

**TEXAS DEPARTMENT OF INFORMATION RESOURCES  
APPENDIX D TO DIR CONTRACT NUMBER DIR-TSO-3949  
AMANDA SOFTWARE LICENSE AGREEMENT**

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**This Appendix D to DIR Contract Number DIR-TSO-3949 and AMANDA Software License Agreement is an agreement between:**

By *Unisys Corporation*, DIR Contract Number DIR-TSO-3949 (Hereafter referred to as "Vendor") and *<customer name and address>* (Hereafter referred to as "Licensee" or "Customer")  
On behalf of:  
CSDC Systems Inc.  
1705 Tech Avenue, Unit 1  
Mississauga ON L4W 0A2  
(Hereafter referred to as "Licensor")

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For the Software as identified in Appendix D1 – AMANDA Licensed Software Schedule attached hereto and incorporated by reference as written. With the installation and or use of the Software as identified in Appendix D1 – AMANDA Licensed Software Schedule of this Agreement, the Licensee accepts all the Terms and Conditions of DIR Contract Number DIR-TSO-3949 and this Agreement.

**1. TERMS AND CONDITIONS**

Licensor and the Licensee hereby agree that the following terms and conditions will apply to each license granted under this Agreement.

**2. DEFINITIONS**

**2.1. "Agreement"**

Means DIR Contract Number DIR-TSO-3949, this AMANDA Software License Agreement and any appendices and any attachments thereto.

**2.2. "Contract"**

Means Texas Department of Information Resources (DIR) Contract Number DIR-TSO-3949 between DIR and Unisys Corporation.

**2.3. "Commencement Date"**

Shall mean the date on which the Licensee begins using all or part of the functions of the AMANDA Licensed Software for Production purposes or 12 months after Installation date, whichever comes first. Commencement Date for additional software purchases not listed in Appendix D1 shall mean thirty (30) days after receipt of the software by Licensee from Licensor.

**2.4. "Effective Date"**

Shall mean the date of receipt by the Customer.

**2.5. "Upgrade(s)"**

Shall mean improvements made by Licensor to the AMANDA Licensed Software which relates to operating performance and does not change the basic function of the AMANDA Licensed Software.

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**2.6. "Enhancement(s)"**

Shall mean Modifications made by Licensor to the Licensed Software which relate to the enhancement of operating performance but does not change the basic function(s) of the Licensed Software.

**2.7. "Modification(s)"**

Shall mean any programmatic or database schema changes made to the Licensed Software.

**2.8. "Licensed Software"**

Shall mean information which directs a data processing system and associated equipment to perform a function or functions and which may be loaded into or removed from such data processing system software owned or distributed by Licensor for which the Licensee is granted a license pursuant to this Agreement.

Licensed Software shall also, for purposes of this document, mean:

1. A database schema and triggers resident on a server computer;
2. Client computer program; and
3. The media containing the Licensed Software program(s) which is in machine readable form and which will operate on such data processing systems and includes all necessary manuals and documentation related to the Licensed Software as specified in Appendix D1 of this License.

Licensed Software does not include onsite-specific specific setup / configuration such as:

1. business rules;
2. converted data;
3. output forms and reports;
4. valid and default, tables and, lookup tables;
5. merge documents and citizen facing web pages; or
6. configuration of interfaces using Licensor's APIs or custom developed interfaces that are part of the Licensee's setup.

**2.9. "Supported License"**

Shall mean a license which includes software maintenance and support Services for the relevant time period and for which no payments are due and owing at the time.

**2.10. "Software Bug(s) or Defects"**

Shall mean errors reported by the Licensee regarding the Licensed Software (as an error code) during its operation or the inability of the software to perform a function as described in the Licensed Software documentation provided by Licensor. This is exclusive of any faults or problems introduced by the Licensee due to modifications or related to any site-specific configuration not mutually agreed upon between the Licensee and the Licensor.

**2.11. "Designated Support Contact"**

Shall mean an employee of the Licensee that has been designated by the Licensee, with written notice to Licensor, with the authority of reporting Software Bugs, Defects, requesting Upgrades, requesting Enhancements, and requesting Modifications from Licensor.

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**2.12. "Installation Date"**

The date that the Licensed Software is installed on a server computer and/or a client computer at the Licensee's site.

**2.13. "Technical Documentation"**

Shall mean a documentation that provides a descriptive summary of the source code for a particular AMANDA Licensed Software module or feature.

**2.14. "Material Breach"**

Shall be handled in accordance with Section 5.F Injunctive Relief and Section 11.B.4 Termination for Cause Part a) of Appendix A Standard Terms and Conditions to DIR Contract Number DIR-TSO-3949. Material Breach shall mean a breach that carries significant financial or operational consequences or is affecting the intellectual property rights of a party or its reputation.

**3. SOFTWARE LICENSE**

**3.1. Rights Granted**

- A. LICENSOR hereby grants to the Licensee a non-exclusive perpetual license to use the Licensed Software. The Licensee obtains rights, pursuant to DIR Contract Number DIR-TSO-3949 and this Agreement, as follows:
  - 1. To use the Licensed Software on one server computer designated for production use, and one or more client computer(s) with limitations as defined in Appendix D1– AMANDA Licensed Software Schedule;
  - 2. To copy the Licensed Software for archival, disaster recovery or backup purposes. All archival and backup or disaster recovery copying of the Licensed Software is subject to the provisions of DIR Contract Number DIR-TSO-3949 and this Agreement, and all titles, trademarks, copyright and restricted rights notices shall be reproduced in such copies;
  - 3. To modify the Licensed Software only with Licensor's approval; and
  - 4. To use the Licensed Software on the Licensee's development machines for the purposes of testing software upgrades.
- B. The Licensee agrees not to cause or permit the reverse engineering, disassembly, or decompilation of the Licensed Software.
- C. By virtue of this Agreement, the Licensee acquires only the right to use the Licensed Software and does not acquire any rights of ownership. All right, title and interest in the AMANDA Licensed Software shall at all times remain the property of Licensor.

**3.2. Transfer and Assignment**

- A. The Licensed Software may be transferred to a different operating system and/or upgraded CPUs or CPUs of like configuration or the designated CPUs may be transferred to other locations within the Licensee's organization.
- B. The rights granted herein shall not be assigned or transferred to a third party without the prior written permission of Licensor, which consent shall not be unreasonably withheld.

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**3.3. Documentation**

Licensor will provide the Licensee with one (1) bound paper copies and one electronic, PDF, copy of all relevant user documentation in addition to one (1) bound paper copies and one electronic, PDF, copy of all relevant Technical Documentation. Help documentation is provided only in an electronic format on-line with the application. On-line help may be printed as required. The Licensee is authorized to make unlimited copies of the documentation and / or the on-line help in its entirety and / or extracted sections for internal staff training purposes only. Full printed documentation and / or any extracted sections and / or on-line help must include Licensor's copyright and confidential statements.

**4. MAINTENANCE AND SUPPORT SERVICES**

**4.1. Renewal of AMANDA Maintenance and Support Services**

- A. In order to renew AMANDA Maintenance and Support Services after the one-year anniversary date of the Commencement Date or 12 months from the Installation Date, whichever date comes first, the Licensee must agree in writing to a AMANDA Maintenance and Support Agreement for incremental terms of one year.

Renewal of the Maintenance and Support Services is optional and not automatic. Licensing and Maintenance & Support Services will not be provided should the Customer not renew licensing and maintenance and support services in writing to the Vendor. C. Vendor will invoice the Licensee in writing at least forty-five (45) calendar days prior to the expiry of each anniversary licensing and maintenance and support services. and the Licensee must make payment in accordance with Section 8, Pricing, Purchase Orders, Invoices, and Payments of Appendix A to DIR Contract Number DIR-TSO-3949, If the Customer wishes to discontinue support services, it shall notify the Vendor in writing upon receipt of the invoice, but no later than ten (10) calendar days prior to the expiration date of the current term of the Licensing and Maintenance & Support Services.

**5. TERM AND TERMINATION**

**5.1. Term**

This Agreement and each license granted hereunder have an initial one-year term and unless otherwise terminated in accordance with DIR Contract Number DIR-TSO-3949 and this Agreement will renew in accordance with DIR Contract Number DIR-TSO-3949.

**5.2. Termination by the Licensee**

5.2.1 Termination shall be handled in accordance with Section 11.B of Appendix A to DIR Contract Number DIR-TSO-3949.

**5.3. Effect of Termination**

Termination of DIR Contract Number DIR-TSO-3949, this Agreement or any license granted hereunder shall not limit either party from pursuing any other remedies available to it in accordance with DIR Contract Number DIR-TSO-3949, including injunctive relief, nor shall such termination relieve the Licensee's obligation to pay all fees that accrued prior to such termination.

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**6. WARRANTIES, REMEDIES, LIMITATION OF LIABILITY**

**6.1. Infringement Indemnity**

- A. Infringement and Indemnification shall be handled in accordance with Section 10. Vendor Responsibilities of Appendix A, Standard Terms and Conditions to DIR Contract Number DIR-TSO-3949.

**6.2. Warranties and Disclaimers**

A. Warranties

1. Software License Warranties

For each Supported License, Licensor warrants the software for a period of 90 days from the Installation Date (Warranty Period) or Until Commencement Date whichever comes first that the AMANDA Licensed Software, unless modified by the Licensee without Licensor's approval, will perform the functions described in the documentation provided by Licensor when operated on the designated hardware and operating system. Licensor will undertake to correct any error condition within 10 business days from the date of report of such condition by the Licensee.

2. Media Warranty

Licensor warrants the tapes, diskettes or other media to be free of defects in materials and workmanship under normal use for 90 calendar days from the Effective Date. During the 90-day period, the Licensee may return defective media to Licensor and it will be replaced without charge. Replacement of media is the Licensee's sole remedy in the event of a media defect.

3. Ownership Warranty

Licensor warrants that it is the sole owner of the Licensed Software or has the full power and authority to affect Upgrades, Enhancements and Modifications referred to herein and will indemnify and hold the Licensee harmless from and against any loss, cost, liability and expense arising out of any breach or claimed breach of this warranty.

B. Limitations on Warranties

- 1. The warranties above are exclusive and in lieu of all other warranties, whether expressed or implied, including the implied warranties of merchantability and fitness for a particular purpose.
- 2. Licensor may **not** supply the Licensee with pre-production releases of Licensed Software, labeled "Alpha" or "Beta".
- 3. All warranties are void if Licensee makes any modifications to the Licensed Software without express written approval by Licensor.

**6.3. Escrow**

For as long as this Software License Agreement is active, associated undisputed Fees are paid in full; and upon receipt of written request from Licensee, Vendor will establish and then maintain for the remaining term of this Agreement (and for so long as Vendor is obligated to provide maintenance and support services for the AMANDA Licensed

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Software under DIR Contract Number DIR-TSO-3949, the source code with the escrow agent identified in the Source Code Escrow Deposit Agreement with Licensee identified as a beneficiary. "Source Code" means the human-readable version of the Software that can be compiled into machine-readable code.

**6.4. Exclusive Remedies**

For any breach of the warranties contained in Paragraph 6.2 above, the Licensee's exclusive remedy, and Licensor's entire liability, shall be:

The correction of Licensed Software errors or replacement of Licensed Software media. If Licensor is unable to make the Licensed Software operate as warranted, the Licensee shall be entitled to recover the full applicable License and Technical Support Services fees in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3949, if any, paid to Vendor. Should the Licensee choose to continue to use any of the Licensed Software or portions thereof, the recovery of the License and Maintenance and Support Services fees shall be prorated accordingly. Should the parties fail to agree on the prorated amounts, the Texas Department of Information Resources Contract Manager will issue findings in accordance with DIR Contract Number DIR-TSO-3949 which shall be binding to both parties.

**6.4. Limitation of Liability**

Limitation of Liability shall be handled in accordance with Section 10. Vendor Responsibilities, K. Limitation of Liability of Appendix A to DIR Contract Number DIR-TSO-3949.

**7. PAYMENT PROVISION**

**7.1. Invoicing and Payment**

Invoicing and Payment shall be handled in accordance with Section 8. Pricing, Purchase Orders, Invoicing and Payments of Appendix A Standard Terms and Conditions of DIR Contract Number DIR-TSO-3949. First year standard Licensor Maintenance and Support Service fees shall be in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3949 and will apply from the expiry of the Warranty Period.

- A. Fees for the Licensor Maintenance and Support Services for subsequent years shall be due in advance and will be those in effect at the beginning of the period for which the fees are paid. Maintenance and Support Services for subsequent years shall be at the option of the Licensee.

As long as Licensee has a valid, paid-up Maintenance and Support Agreement in place, any Updates provided to Licensee under such agreement shall, upon installation, replace earlier versions of the Software and shall be governed by DIR Contract Number DIR-TSO-3949 and this Agreement.

**8. GENERAL TERMS**

**8.1. Non-disclosure**

By virtue of DIR Contract Number DIR-TSO-3949 and this Agreement, the parties may have access to information that is confidential to the other ("Confidential Information"). Confidential Information shall be limited to the Licensed Software and all information clearly marked as confidential.

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A party's Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of the other party, or (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is required to be disclosed under the Texas Public Information Act or similar statute.

The parties agree to forever hold each other's Confidential Information in confidence. The parties agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than the implementation of this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this Agreement.

**8.2. Governing Law**

DIR Contract Number DIR-TSO-3949 and this Agreement shall be constructed under, governed by and interpreted in accordance with the laws of the State of Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

In any legal action relating to DIR Contract Number DIR-TSO-3949 and this Agreement, and any Service Order shall be governed by the laws of the State of Texas. Venue shall be in the State Courts of Travis County, Texas.

**8.3. Notice**

All notices, including notices of address change, required to be sent hereunder, shall be in writing and delivered by common carrier (for example: UPS, Federal Express, etc.) or delivered in person or by facsimile transmission to the then applicable address for the party receiving the same. Receipt of any notice will be deemed to be the earlier of five (5) calendar days after the date of mailing and the actual date of delivery unless service is interrupted.

**Licensor**

*On Behalf of Licensor:*  
Attn: John Dean Holliday  
Unisys Corporation  
801 Lakeview Drive, Suite 100  
Blue Bell, Pennsylvania 19422.  
Phone: (512) 705-3847  
Email: [john.holliday@unisys.com](mailto:john.holliday@unisys.com)

**Licensee**

and **<Customer Name>**  
Attention: Director of Purchasing  
**<Customer Address>**

**8.4. Severability**

In the event any provision of DIR Contract Number DIR-TSO-3949 and this Agreement is held to be invalid or unenforceable by a court as defined in Section 8.2 of this Agreement the same may be severed and the remaining provisions of DIR-TSO-3949 and this Agreement will remain in full force and effect.

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**8.5. Waiver**

The waiver by either party of any default or breach of DIR Contract Number DIR-TSO-3949 or this Agreement shall not constitute a waiver of any other or subsequent default or breach.

**8.6. Force Majeure**

Force Majeure shall be handled in accordance with Section 11.C. Force Majeure of DIR Contract Number DIR-TSO-3949.

**8.7. Assignment**

Assignment shall be handled in accordance with Section 4. General Provisions, D. Assignment of Appendix A Standard Terms and Conditions of DIR Contract Number DIR-TSO-3949.

**8.8. Entire Agreement**

DIR Contract Number DIR-TSO-3949, including all Appendices and this Agreement plus Appendix D1, AMANDA Licensed Software Schedule as attached constitute the complete agreement between the parties and supersede all previous agreements or representations, written or oral, with respect to the Licensed Software specified herein. In the event of a conflict in Terms between this Agreement and DIR Contract Number DIR-TSO-3949, the Terms of DIR Contract Number DIR-TSO-3949 shall take precedence. This Appendix D to DIR Contract Number DIR-TSO-3949, AMANDA Software License Agreement may not be modified or amended except in writing and signed by a duly authorized representative of DIR and Vendor.

It is expressly agreed that any terms and conditions of the Licensee's purchase order issued in respect of this Agreement shall be not be superseded by the terms and conditions of this Agreement unless the specific terms are agreed by the Licensee and Vendor and so annotated and acknowledged by the Vendor on the Licensee's Purchase Order.

**8.9. Survival of License**

Survival shall be handled in accordance with Section 4.E of Appendix A, Standard Terms and Conditions of DIR Contract Number DIR-TSO-3949.

**8.10. Enurement**

The agreement will enure to and be binding upon the parties, their successors and assigns.

**8.11. Acceptance**

When the Licensor provides a software module and / or an AMANDA release that contains additional AMANDA products and / or licenses to the Licensee, the deliverable will be deemed accepted unless the Licensor receives from the Licensee a notice within twenty (20) business days of acquisition indicating detail about the

failure of the deliverable's objective to conform to the specifications outlined in the product documentation.



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**8.12. Authorization**

Both parties agree that upon mutual consent, the Appendix D1, AMANDA Licensed Software Schedule, attached hereto can be modified by the authorized representatives listed in section 8.4 above. A modified Appendix D1 is required to be signed and dated by the authorized representatives listed in section 8.4 above.

**End of Appendix D**

**SIGNED:**

**Unisys Corporation, Vendor  
On behalf of Licensor:**

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Licensee**

I have the authority to bind the Licensee.

By: \_\_\_\_\_  
<Title1>

**APPENDIX D1 –AMANDA LICENSED SOFTWARE SCHEDULE**

**A. Core Software**

CORE SOFTWARE		
Item	Software Package	Unit

**SIGNED:**

**Licensor/Vendor Representative**

**Licensee Representative**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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Date

\_\_\_\_\_  
Date