

7. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
8. **Confidential Information.** UniqueD expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by UniqueD shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.
9. **Performance Warranty.** UniqueD warrants to County that UniqueD has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and UniqueD will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
10. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless UniqueD for any reason are hereby deleted. UniqueD shall Indemnify and defend county against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of UniqueD, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of UniqueD or any of UniqueD's agents, servants or employees.
11. **Attorney Fees.** County does not agree to pay any and/or all attorney fees incurred by UniqueD in any way associated with the Agreement.
12. **Arbitration.** County does not agree to submit disputes arising out of the Agreement to dispute resolution or binding arbitration.
13. **Applicable Law.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.
14. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content.
 - a. Agreement to Not Boycott Israel Chapter 2270 Texas Government Code. By signature below, UniqueD verifies UniqueD does not boycott Israel and will not boycott Israel during the term of this Agreement.
 - b. Texas Government Code §2251.152 Acknowledgment. By signature below, UniqueD represents pursuant to Section 2252.152 of the Texas Government Code, that UniqueD is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

15. **Conflict.** In the event there is a conflict between this Addendum and the attached Quote, this Addendum controls. In the event there is a conflict between this Addendum and the attached Texas DIR Contract No. TSO-4299, the DIR Contract No. TSO-4299 controls.
16. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.

{EXECUTION PAGE FOLLOWS}

{REMAINDER INTENTIONALLY LEFT BLANK}

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the exhibits and attachments hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

FORT BEND COUNTY

UNIQUE DIGITAL

KP George, County Judge

Carrie Drake

Authorized Agent - Signature

Date

Carrie Drake

Authorized Agent – Printed Name

ATTEST:

Account Executive

Title

Laura Richard, County Clerk

09/17/19

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert E. Sturdivant, County Auditor

Exhibit A: Unique Digital Quote

Exhibit B.: Texas DIR TSO-4299 Contract

Exhibit A



Quote

Date	Quote #
2-Aug-19	FBCounty_080219_VxRail_Jane Long

Bill To: Fort Bend County
Ship To: Fort Bend County
Sales Rep: Carrie Drake
 10595 Westoffice Drive
 Houston, TX 77042
 (713) 777-0447

DIR-TSO-4299

Item SKU	Description	Qty	UOM	Total List Price (USD)	Customer Discounted Unit Price (USD)	Customer Discounted Total Price (USD)
VXRAIL Node addition- Jane Long						
INSTLCTRYUSAFR640F	VXRAIL-500 USA SHIPMOD F	1	EA	\$81.00	\$40.50	\$40.50
TPM1.2MODULEAF	VXRAIL-500 TPM 1.2 MODULE AF	1	EA	\$62.00	\$31.00	\$31.00
PS1100WPSF	VXRAIL-500 DUAL HOTPLG 1100W PS F	1	EA	\$825.00	\$412.50	\$412.50
SYSE5602SVENF	VXRAIL 14G E560 1U1N 2S NVME ENT AF	1	EA	\$19,839.00	\$9,919.50	\$9,919.50
PWR200VRACK	C13-C14 PDU RACK PWR CRD 2M N. AM	2	EA	\$0.00	\$0.00	\$0.00
2S8HPFANE560165GR	VXRAIL-500 2S 8 HIGH PERF FAN 165W/GRT	1	EA	\$233.00	\$116.50	\$116.50
2SE560HSKDM165OL	VXRAIL-500 2S E560 165WL HTK DIMM BLNK	1	EA	\$27.00	\$13.50	\$13.50
PROGD61421SF	VXR INTEL CPU GD 6142 2.6G 16C 32T 1S F	1	EA	\$4,659.00	\$2,329.50	\$2,329.50
PROGD61422SF	VXR INTEL CPU GD 6142 2.6G 16C 32T 2S F	1	EA	\$4,659.00	\$2,329.50	\$2,329.50
RISER640CNFG2DUAL	VXRAIL-500 RISER R640 CONFIG2 LP	1	EA	\$19.00	\$9.50	\$9.50
RRAILKIT1U1NCMAAF	VXRAIL-500 A7 RRAILS II WITH CMA 1U1N AF	1	EA	\$199.00	\$99.50	\$99.50
MEMLDIMM32GBAF	VXRAIL-500 MEMORY 32GB RDIMM AF	12	EA	\$13,428.00	\$559.50	\$6,714.00
RDIMM2666INFO	VXRAIL-500 FACTORYORD RQ 2666MHZ RDIMMS	1	EA	\$0.00	\$0.00	\$0.00
NDCX710QP10GBSFP	VXRAIL-500 NDC INTELX710 QP 10GB SFP+ AF	1	EA	\$892.00	\$446.00	\$446.00
INSTKITSFP	HCIA INSTALL KIT 10GBE SFP+ AF	1	EA	\$60.00	\$30.00	\$30.00
CAPSSDSAS3.84TBF	VXR 3.84TB CAPACITY SAS 2.5IN SSD F	6	EA	\$23,574.00	\$1,964.50	\$11,787.00
CACHENVMDR1.6TBF	VXR 1.6TB NVME CACHE 2.5IN F	2	EA	\$5,998.00	\$1,499.50	\$2,999.00
M-PSP-HW-J-003-3Y	PROSUPPORT PLUS VSAN ENT HW SUPP 3 YEARS	1	EA	\$26,856.72	\$13,489.14	\$13,489.14
VXR-14G-MGR-DE-45	VXRAIL SOFTWARE IMAGE V4.5=MA	1	EA	\$0.00	\$0.00	\$0.00
VXRVSANEMB4.5	VXR VSAN ENTERPRISE (EMBEDDED) 4.5 TRK	2	EA	\$0.00	\$0.00	\$0.00
458-001-937	RECOVERPOINT FOR VM FOR 1-NODE HCIA	1	EA	\$0.00	\$0.00	\$0.00
456-111-959	RECOVERPOINT FOR VM FOR 1-NODE HCIA =IB	1	EA	\$0.00	\$0.00	\$0.00
VXROSGDPROCSF	VXR HCI SYSTEM SOFTWARE(G F)=IG	2	EA	\$7,818.00	\$1,954.50	\$3,909.00
VXROS3.84SASF	VXR HCI SYSTEM SOFTWARE(CAP 3.84 SAS)=CF	6	EA	\$11,484.00	\$957.00	\$5,742.00
458-002-204	HCIA NP VXR VSPHERE SOFTWARE	1	EA	\$0.00	\$0.00	\$0.00
456-113-146	HCIA NP VSPH E+ 1CPU W/ 3YR MAINT=IG	2	EA	\$6,788.00	\$1,697.00	\$3,394.00
470-AAVG	SEL - SFP/SFP+ DAC 5M CUS KIT	4	EA	\$880.00	\$110.00	\$440.00
M-PSP-SW-J-002	PROSUPPORT PLUS SOFTWARE SUPPORT - 3 YEARS	1	EA	\$12,447.00	\$6,223.50	\$6,223.50
				\$140,828.72		\$70,475.14

PROFESSIONAL SERVICES

UDI-PS-VxRAIL-ADD Unique Digital implementation of one VxRail E series appliance cluster. Implementation of VxRail E series Appliance of up to 1 add on node; installation to include burn-in, rack and stack; Does not include data migration or advanced feature functionality.

\$2,000.00

Configuration Total	\$72,475.14
Tax	Exempt
Shipping	Included
Total Price	\$72,475.14

SIGNATURE

** Leasing Options Available
 ** Restocking Fees May Apply if Purchase Order Cancelled
 ** 4% Credit Card Fee Applicable
 ** Terms: Net 30

Exhibit B

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
EMC Corporation, dba System Peripherals, Inc.

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and EMC Corporation, dba System Peripherals, Inc. (hereinafter "Vendor"), with its principal place of business at 176 South Street, Hopkinton, Massachusetts 01748.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-422, on March 20, 2018, for Data Storage, Data Communications & Networking Equipment and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-422 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Support Service and Professional Service Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-422, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-422, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. For Lease transactions under this Contract the order of precedence shall be as follows: this Contract; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement, as applicable depending on the type of lease; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Support Service and Professional Services Agreement; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-422, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-422, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor governing lease transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E, then Appendix F, then Exhibit 1, and finally Exhibit 2. In the event of a conflict between the documents listed in this paragraph related to lease transactions, the controlling

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document shall be this Contract, then Appendix E or Appendix F, depending on the type of lease transaction, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The initial term of this Contract shall be two (2) years commencing on the last date of approval by DIR and Vendor, with one (1) optional two-year renewal and one (1) optional one-year renewal. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to Data Storage, Data Communications & Networking Equipment as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to Data Storage, Data Communications & Networking related services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM
Director, Cooperative Contracts
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-1647
Facsimile: (512) 475-4759
Email: kelly.parker@dir.texas.gov

If sent to the Vendor:

Tiffany Pabst
EMC Corporation, dba System Peripherals, Inc.
3017 Douglas Blvd., Ste 300
Roseville, CA 95661
Phone: 774-350-8224
Email: tiffany.pabst@dell.com

7. Software License, Service and Leasing Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License Terms below and the End User License Agreement (EULA). No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in the Software License Terms and EULA, however, that the Customer and Vendor may agree to additional terms and conditions that do not diminish a term or condition in the Software License Terms, or in any manner lessen the rights or protections of Customer or the responsibilities or liabilities of Vendor. Order Fulfiler shall make the Software License Agreement Terms available to all Customers at all times.

2) Compliance with the Software License Terms is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License Terms. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License Term or shrink/click wrap license agreement, as applicable.

3) Shrink/Click-wrap License Agreement

It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.

B. Software License Terms:

Definitions:

- a) **“Documentation”** means the then-current, generally available, written user manuals and online help and guides provided by EMC for Products.
- b) **“Products”** mean **“Equipment”** (which is the EMC branded hardware delivered by EMC to Customer) and/or **“Software”** (which is any programming code provided by EMC to Customer as a EMC branded standard product, also including microcode, firmware and operating system software).
- c) **Product Notice”** means the Product and Services related information posted at the applicable EMC website at the time of the EMC quote, currently located at http://www.emc.com/products/warranty_maintenance/index.jsp.
- d) **“Software Release”** means any subsequent version of Software provided by EMC after initial Delivery of Software, but does not mean a new Product.
- e) **General License Grant.** Vendor grants to Customer a non-exclusive, non-transferable (except as specified in this Contract) license to use the Software and the Documentation during the period of the license solely for Customer's internal business operations, and subject to the provisions of this Contract. Unless otherwise indicated in this Contractor or the applicable quote, licenses granted to Customer will be perpetual, will be for use of object code only, and will commence on either delivery of the physical media or the date Customer is notified of availability for electronic download. Use of Software may require Customer to complete Vendor's then current product registration process, if any, to obtain and input an authorization key or license file.
- f) **Licensing Models.** Software is licensed for use only in accordance with the commercial terms and restrictions of the Software's relevant licensing model, which are stated in the Product Notice and/or Vendor quote. For example, the licensing model may provide that Software is licensed for use solely (i) for a certain number of licensing units; (ii) on or in connection with a certain piece equipment, CPU, network or other hardware environment; and/or (iii) for a specified amount of storage capacity. Microcode, firmware or operating system software needed by the Equipment with which it is shipped to perform its basic functions, is licensed for use solely on such Equipment.
- g) **Copying Permitted.** Customer may copy the Software and Documentation as necessary to install and run the quantity of copies licensed, but otherwise for archival purposes only.
- h) **License Restrictions.** Without Vendor's prior written consent, Customer must not, and must not allow any third party to: (i) use Software in an application services provider, service bureau, or similar capacity for third parties; (ii) disclose to any third party the results of any benchmarking testing or comparative or competitive analyses of Vendor's Products done by or on behalf of Customer; (iii) make available Software in any form to anyone other than Customer's employees or contractors reasonably acceptable to Vendor and which require access to use Software on behalf of Customer in a matter permitted by this Contract; (iv) transfer or sublicense Software or Documentation to any third party; (v) use Software in conflict with the terms and restrictions of the Software's licensing model and other requirements specified in the Product Notice and/or Vendor quote; (vi) except to the extent

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permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Software, or reverse assemble or disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the Software; (vii) remove any copyright or other proprietary notices on or in any copies of Software; or (viii) violate or circumvent any technological restrictions within the Software or specified in this Contract, such as via software or services.

- i) **Software Releases.** Software Releases shall be subject to the license terms applicable to Software.
- j) **Records and Audit.** Records and Audit shall be in accordance with DIR contract number DIR-TSO-4299.
- k) **Termination of License.** Termination of licenses shall be in accordance with DIR contract number DIR-TSO-4299.
- l) **Reserved Rights.** Vendor reserves all rights not expressly granted to Customer and does not transfer any ownership rights in any Software.
- m) **Other License Terms.** If a particular Product or component is provided with its own license terms ("Separate License Terms"), typically in the form of a (i) "click-to-accept" agreement included as part of the installation and/or download process, or (ii) "shrink-wrap" agreement included in the packaging for the Product, or (iii) notice indicating that by installation and/or use thereof the related license terms apply, then, in case of conflict with the terms of this Contract, such Separate License Terms shall (a) prevail with regard to Products or components for which Vendor is not the licensor; and (b) not prevail with regard to a Product or component for which Vendor is the licensor.

C. Service Agreement

Services provided under this Contract shall be in accordance with, Support Service and Professional Services Agreement as set forth in Appendix D or in a Statement of Work or other services agreement of this Contract . No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. Master Operating Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Operating Lease Agreement in Appendix E of this Contract for Lessees that are Texas State Agencies or otherwise authorized to conduct lease transactions through DIR contracts.

E. Master Lease Agreement

DIR and Vendor hereby agree that Vendor is authorized to utilize the Master Lease Agreement in Appendix F of this Contract for DIR authorized entities as Lessees that are **not** Texas State Agencies or otherwise required by statute to utilize the Texas Public Finance Authority for such leasing transactions. Texas State Agencies that have the requisite capital authority and who are not required to utilize such authority via the Texas Public Finance Authority may or may not be eligible to utilize the Master Lease Agreement; each such agency must confer with its own counsel to make this determination.

F. Conflicting or Additional Terms

In the event of a conflict, any linked documents (other than and those referenced in software license terms in Section 7) may not take precedence over the printed or referenced

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documents comprising this contract; provided further that any update to such linked documents shall only apply to purchases or leases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase unless Vendor directly informs Customer of the update before the purchase is consummated.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any document that: 1) diminishes the rights, benefits, or protections of the Customer, or that alters the definitions, measurements, or method for determining any authorized rights, benefits, or protections of the Customer; or 2) imposes additional costs, burdens, or obligations upon Customer, or that alters the definitions, measurements, or method for determining any authorized costs, burdens, or obligations upon Customer.

The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer or Publisher.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.

A. Appendix A, Section 3, Definitions, is hereby replaced in its entirety as follows:

A. Customer - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a private school, as defined by Section 5.001, Education Code, a private or independent institution of higher education, as defined by Section 61.003, Education Code, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, any local government as authorized through the Interlocal Cooperation Act, Chapter 791, Texas Government Code, and the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code and, except for telecommunications services under Chapter 2170, Texas Government Code, assistance organizations as defined in Section 2175.001, Texas Government Code to mean:

- 1) A non-profit organization that provides educational, health or human services or assistance to homeless individuals;
- 2) A nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;
- 3) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance Office of the Agency for International Development;
- 4) A group, including a faith-based group, that enters into a financial or non-financial agreement with a health or human services agency to provide services to that agency's clients;
- 5) A local workforce development board created under Section 2308.253;

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- 6) A nonprofit organization approved by the Supreme Court of Texas that provides free legal services for low-income households in civil matters;
 - 7) The Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Texas Agriculture Code;
 - 8) A nonprofit computer bank that solicits, stores, refurbishes and redistributes used computer equipment to public school students and their families; and
 - 9) A nonprofit organization that provides affordable housing.
- B. Compliance Check** – an audit of Vendor's compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
- C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
- D. CPA** – refers to the Texas Comptroller of Public Accounts.
- E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- F. Order Fulfiller** – means the party, either Vendor or a party that may be designated by Vendor as a Reseller, who is authorized to quote and fulfill-a Purchase Order and receive payment pursuant to the Contract.
- G. Purchase Order** - means the Customer's fiscal form or format, which is used when making a purchase (e.g. formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument). Neither Vendor or Customer is or shall be bound by a terms and conditions imprinted on or embedded in orders, order acknowledgements or other communications between the parties relating to orders.
- H. State** – refers to the State of Texas.
- I. Documentation** means the then-current, generally available, written user manuals and online help and guides provided by EMC for Products.
- J. Products** mean **"Equipment"** (which is the EMC branded hardware delivered by EMC to Customer) and/or **"Software"** (which is any programming code provided by EMC to Customer as an EMC branded standard product, also including microcode, firmware and operating system software).
- K. Reseller** means any third party approved by Vendor to sell to Customers under this Contract. Vendor will flow the terms and conditions of this Contract to its Resellers authorized under this Contract except, the pricing Reseller resales to Eligible Customers will be established by the Reseller. Reseller will not resale products or services that exceed the maximum price as set forth in Appendix C, Pricing Index, of this Contract.

- B. Appendix A, Section 4. General Provision, E. Survival**, is hereby replaced in its entirety as follows:

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract prior to expiration or termination of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders, Statements of Work or Service Agreements issued to and accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract for the term of the Purchase Order, Statement of Work or

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service agreement unless the Customer terminates the Purchase Order, Statement of Work or Service Agreement sooner. However, regardless of the term of the Purchase Order, no Purchase Order shall survive the expiration or termination of the Contract for more than five years, unless Customer includes a statement of its internal approval of such longer period on the Purchase Order. Rights and obligations under this Contract which by their nature should survive will apply to such Purchase Order that survives after expiration or termination of the Contract, including, but not limited to the DIR Administrative Fee; and any and all payment obligations that occurred prior to the termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

- C. **Appendix A, Section 5. Intellectual Property Matters, A. Definitions**, is hereby replaced in its entirety as follows:

A. Definitions.

- 1) "Work Product" means any and all reports, analyses, scripts, code or other work results which have been developed by Vendor for Customer within the framework of fulfilling obligations by Vendor for Customer under a Statement of Work issued pursuant to this Contract.
- 2) "Property Rights" mean all patents, copyrights, trade secrets, methodologies, ideas, concepts: inventions, know-how, techniques or other intellectual property rights of a party.
- 3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.
- 4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.
- 5) "Vendor IP" shall mean all tangible or intangible items or things, including the Property Rights therein, created or developed by Vendor. (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Professional Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer. Vendor shall not be limited in developing, using or marketing services or products which are similar to the Work Product or Professional Services provided hereunder, or, subject to Vendor's confidentiality obligations to Customer, in using the Work Product or performing similar Professional Services for any other project.

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6) “Services” mean (i) services for the support and maintenance of Products (“**Support Services**”) as set forth in the Support Services and Professional Services Agreement, Appendix D to this Contract; or (ii) consulting, installation, implementation, or other services that are not Support Services (“**Professional Services**”) as set forth in the Support Services and Professional Services Agreement, Appendix D to this Agreement.

D. Appendix A Section 5. Intellectual Property Matters, B. Ownership through L. Vendor Development right is hereby replaced in its entirety as follows:

B. Property Rights:

1) Grant of Copyright Rights in Work.

Subject to Customer’s payment of the applicable amounts due Vendor and to Vendor’s Proprietary Rights in any underlying intellectual property embodied therein or used by Vendor to perform Professional Services, Customer shall own all copyright rights to the portion of Work Product that consists solely of written reports, analyses and other working papers prepared and delivered by Vendor to Customer in the performance of EMC’s obligations under the SOW.

2) Grant of License Rights in Work Product.

For the portion of Work Product that consists of scripts and code, Vendor grants Customer a non-exclusive, non-transferable, irrevocable (except in case of breach of the Contract or SOW) perpetual right to use, copy and create derivative works from such (without the right to sublicense) for Customer’s internal business operations, as contemplated by the applicable SOW. The license granted in this section does not apply to (i) Customer furnished materials, and (ii) any other Products or items licensed, or otherwise provided, under a separate agreement.

3) Customer Furnished Materials.

Customer does not relinquish any of its rights in materials it furnishes for use by Vendor in connection with the performance of Professional Services. Pursuant to Customer’s Proprietary Rights therein, Customer grants EMC a non-exclusive, non-transferable right to use such solely for the benefit of Customer in fulfillment of Vendor’s obligations under the SOW.

4) Reservation of Proprietary Rights.

Each party reserves for itself all Proprietary Rights that it has not expressly granted to the other. Vendor shall not be limited in developing, using or marketing services or products which are similar to the Work Product or Professional Services provided hereunder, or, subject to Vendor’s confidentiality obligations to Customer, in using the Work Product or performing similar Professional Services for any other projects.

5) Confidentiality.

All documents, information and materials forwarded to Vendor by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, and subject to the license granted by Customer to Vendor under subparagraph 5.3.B.5, Customer Furnished Materials, hereunder. Vendor shall not use, disclose, or permit any

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person to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

6) Vendor License to Use.

Customer hereby grants to Vendor a non-transferable, non-exclusive, royalty-free, fully paid-up license to use any Work Product solely as necessary to provide the Services to Customer. Except as provided in this Section, neither Vendor nor any Subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

E. Appendix A, Section 7. Contract Fulfillment and Promotion, A. Services, Sales and Support of the Contract, is hereby replaced in its entirety as follows:

Vendor shall provide service, sales and support resources available under the Contract to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its commercially reasonable efforts to ensure that potential Customers are made aware of the existence of the Contract.

F. Appendix A, Section 7. Contract Fulfillment and Promotion, C. Product Warranty and Return Policies, is hereby replaced in its entirety as follows:

Order Fulfiler will adhere to the Vendor's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

Vendor's Warranty:

1. Product Warranty

A. Equipment and Software Media. Vendor warrants that (i) Equipment, and Equipment upgrades installed into Equipment, when purchased from Vendor and operated with normal usage and regular recommended service; and (ii) the physical media, if any, on which software is provided by Vendor, shall be free from material defects in materials and workmanship, and perform substantially in accordance with Documentation provided for Equipment or the physical media until the expiration of the warranty period. Unless otherwise noted on the Product Notice or Vendor quote, the warranty coverage for the microcode, firmware or operating system software that enables Equipment to perform as described in its Documentation shall be no less than that which applies to such Equipment. To the extent specified in the Product Notice, Support Services in the form of the Support Option noted on the Product Notice are included free of charge during the Equipment warranty period. In some cases, a Support Option upgrade during the Equipment warranty period may be available by separate purchase.

B. Equipment and Software Media Warranty Duration. Unless otherwise stated on the Vendor quote, the warranty period from Vendor for Products shall be as set forth at

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the Product Notice. Equipment warranty commences upon Delivery. Equipment upgrades are warranted in the same manner as the Equipment in which the upgrades are installed from Delivery of the upgrade until the end of the warranty period for the Equipment into which the upgrades are installed. The warranty for physical media for Software provided by EMC, if any, is ninety (90) days and commences upon Delivery.

- C. Equipment and Software Media Warranty Remedies.** Vendor's entire liability and Customer's exclusive remedies under the Equipment and physical media for Software warranties described in this Section 6 shall be for Vendor, at its option, to remedy the non-compliance or to replace the affected Product, and if Vendor is unable to effect such within a reasonable time, then Vendor shall refund the amount paid by Customer for the affected Product as depreciated on a straight line basis over a five (5) year period, upon return of such Product to Vendor. All replaced Products or portions thereof shall be returned to and become the property of Vendor. If such replacement is not so returned, Customer shall pay Vendor's then current spare parts price therefore. Vendor shall have no liability hereunder after expiration of the applicable warranty period.
- D. Software Warranty, Duration and Remedy.** Vendor warrants to Customer that the Software will, for a period of ninety (90) days following Delivery or notice of availability for electronic download ("Warranty Period"), substantially conform to the applicable Documentation, provided that the Software: (i) has been properly installed and used at all times in accordance with the applicable Documentation; and (ii) has not been modified or added to by persons other than Vendor or its authorized representative. Vendor will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to Vendor by Customer in writing during the Warranty Period. If Vendor determines that it is unable to correct the error or replace the Software, Vendor will refund to Customer the amount paid by Customer for that Software, in which case the license for that Software will terminate.
- E. Exclusions.** Warranty does not cover problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Product is used or other causes beyond Vendor's control; (iii) installation, operation or use not in accordance with Vendor's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for which the Product was not designed; (v) modification, alteration or repair by anyone other than Vendor or its authorized representatives; or (vi) in case of Equipment only, causes not attributable to normal wear and tear. Vendor has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without Vendor's consent or whose original identification marks have been altered or removed.
- F. Disclaimer of Warranty.** OTHER THAN THE WARRANTIES SET FORTH IN THIS CONTRACT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VENDOR AND ITS SUPPLIERS MAKE NO OTHER EXPRESS WARRANTIES UNDER THIS CONTRACT, AND DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. VENDOR AND ITS SUPPLIERS DO NOT

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WARRANT THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET CUSTOMER'S REQUIREMENTS.

2. Support Services Warranty:

- A. Support Services.** Vendor shall perform the labor portion of Support Services in a workmanlike manner in accordance with generally accepted industry standards. Customer shall notify Vendor of any failure to so perform as soon as reasonably possible, and in no event more than ten (10) days after the date on which such failure first occurs. A replacement part receives the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part.
- B. Customer Remedies.** Customer's exclusive remedy and Vendor's entire liability under the foregoing warranties shall be for Vendor to, at its option, (i) use reasonable efforts to (a) re-perform the deficient labor services within a reasonable time, or (b) replace any replacement parts which become defective during the remainder of the warranty or Support Services coverage applicable to the Product containing the replacement part, or sixty (60) days after installation thereof, whichever occurs later; and (ii) if, after reasonable efforts, Vendor is not able correct such deficiencies, then Customer has the right to terminate for breach in accordance with Section 7 D below.
- C. No Further Warranties.** EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, VENDOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

3. Professional Services.

- A. Professional Services.** Vendor shall perform Professional Services in a workmanlike manner in accordance with generally accepted industry standards. Customer must notify Vendor of any failure to so perform within ten (10) days after the performance of the applicable portion of Professional Services.
- B. Customer Remedies.** Vendor's entire liability and Customer's sole remedy for Vendor's failure to so perform shall be for Vendor to, at its option, (i) correct such failure; and/or (ii) terminate the applicable SOW and refund that portion of any fees received that correspond to such failure to perform.
- C. No Further Warranties.** EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO PRODUCTS, SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, VENDOR (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, AND DISCLAIMS ALL IMPLIED WARRANTIES. INSOFAR AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

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- F. Appendix A, Section 7. Contract Fulfillment and Promotion, H. Trade Show Participation,** is hereby replaced in its entirety as follows:

At DIR's discretion, Vendor may be required to participate in no more than two DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any required participation. Vendor must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's booth.

- G. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price,** is hereby replaced in its entirety as follows:

The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee, as set forth in the Contract).

1) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

2) During the term of this Contract, if pricing for products or non-custom services available under this Contract are provided by Vendor at a lower price to an Eligible Texas Customer (headquartered in the State of Texas) who is not purchasing those products or services under this Contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to products or non-customized services actually charged by Vendor for a quantity of one (1) under substantially similar terms and conditions, for substantially similar configurations or deliverables. This requirement does not apply to volume or special pricing purchases. This Contract shall be amended within ten (10) business days to reflect the lower price.

- H. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, G. Changes to Prices,** is hereby replaced in its entirety as follows:

Vendor or Order Filler may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately at the time of submission of a purchase order, but shall not be retroactive to products for which a purchase order has been received, or for services currently being rendered under a prior purchase order.

- I. Appendix A, Section 8. Pricing, Purchase Orders, Invoices, and Payments, K. Acceptance** is amended by adding the following:

K. Acceptance.

All Products will be deemed to be delivered and accepted, meaning that Product operates in

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substantial conformity to the Product's Documentation upon (i) Delivery of the Equipment or physical media; or (ii) transmission of a notice of availability for download (accomplished by the license key when required by EMC). Notwithstanding such acceptance, Customer retains all rights and remedies set forth in the Section entitled "Product Warranty".

J. Appendix A, Section 9. Contract Administration, C. Records and Audit, is hereby replaced in its entirety as follows:

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records relevant to the performance of the Contract to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall grant access to all paper and electronic records, books, documents, accounting procedures, practices, customer records including but not limited to contracts, agreements, purchase orders and statements of work, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. Vendor and/or Order Fulfiller shall provide adequate office space to DIR staff during the performance of Compliance Check. If Vendor is found to be responsible for inaccurate reports, DIR may

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invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

K. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 2) Acts or Omissions, is hereby replaced in its entirety as follows:

2) ACTS OR OMISSIONS

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS FOR LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract resulting in bodily injury (including death) or damage to tangible property and to the extent caused by Vendor or its Order Fulfillers, Agents, Resellers or subcontractors. VENDOR'S OBLIGATIONS TO INDEMNIFY AND HOLD HARMLESS WILL BE LIMITED TO CLAIMS CAUSED SOLELY BY VENDOR NEGLIGENCE. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS FEES AWARDED BY A COURT OF FINAL DETERMINATION. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL FOR TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT OR BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS. VENDOR MAY NOT AGREE TO ANY SETTLEMENT AS TO CLAIMS AGAINST STATE AGENCIES WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

L. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 3) Infringements, is hereby replaced in its entirety as follows:

3) INFRINGEMENTS

a) Vendor shall indemnify the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES ("Indemnified Party"), from any and all third-party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the performance of Services or the provision of Vendor-branded Products by Vendor pursuant to this contract by paying (i) the resulting costs and damages finally awarded against Indemnified Party by a court of competent jurisdiction to the extent that such are the result of the third party claims, or (ii) the amounts stated in a written settlement negotiated and approved by Vendor. "Vendor-Branded Products" shall mean hardware products (including all EMC standard components and parts contained within the

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EMC system), components, or parts bearing the Vendor's logo that are included on Vendor's standard price list.

Vendor and Customer agrees to furnish timely written notice to each other of any such claim. The defense shall be coordinated by the Office of the Attorney General for Texas State Agency Customers, Vendor's Counsel for Vendor, and by Customer's legal counsel for non-state agency customers and Vendor may not agree to any settlement as to claims against Texas State agencies without first obtaining concurrence from the Office of the Attorney General. In addition, without any additional payment of liability by Vendor, the foregoing IP obligations shall extend to third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with Vendor's sale of third party equipment and license of third party software under this Contract, if and to the extent the applicable third party equipment manufacturer or third party software licensor is contractually obligated to Vendor to provide indemnification for such claims and such indemnification by its own terms can be extended to Indemnified Party.

b) Notwithstanding the foregoing, Vendor shall have no obligation under this Section 10.A.3 for any claim to the extent that it results or arises from (1) Customer's modifications of such products, services or deliverables that were not performed by or on behalf of Vendor; (2) the combination, operation or use of such product, service or deliverable in connection with a third-party product or service (the combination of which causes the infringement); or (3) Vendor's compliance with Customer's written specifications (to the extent such specifications were not developed by Vendor) or directions, including the incorporation of any software or other materials or process provided by or requested by Customer. In the event Vendor has no obligation for a claim as set forth above, Vendor agrees to provide such assistance (e.g., producing documents and its employees as witnesses) as is reasonably requested by the Attorney General in connection with the Attorney General's defense of such claim.

c) If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing, or (iii) provide a refund that reflects reasonable depreciation for time of use, and for services/custom software. (iii) applies only if the remedies described in subparts (i) and (ii) are not obtainable despite Vendor's commercially reasonable efforts. This subsection states Customer's exclusive remedies for any third-party intellectual property claim. Notwithstanding the foregoing, if Vendor provides the remedy described in subpart (iii) and the affected Customer incurs transition expenses relating to the replacement in such Customer's IT environment of the affected portion of Dell Vendor-Branded Products or services, such Customer may tender to Vendor a claim for such actual and reasonable transition expenses in an amount up to the difference between (y) the original purchase price for the affected portion of the product or service being removed and (z) the

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refund provided to such Customer pursuant to subpart (iii), above, and Vendor will pay such claim.

M. Appendix A, Section 10. Vendor Responsibilities, A. Indemnification, 4) Property Damage, is hereby replaced in its entirety as follows:

4) PROPERTY DAMAGE

IN THE EVENT OF LOSS, DAMAGE, OR DESTRUCTION OF ANY REAL AND TANGIBLE PROPERTY OF CUSTOMER OR THE STATE DUE TO THE SOLE NEGLIGENCE, MISCONDUCT, WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS, THE VENDOR SHALL; 1) FOR LOSS, DAMAGE OR DESTRUCTION OF EMC PRODUCT, EMC WILL REPAIR OR REPLACE THE EMC PRODUCT OR PROVIDE THE REFUND EACH AS SPECIFIED IN THE TERMS AND CONDITIONS OF THE APPLICABLE WARRANTY OR SUPPORT SERVICE TERMS, OR 2) FOR PRODUCTS OTHER THAN AN EMC PRODUCT, AND AFTER VENDOR'S INVESTIGATION AND SUMMARY OF PROPOSED REMEDY, PAY THE FULL COST OF EITHER REPAIR, RECONSTRUCTION, OR REPLACEMENT OF THE PROPERTY, AT THE CUSTOMER'S ELECTION, TAKING INTO CONSIDERATION THE VENDOR'S RECOMMENDATION. IF SUCH LOSS DAMAGE OR DESTRUCTION IS CAUSED SOLELY BY VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS NEGLIGENCE. FOR LOSS, DAMAGE OR DISTRUCTION NOT CAUSED SOLELY BY VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES OR SUBCONTRACTORS SOLE NEGLIGENCE VENDOR WILL PAY THAT PORTION OF THE COST OF EITHER REPAIR, RECONSTRUCTION OR REPLACEMENT OF THE PROPERTY TO THE DEGREE RESPONSIBLE. SUCH COST SHALL BE DETERMINED BY 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.

N. Appendix A, Section 10. Vendor Responsibilities, B. Taxes/Worker's Compensation/UNEMPLOYMENT INSURANCE, is hereby replaced in its entirety as follows:

1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR,-ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER AS A RESULT OF ITS PERFORMANCE UNDER THIS CONTRACT.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS,-AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO EMPLOYEE TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE

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INCLUDING ATTORNEYS' FEES FOR CLAIMS MADE BY VENDOR VENDOR'S EMPLOYEES, VENDOR'S SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR OR FOR WITH CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCIES. VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL OR NON-STATE COUNSEL IF SUCH SETTLEMENT REQUIRES THE STATE OR STATE AGENCY TO MAKE ANY PAYMENT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

L.

O. Appendix A, Section 10. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel, is hereby replaced in its entirety as follows:

a) Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other tangible property, belonging to the Customer. Vendor shall use commercially reasonable efforts to preserve the safety, security, and the integrity of the premises, equipment, and other tangible property of the Customer, in accordance with the instruction of the Customer provided to Vendor or the applicable Order Fulfiller by the Customer in writing or in the manner that Customer generally provides such instructions to its own employees and other contractors. Vendor and/or Order Fulfiller shall be responsible for damage to Customer's equipment, premises, and other tangible property when and to the degree such damage is caused by its employees or subcontractors. If a Vendor and/or Order Fulfiller materially fails to comply with Customer's security requirements, then Customer may terminate its Purchase Order and related Service Agreement in accordance with Section 11.B. Termination of the Contract.

b) In addition, Vendor and/or Order Fulfiller may, during performance of the Contract, have access to Customer's data ("Data") that is hosted either at Customer's or a third party's premises (other than premises of Vendor's Affiliates or subcontractors) (collectively, "Customer Premises") or at Vendor's premises or the premises of Vendor's Affiliates or subcontractors (collectively, "Vendor Premises").

i) As to Data hosted at any Customer Premises, Vendor shall comply with Customer's instructions related to preserving the safety, security and integrity of such Data provided to Vendor or the applicable Order Fulfiller by the Customer in writing or in the manner that Customer generally provides such instructions to its own employees and other contractors.

ii) As to Data hosted at any Vendor Premises, Vendor will comply with its generally applicable security standards designed to preserve the safety, security and integrity of such Data, as well as any additional security obligations expressly agreed in the applicable Statement of Work executed by Customer and Vendor.

iii) Notwithstanding anything to the contrary in this Contract, including this Section 10.I, except as otherwise expressly provided in a Statement of Work executed by Customer and Vendor: (A) Customer is responsible for backing up its own Data, (B) Vendor and Order Fulfiller shall not have operational or financial responsibility for refreshes, upgrades, modifications or improvements to Customer-provided facilities, equipment or software that may be required to preserve the safety, security and integrity of such Data, and (C) if Vendor or Order Fulfiller's compliance with Customer's instructions constitutes a material change to the scope of Services or their other obligations, the parties will equitably adjust the charges to account for such material change. Vendor and Order Fulfiller shall not be responsible, or liable for any damages, for any Data losses to the extent such Data cannot be retrieved due to Customer's

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(or Customer's applicable Third-Party Vendor's) failure to use standard industry practices relating to data backups and retrieval of Data.

P. Appendix A, Section 10. Vendor Responsibilities, J. Background and/or Criminal History Investigation, is hereby replaced in its entirety as follows:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by the Customer (as required by Customer), provided the Customer gives prior notice of such investigation. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately require replacement of the Vendor or Order Fulfiller employee or subcontractor in question. If Vendor fails to replace the employee or subcontractor personnel as soon as practicable, then Customer may terminate its Purchase Order and related Service Agreement in accordance with the applicable termination sections of this Contract.

Q. Appendix A, Section 10. Vendor Responsibilities, K. Limitation of Liability, is hereby replaced in its entirety as follows:

For any claims 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, none of the parties shall be liable to the other for indirect, punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's cumulative liability for all claims and damages of any kind to the Customer under the Contract shall be limited in the aggregate, to \$5,000,000. The foregoing limitations shall apply regardless of whether the claim for such damages is based in contract, warranty, strict liability, negligence, tort or otherwise. Insofar as applicable law prohibits any limitation herein, the parties agree that such limitation will be automatically modified, but only to the extent so as to make the limitation permitted to the fullest extent possible under such law. However, this limitation of Vendor's liability shall not apply to Vendor's indemnification obligations for claims of patent, trademark, or copyright infringement of Vendor-branded products or Vendor provided services and deliverables as set forth in Section 10.A.3 ("Infringements").

R. Appendix A, Section 10. Vendor Responsibilities, M. Prohibited Conduct, is hereby replaced in its entirety as follows:

Vendor certifies that, to the best of its knowledge as of the date of this certification, neither Vendor nor any Reseller Order Fulfiller, subcontractor has: (1) violated the antitrust laws of the State of Texas under Texas Business & Commerce Code, Chapter 15, or the federal antitrust laws; or (2) communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract

S. Appendix A, Section 10. Vendor Responsibilities, N. Required Insurance Coverage, is hereby replaced in its entirety as follows:

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As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within 5 business 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 have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on Commercial General Liability and Business Auto Liability policies. 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 \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. 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; and
- d) Waiver of Subrogation

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 PER EMPLOYEE AND \$1,000,000 PER DISEASE POLICY LIMIT.

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. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

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T. Appendix A, Section 10. Vendor Responsibilities, S. Secure Erasure of Hard Disk Products and/or Services, is hereby replaced in its entirety as follows:

Vendor agrees that all products that are equipped with hard disk drives (i.e. computers, servers etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services. Erasure services are available at additional cost.

U. Appendix A, Section 10. Vendor Responsibilities, T. Deceptive Trade Practices; Unfair Business Practices, is hereby replaced in its entirety as follows:

1) Vendor certifies as of the Effective Date of this Contract, that neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

2) Vendor certifies, as of the Effective Date of this Contract, that it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

V. Appendix A, Section 10. Vendor Responsibilities, U. Drug Free Workplace Policy, is hereby replaced in its entirety as follows:

Vendor will comply with drug and alcohol rules and regulations that are legally mandated for employers in the State of Texas. Vendor and Customers may agree to more specific requirements for onsite services in a mutually agreed statement of work.

W. Appendix A, Section 11. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation, a). Termination for Non-Appropriation by Customer is hereby replaced in its entirety as follows:

“Customer will endeavor to ensure appropriated funds have been appropriated prior to placing orders. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted delivery of the product or services, they are obligated to pay for the product or services or they may return the product and discontinue using services under any return provisions that Vendor offers. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

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X. Appendix A, Section 11. Contract Enforcement, B. Termination, 3) Termination for Convenience, is hereby replaced in its entirety as follows:

DIR may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate a Purchase Order by giving the other party thirty (30) calendar days written notice. Customer will be responsible for all payments for products and services delivered prior to termination and for any agreed to costs associated with termination of a services as agreed to in a lease agreement, Statement of Work or other service agreement.

Y. Appendix A, Section 11. Contract Enforcement, C. Force Majeure, is hereby replaced in its entirety as follows:

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if 1) its performance is or will be delayed by 20 days or more by event(s) of Force Majeure (or a longer period if agreed to by the Customer) and 2) if it is reasonably determined by the Customer that Order Fulfiller will not be able to deliver services in a timely manner to meet the business needs of the Customer

Z. Appendix A, Section 14. Trade Compliance, is hereby added as follows:

The parties agree to comply with US Export and Import laws.

All content, Services and the technology included therein (collectively the "Materials") provided under this Contract are subject to governmental restrictions on exports and imports including without limitation (i) exports from the U.S and the European Union as well as re-export from third countries in the form received; (ii) exports from other countries in which the Materials may be produced or located; (iii) disclosures of technology to non-U.S persons; (iv) exports from other countries of the same or products derivative of Materials; and (v) the importation and/or use the Materials outside of the U.S. or other countries (collectively, "Trade Laws"). Customer must comply with all Trade Laws. Diversion contrary to U.S. law or other Trade Laws is expressly prohibited. In addition, Customer shall not send or deliver to EMC any data controlled by the International Traffic in Arms ("ITAR"), and shall not request Materials or Service from EMC where an ITAR license is required in order for EMC to provide such Materials or Service, unless the EMC Global Trade Compliance Group Office has signed a specific agreement consenting to provide ITAR controlled Materials or Service Customer. Customer represents and warrants that it is not (a) listed on any of the lists of restricted parties found at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>; (b) located in any country subject to embargo by the U.S. (identified as an E:1 country in Supplement 1 to Part 740 of the United States Export Administration Regulations

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("EAR"), as shown here and updated from time to time: <http://www.ecfr.gov/cgi-bin/text-idx?SID=7f51b38428b0614519eea4b4fdc8640e&node=15:2.1.3.4.25.0.1.21.28&rgn=div9>; or (c) engaged in the proliferation of weapons of mass destruction (i.e., nuclear, chemical or biological weapons or missiles). Customer will not participate or ask EMC to participate in any illegal boycott.

AA. Appendix A, Section 15. EMC Select or Brokerage Products, shall be added at a later date.

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This Contract is executed to be effective as of the date of last signature.

EMC Corporation, dba System Peripherals, Inc.

Authorized By: Signature on file

Name: Rita Roles

Title: Sr. Contracts Manager

Date: 12/10/2018

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

Authorized By: Signature on file

Name: Hershel Becker

Title: Chief Procurement Officer

Date: 12/17/2018

Office of General Counsel: DB 12/14/2018