Servers acquired or leased by Service Provider after the Commencement Date for dedicated use by any DIR Customer(s), including all associated peripheral Equipment, applicable sales and use taxes, freight and, only for new Application Servers (and not Application Server Upgrades or refreshed Application Servers), installation charges. For purposes of the New Application Server Hardware Service Charge for Capital Expenditures, lease payment streams under leases for Application Servers that are procured by Service Provider after the Commencement Date for dedicated use by any DIR Customer(s) shall be converted to a single Capital Expenditure by taking the net present value of such lease payments, using the then-current value of “i” defined for the HSMA calculation below as the applicable interest rate.

**“Capital Expenditure Application Server”** means an Application Server charged to DIR as a Capital Expenditure.

**“OTC Capital Expenditures”** means the Instance Allocation of the amounts of a one-time charge where payment was made by Service Provider for amounts approved in advance by DIR for Application Servers acquired or leased by Service Provider after the Commencement Date for dedicated use by any DIR Customer(s), including all associated peripheral Equipment, applicable sales and use taxes, freight and, only for new Application Servers (and not Application Server Upgrades or refreshed Application Servers), installation charges. For purposes of the New Application Server Hardware Service Charge, the net present value and applicable interest for lease payment streams under leases for Application Servers that are procured by Service Provider after the Commencement Date for dedicated use by any DIR Customers(s) shall be excluded from the OTC Capital Expenditure calculation.

**“OTC Capital Expenditure Application Server”** means an Application Server charged to DIR as a OTC Capital Expenditure.

**“Instance Allocation”** means that portion of the planned usage of an Application Server that is allocated to a single Instance. For the avoidance of doubt, if the planned usage of an Application Server is only one Instance, then the Instance Allocation shall equal 100%.

**“Maintenance Costs”** means the amounts where payment was made by Service Provider for amounts approved in advance by DIR for the provision of

maintenance and support Services in respect of Application Servers and peripheral Equipment used in connection with such Application Servers that are acquired by Service Provider after the Commencement Date.

“**Server Lease Costs**” means the amounts where payment was made by Service Provider for amounts approved in advance by DIR under the Application Server and Utility Server leases identified on **Attachment 12-B**.

“**Software Costs**” means the amounts where payment was made by Service Provider for amounts approved in advance by DIR for license fees and the provision of maintenance and support Services in respect of the Software which is installed on Application Servers or Utility Servers and is categorized in the “Software Rates and HSC” tab of **Attachment 4-B** as “DIR Customer Request.”

The New Application Server Hardware Service Charge payable by DIR shall be calculated for each month following the Commencement Date, and shall equal the sum of the results of the HSC and HSMA calculations set forth in this Section. For the avoidance of doubt, the HSMA calculation may yield a negative result for any given month, in which case the result of the HSC calculation shall be decreased by the result of the HSMA calculation; provided, if the HSMA calculation yields a negative result for any given month and such negative result exceeds the result of the HSC calculation for that month, such excess amount shall be credited by Service Provider to DIR on the applicable Monthly Invoice for that month.

Capital Expenditures shall be included in the HSMA calculation on a prorated basis over a sixty (60) month period beginning in the month following the month during which the applicable Application Server was installed in a DIR Customer’s Production Environment in accordance with the Policies and Procedures Manual. The Maintenance Costs and Software Costs for the Capital Expenditures shall be included in the HSMA calculation in the month in which payment was made by Service Provider; provided, however, that where Service Provider pre-pays for a benefit that will be received over a period of time (e.g., pre-paid maintenance services), such amount shall be included in the HSMA calculation on a prorated basis over such time period (e.g., if Service Provider pays \$120 in January for an annual software license or annual maintenance agreement, Service Provider will spread such cost over 12 months). Software Licenses for which payment was made as a one-time payment by Service Provider will be billed as a one-time charge to DIR.

OTC Capital Expenditures and the initial Maintenance Costs and Software Costs for the OTC Capital Expenditures shall be included in the HSMA calculation as one time charges beginning in the month following the month during which the applicable Application Server was installed in a DIR Customer’s Production Environment in accordance with the Policies and Procedures Manual. The Maintenance Costs and Software Costs for the OTC Capital Expenditures shall be included in the HSMA calculation in the month in which payment was made by

Service Provider. The Application Server will have a sixty (60) month installation period; and therefore, any ongoing Maintenance Costs and Software Costs for the OTC Capital Expenditures that are subsequent to the initial Maintenance Costs and Software Costs, shall be included in the HSMA calculation in the month in which payment was made by Service Provider (e.g., if the one time charges initially include 36 months of server maintenance and 12 months of software maintenance, then ongoing Maintenance Costs and Software Costs should begin in months 37 and 13 respectively).

No Capital Expenditures, OTC Capital Expenditures, Maintenance Costs or Software Costs shall be included in the HSMA calculation with respect to any Applications Server (a) that is not installed in a DIR Customer’s Production Environment (e.g., the applicable order for such Server is cancelled), (b) that remains installed in a DIR Customer’s Production Environment following the end of its applicable Capital Expenditure sixty (60) month payment period or OTC Capital Expenditure sixty (60) month installation period (except as expressly provided in this Section below) or (c) that is not dedicated to use by or for a DIR Customer.

**HSC Calculation:**

The applicable HSC amounts for purposes of determining the New Application Server Hardware Service Charge are set forth in the “Detailed Base Charges” tab of **Attachment 4-A**. In order to derive the applicable monthly amounts for purposes of determining the New Application Server Hardware Service Charge payable by DIR each month, the applicable amount set forth on the “Detailed Base Charges” tab of **Attachment 4-A** for the Stub Period or relevant Contract Year shall be divided by the number of monthly periods in the relevant time period (e.g., Stub Period has five (5) months). For illustrative purposes, the following formula indicates the manner in which HSC amounts set forth on the “Detailed Base Charges” tab of **Attachment 4-A** were determined.

$$HSC = \left( P_{baseline} * \left[ \frac{\frac{i}{12} * \left(1 + \frac{i}{12}\right)^{60}}{\left( \left(1 + \frac{i}{12}\right)^{60} - 1\right)} \right] + \left[ \frac{Property\ Tax\ \%}{12} * P_{baseline} * .5 \right] \right) + HSCM_{baseline} + HSCS_{baseline} + HSCXL_{baseline}$$

Where:

“HSC” is the hardware service charge;

“P<sub>baseline</sub>” is an amount equal to the applicable amount for the Stub Period or relevant Contract Year set forth in the capital plan shown on the “Server Refresh” tab of **Attachment 4-A**, divided by the number of monthly periods in the relevant timeframe (e.g., Stub Period has five (5) months);

“**Property Tax %**” is one and one-half percent (1½%);

“**HSCM<sub>baseline</sub>**” is the total amount of Maintenance Costs that were forecasted as of the Commencement Date for the applicable month;

“**HSCS<sub>baseline</sub>**” is the total amount of Software Costs that were forecasted as of the Commencement Date for the applicable month;

“**HSCXL<sub>baseline</sub>**” is the total amount of Server Lease Costs that were forecasted as of the Commencement Date for the applicable month; and

“**i**” is equal to .0813 (i.e., 8.13%).

The annual HSCM<sub>baseline</sub>, HSCS<sub>baseline</sub> and HSCXL<sub>baseline</sub> are set forth in **Attachment 4-A**. Such annual baselines, divided by the number of monthly periods in a given timeframe (e.g. Stub Period has five (5) months), equals the applicable monthly HSCM<sub>baseline</sub>, HSCS<sub>baseline</sub> and HSCXL<sub>baseline</sub>, respectively, for purposes of calculating the HSC.

**HSMA Calculation:**

The HSMA shall be determined for each month during the Term in accordance with the following formula:

$$\begin{aligned}
 \text{HSMA} = & \left( P_{\text{actual}} * \left[ \frac{\frac{i}{12} * \left(1 + \frac{i}{12}\right)^{60}}{\left(\left(1 + \frac{i}{12}\right)^{60} - 1\right)} \right] + \left[ \frac{\text{Property Tax \%}}{12} * P_{\text{actual}} * .5 \right] \right) \\
 & + ((P_{\text{actualOTC}} + \left(\frac{\text{Property Tax \%}}{12} * P_{\text{actualOTC}} * .5 * 60\right)) - (\text{HSCM}_{\text{baseline}})) \\
 & + (\text{HSCM}_{\text{actual}} - \text{HSCM}_{\text{baseline}}) + (\text{HSCS}_{\text{actual}} - \text{HSCS}_{\text{baseline}}) + (\text{HSCXL}_{\text{actual}} - \text{HSCXL}_{\text{baseline}})
 \end{aligned}$$

Where:

“**HSMA**” is the monthly adjustment to the HSC;

“**P<sub>actual</sub>**” is the amount of actual Capital Expenditures;

“**i**” is equal to the International Swaps and Derivatives Association mid-market par 3-year swap rate as of the actual Capital Expenditure date plus 0.0256 (i.e., plus 2.56%) (Note: Current rates can be found at: <http://www.federalreserve.gov/releases/h15/update/>);

“**Property Tax %**” is the then-current applicable personal property tax rate for the location of the Application Server, pro rated as applicable based on the actual acquisition date of the subject Application Server;

“**P<sub>actualOTC</sub>**” is the monthly amount of actual OTC Capital Expenditures;

“**HSC<sub>baseline</sub>**” is the total amount of Capital Expenditures that were forecasted as of the Commencement Date for the applicable month;

“**HSCM<sub>actual</sub>**” is the total amount of Maintenance Costs where payment was made by Service Provider during the applicable month;

“**HSCM<sub>baseline</sub>**” is the total amount of Maintenance Costs that were forecasted as of the Commencement Date for the applicable month;

“**HSCS<sub>actual</sub>**” is the total amount of Software Costs where payment was made by Service Provider during the applicable month; and

“**HSCS<sub>baseline</sub>**” is the total amount of Software Costs that were forecasted as of the Commencement Date for the applicable month.

“**HSCXL<sub>actual</sub>**” is the total amount of Server Lease Costs where payment was made by Service Provider during the applicable month; and

“**HSCXL<sub>baseline</sub>**” is the total amount of Server Lease Costs that were forecasted as of the Commencement Date for the applicable month.

Service Provider shall provide DIR with a supplemental invoice which will include a reconciliation of the HSC and HSMA calculations for each month and shall also identify the amount of Capital Expenditures, OTC Capital Expenditures, Maintenance Costs, Software Costs and Server Lease Costs in which payment was made by the Service Provider during each month. In the event that Service Provider chooses to lease a OTC Capital Expenditure Application Server, the cost included in the OTC Capital Expenditures supplemental invoice reconciliation shall reflect the amounts charged to DIR rather than the actual amount paid by Service Provider. Copies of relevant Third Party invoices and such other information reasonably requested by DIR will also be included with such invoices.

Service Provider shall obtain DIR’s approval prior to incurring any Capital Expenditure, OTC Capital Expenditure, Maintenance Costs or Software Costs. If Service Provider does not obtain DIR’s prior approval in respect of any Capital Expenditures, OTC Capital Expenditures, Maintenance Costs or Software Costs, then such costs shall not be included in the New Application Server Hardware Service Charge and Service Provider shall be responsible for such costs.

If DIR requests Service Provider to remove a Capital Expenditure Application Server from the DIR Customers’ Production Environments prior to the end of its applicable sixty (60) month payment period, Service Provider shall use

commercially reasonable efforts to re-deploy such Application Server. Any remaining New Application Server Hardware Services Charges for that Application Server shall continue until the earlier of (a) such time as Service Provider is able to re-deploy such Server or (b) end of the applicable sixty (60) month payment period for such Server, using a discount rate equal to the applicable rate of interest for that Server as included in the HSMA calculation, provided that Service Provider continues to use commercially reasonable efforts to re-deploy such Server. Alternatively, at DIR’s option, DIR may purchase or assume the lease for such Application Server in a manner consistent with that described in **Section 4.4(b)(4)(ii)** of the Agreement.

With respect to any Capital Expenditure Application Server that DIR elects, in DIR’s sole discretion, to keep installed in a DIR Customer’s Production Environment following the end of its applicable sixty (60) month payment period, only the personal property taxes actually paid by Service Provider in respect of such Application Server (and not any other Capital Expenditures) and any ongoing Maintenance Costs, Software Costs and Server Lease Costs where payment was made by Service Provider in respect of such Application Server shall continue to be included in the HSC and HSMA calculations until such Application Server is refreshed or is removed from the DIR Customers’ Production Environments.

With respect to any OTC Capital Expenditure Application Server that DIR elects, in DIR’s sole discretion, to keep installed in a DIR Customer’s Production Environment following the end of its applicable sixty (60) month installation period, only the personal property taxes actually paid by Service Provider in respect of such Application Server (and not any other OTC Capital Expenditures) and any ongoing Maintenance Costs and Software Costs where payment was made by Service Provider in respect of such Application Server shall continue to be included in the HSC and HSMA calculations until such Application Server is refreshed or is removed from the DIR Customer’s Production Environments.”

11. Exhibit 4, Charges, is amended to replace Section 5.1(e)(i), Application Tapes in Storage – Virtual Tape Storage, with the following:

“(i) **Application Tapes in Storage – Virtual Tape Storage**

“Application Tapes in Storage – Virtual Tape Storage” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) gigabyte of (i) VTS internal high-speed cache storage of application data (disk or buffer), and/or (ii) VTS media storage. This Resource Unit will be measured as of the last day of the applicable month for purposes of determining the Resource Unit count for such month. The sum of partial Resource Unit usage in this Resource Unit Category during a calendar month will be rounded to the nearest whole gigabyte for measurement, tracking, reporting and billing purposes. One GB will be equal to 1,000,000,000 bytes.”

12. Exhibit 4, Charges, is amended to replace Section 5.1(j), Optical Storage, with the following:

**“(j) Optical Storage**

“Optical Storage” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall equal one (1) gigabyte of optical storage capacity in the optical storage device or on-site (excluding blank platters) each month. The sum of partial Resource Unit usage in this Resource Category during a calendar month will be rounded to the nearest whole gigabyte for measurement, tracking, reporting and billing purposes. One GB will be equal to 1,073,741,824 bytes.”

13. Exhibit 4, Charges, is amended to replace Section 5.4(a), Allocated Disk Storage Dedicated, with the following:

**“(a) Allocated Disk Storage Dedicated**

“Allocated Disk Storage Dedicated” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) GB of dedicated storage on a Server that is allocated to a specific Application or function (i.e., not considered available as free space) allocated to DIR Customers and unavailable for re-allocation to Service Provider for other purposes. One GB will be equal to 1,073,741,824 bytes.”

14. Exhibit 4, Charges, is amended to replace Section 5.4(b), Allocated Disk Storage Shared, with the following:

**“(b) Allocated Disk Storage Shared**

“Allocated Disk Storage Shared” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) GB of storage that is shared by multiple Servers (e.g., SAN, NAS) allocated to DIR and unavailable for re-allocation to Service Provider for other purposes. One GB will be equal to 1,073,741,824 bytes.”

15. Exhibit 4, Charges, is amended to replace Section 5.4(c), Direct Attached Tape, with the following:

**“(c) Direct Attached Tape**

“Direct Attached Tape” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) utilized GB of Direct Attached Tape excluding any space attributed to Systems Overhead and scratch tapes, tapes to support vendor-controlled system services, operations, maintenance, administration, system managed periodic full storage volume and incremental storage volume backups. One GB will be equal to 1,073,741,824 bytes.”

16. Exhibit 4, Charges, is amended to replace Section 5.4(d), Centralized Tape, with the following:

“(d) **Centralized Tape**

“Centralized Tape” shall be a Resource Unit Category. One (1) Resource Unit for this Resource Unit Category shall be equal to one (1) GB of Centralized Tape excluding storage and any storage attributed to Systems Overhead and scratch tapes, tapes to support provider controlled system services, operations, maintenance, and administration, system managed periodic full storage volume and incremental storage volume backups. One GB will be equal to 1,073,741,824 bytes.”

17. Exhibit 4, Charges, Section 9.3(a)(i) is amended to replace paragraph 2 with the following:

“Facility charges are based on the number of co-located equipment cabinets comprising the DIR Customer IT environments. **Attachment 4-J.2** contains a specific number of cabinets for each IT environment of a DIR Customer receiving co-location services as of the dates listed in **Attachment 4-J.2**. It is understood that the DIR Customer IT environments may be dynamic in nature and the number of cabinets may vary and that additional cabinets may be needed for DIR Customers receiving co-location services. Therefore, facility charges will be calculated based on the actual number of cabinets co-located at the State Data Center and the Service Provider Consolidated Data Center. If a cabinet is co-located at the State Data Center or the Service Provider Consolidated Data Center for a portion of a calendar month, then the charges will be calculated on a prorated basis.”

18. Exhibit 4, Charges, Section 9.3(a)(ii), Utility Charges, is replaced by the following:

“(ii) **Utility Charges**

Utility charges are inclusive of all electrical, heating and cooling costs. **Attachment 4-J.2** contains the utility consumption for each IT environment of a DIR Customer receiving co-location services as of the dates listed in **Attachment 4-J.2**. It is understood that the DIR Customer IT environments may be dynamic in nature and additional equipment may be needed. Therefore, utility charges will be calculated based on the actual utility consumption for the DIR Customer IT environments co-located at the State Data Center, the Service Provider Consolidated Data Center, and the Austin Disaster Recovery Operations Center. The unit rates for the utility charges are set forth in **Attachment 4-J.1**.

Prior to the start of each Contract Year, Service Provider will review the electric utility rates in effect at the State Data Center and the Service Provider Consolidated Data Center and the utility consumption for each co-located environment therein. Based on any changes in the aforementioned electric utility rates and/or utility consumption, Service Provider will provide DIR with the proposed adjustments to the utility charges by July 1<sup>st</sup> for the upcoming Contract Year. Utility charges for

the upcoming Contract Year will be adjusted accordingly upon DIR's approval. The annual utility rate and consumption adjustment will be effective September 1, 2008 and will be adjusted each Contract Year thereafter, subject to the approval of DIR.

The electric utility rates in effect at the time any new DIR Customer IT environment is co-located at the State Data Center or the Service Provider Consolidated Data Center or any additions are made to any existing co-located DIR Customer IT environment therein, shall apply to the new or changed environment. For co-location of new DIR Customer IT environments at the State Data Center or the Service Provider Consolidated Data Center, Service Provider will provide DIR with the utility usage amounts as part of the initial pricing proposal. Prior to the addition of equipment to any existing co-located DIR Customer IT environment at the State Data Center or the Service Provider Consolidated Data Center, Service Provider will provide DIR with the additional utility usage for such equipment.

Prior to the start of each Contract Year, DIR and Service Provider will review the electric rates in effect at the Austin Disaster Recovery Operations Center and the utility consumption for each co-located environment therein. Based on any changes in the aforementioned electric utility rates and/or utility consumption, DIR and Service Provider will mutually agree to any proposed adjustments to the utility charges by July 1<sup>st</sup> for the upcoming Contract Year and the utility charges for the upcoming Contract Year will be adjusted accordingly. The annual utility rate and consumption adjustment will be effective September 1, 2008 and will be adjusted each Contract Year thereafter.

The electric utility rates in effect at the time any additions are made to any existing DIR Customer IT environment co-located at the Austin Disaster Recovery Operations Center shall apply to the changed environment. Prior to the addition of equipment to any existing co-located DIR Customer IT environment at the Austin Disaster Recovery Operations Center, DIR and Service Provider will determine the additional utility usage for such equipment.”

19. Exhibit 4, Charges, is amended to replace the first paragraph of Section 16, Chargeback, with the following paragraph:

“For all Base Charges, One-Time Charges, New Services, and all other services for which Service Provider is authorized to charge separately by DIR, Service Provider will provide lists of Charges by DIR Customer in both hard and soft copy that conforms with the requirements of **Section 12.1** of the Agreement. DIR will provide Service Provider with the chargeback unit rate methodology and Service Provider will make available to DIR and DIR Customers through the Portal the monthly chargeback volumes, rates, and extended price per Resource Unit per DIR Customer. Except for the ASU Allowance, it is anticipated that the DIR chargeback methodology will include the use of applying the ARC/RRC rates against the total volume per DIR Customer plus the allocation of the

remaining fixed cost and One-Time Charges on a weighted average basis. Service Provider will implement chargeback in a phased approach as described in **Exhibit 20-A**.”

20. Exhibit 4, Charges is amended to replace paragraph five of Section 16, Chargeback, with the following paragraph:

“For certain billable resource units, such as One-Time Charges for Transition, it may not be possible to determine utilization attributable to specific DIR Customers. In this case, the charges associated with each milestone are to be amortized and then distributed to the DIR Customers in the following manner. Charges directly attributable to a DIR Customer should be allocated to that DIR Customer. Charges that are not attributable to a specific DIR Customer should be allocated using cost data from the prior month. Mainframe related charges should be allocated based on each DIR Customer’s Mainframe related costs as a proportion of total Mainframe related costs. Similarly, Server related charges should be allocated based on each DIR Customer’s Server related costs as a proportion of total Server related costs. Finally, charges which cannot be attributable solely to a DIR Customer or as a Mainframe or Server related cost should be allocated based on each DIR Customer’s total costs as a proportion of the total costs for all DIR Customers. Service Provider will allocate the chargeback for the ASU Billable Charges as instructed by DIR.”

21. Attachment 4-D, Resource Baselines, is deleted and replaced with the attached Attachment 4-D dated March 20, 2009.

22. Attachment 4-J.1, Service Provider Pricing Forms - Co-Location Services, is deleted and replaced with the attached Attachment 4-J.1 dated March 20, 2009.

23. Attachment 4-J.2, Co-location Services Baselines, is deleted and replaced with the attached Attachment 4-J.2 dated March 20, 2009.

24. Attachment 5-E, Key Service Provider Personnel, is amended to replace Randy Livingston, Service Provider Human Resource Manager, with Danita (Libby) McGhee, Service Provider Human Resource Manager.

25. Exhibit 14, Customer Satisfaction Surveys, Section 3.0, Executive Customer Surveys, is amended to replace item 1 with the following:

“1. Completing the first Executive Customer Survey within twenty-five (25) months after the Commencement Date. The first and subsequent Executive Customer Surveys shall be conducted by a third party approved by DIR in accordance with Section 7.6 of the Agreement.”

26. Exhibit 14, Customer Satisfaction Surveys, Section 4.0, IT Management Customer Surveys, is amended to replace item 3 with the following:

“3. Completing the first IT Management Customer Satisfaction Survey within twenty-five (25) months after the Commencement Date. The first and subsequent IT

Management Customer Satisfaction Surveys shall be conducted by a third party approved by DIR in accordance with Section 7.6 of the Agreement.”

27. Exhibit 14, Customer Satisfaction Surveys, Section 5.0, Customer Representative Satisfaction Surveys, is amended to replace item 2 with the following

“2. Completing the first Customer Representative Satisfaction Survey within twenty-five (25) months after the Commencement Date.”

28. Capitalized terms not defined herein shall have the same meanings as set forth in the Agreement.

29. All other provisions of the Agreement not specifically amended hereby remain in full force and effect. In the event of conflict among provisions, the order of precedence shall be this Tenth Amendment, then the Ninth Amendment, then the Eighth Amendment, then the Seventh Amendment, then the Sixth Amendment, then the Fifth Amendment, then the Fourth Amendment, then the Third Amendment, then the Second Amendment, then the First Amendment and then the Agreement.

IN WITNESS WHEREOF, Service Provider and DIR execute this Tenth Amendment to be effective upon the date of the last party to sign.

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

By: *signature on file*  
Name: Cindy Reed  
Title: Deputy Executive Director for Operations and Statewide Technology Sourcing

Date: 4/1/09

Legal: *signature on file*

**INTERNATIONAL BUSINESS MACHINES CORPORATION**

By: *signature on file*  
Name: Ken Weiss  
Title: Vice President, State of Texas Data Center Services

Date: 4/1/2009