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COUNTY OF FORT BEND

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ADDENDUM TO UNIQUE DIGITAL, INC.'S AGREEMENT

THIS ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Unique Digital, Inc., ("Unique Digital"), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "parties").

WHEREAS, subject to the changes herein, the parties have executed and accepted Unique Digital's Quote (dated July 6, 2021), Statement of Work (dated July 18, 2021), and the Master Services Agreement (collectively the "Agreement"), attached hereto as Exhibit "A" and incorporated fully by reference, for the purchase of specified hardware, software, support services, and professional services (collectively the "Services") concerning servers; and

WHEREAS, County desires that Unique Digital provide Services as will be more specifically described in this Agreement; and

WHEREAS, Unique Digital represents that it is qualified and desires to perform such Services; and

WHEREAS, the parties wish to utilize the State of Texas Department of Information Resources ("DIR") Contract No. DIR-TSO-4299, incorporated fully by reference, for the purchase of the Services; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

AGREEMENT

1. **Scope of Services.** Subject to this Addendum, Unique Digital will render Services to County as described in Exhibit A; and in accordance with the requirements and specifications of DIR Contract No. DIR-TSO-4299.

The Services shall be scheduled at a time that is mutually agreeable between the parties but without reasonable delay. All performance of the Scope of Services by Unique Digital including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by County.

2. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. If County disputes charges related to the invoice submitted by Unique Digital, County shall notify Unique Digital no later than twenty-one (21) days after the date County receives the invoice. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body

corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE. County reserves the right to withhold payment pending verification of satisfactory work performed.

Mutually approved travel and mileage expenses incurred in the performance of required Services will be compensated only in accordance with the County's Travel Policy, a copy of which will be provided upon request. Receipts evidencing travel related expenditures made by Unique Digital or Unique Digital's subcontractors shall be submitted to the County Auditor's Office:

Fort Bend County Auditor
Attn: Robert Ed Sturdivant
301 Jackson Street, Suite 701, Richmond, TX 77469

3. **Limit of Appropriation.** Unique Digital clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of One Hundred Ninety-Five Thousand, Four Hundred Fifty-Four and 16/100 dollars (\$195,454.16), specifically allocated to fully discharge any and all liabilities County may incur. Unique Digital does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Unique Digital may become entitled to and the total maximum sum that County may become liable to pay to Unique Digital shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Ninety-Five Thousand, Four Hundred Fifty-Four and 16/100 dollars (\$195,454.16). In no event will the amount paid by the County for all services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
4. **Public Information Act.** Unique Digital 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 Unique Digital 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.
5. **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 Unique Digital for any reason are hereby deleted. Unique Digital 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 Unique Digital, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of Unique Digital or any of Unique Digital's agents, servants or employees.

6. **Applicable Law; Arbitration; Attorney Fees.** 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. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Unique Digital in any way associated with the Agreement.
7. **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 2271 Texas Government Code: By signature below, Unique Digital verifies that if Unique Digital employs ten (10) or more full-time employees and this Agreement has a value of \$100,000 or more, Unique Digital does not boycott Israel and will not boycott Israel during the term of this Agreement.
 - b. Texas Government Code § 2252.152 Acknowledgment: By signature below, Unique Digital represents pursuant to § 2252.152 of the Texas Government Code, that Unique Digital is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under § 806.051, § 807.051, or § 2252.153.
8. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.
9. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, UNIQUE DIGITAL ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
10. **Use of Customer Name.** Unique Digital may use County's name without County's prior written consent only in any of Unique Digital's customer lists, any other use must be approved in advance by County.
11. **Performance Warranty.** Unique Digital warrants to County that Unique Digital has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Unique Digital 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.

Unique Digital warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

12. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls. In the event there is a conflict between this Addendum and the terms and conditions of DIR Contract Number DIR-TSO-4299, then the terms and conditions of DIR Contract Number DIR-TSO-4299 controls to the extent of the conflict.
13. **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.
14. **Inspection of Books and Records.** Unique Digital will permit County, or any duly authorized agent of County, to inspect and examine the books and records of Unique Digital for the purpose of verifying the amount of work performed under the Scope of Services. County's right to inspect survives the termination of this Agreement for a period of four (4) years.
15. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
16. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
17. **Assignment and Delegation.**
 - 17.1. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
 - 17.2. Neither party may delegate any performance under this Agreement.
 - 17.3. Any purported assignment of rights or delegation of performance in violation of this Section is void.
 - 17.4. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County.

18. **Successors and Assigns.** County and Unique Digital bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.
19. **Ownership and Reuse of Documents.** All documents, data, reports, research, graphic presentation materials, etc., developed by Unique Digital as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under § 2 for work performed. Unique Digital shall promptly furnish all such data and material to County on request.
20. **Personnel.** Unique Digital represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Unique Digital shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

All employees of Unique Digital shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Unique Digital or agent of Unique Digital who, in the opinion of County, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services for the County, Unique Digital shall comply with, and ensure that all Unique Digital Personnel comply with, all rules, regulations and policies of County that are communicated to Unique Digital, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

21. **Compliance with Laws.** Unique Digital shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Unique Digital shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
22. **Confidential Information.** Unique Digital acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Unique Digital or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Unique Digital shall

be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Unique Digital) publicly known or is contained in a publicly available document; (b) is rightfully in Unique Digital's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Unique Digital who can be shown to have had no access to the Confidential Information.

Unique Digital agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Unique Digital uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Unique Digital shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Unique Digital shall advise County immediately in the event Unique Digital learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Unique Digital will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Unique Digital against any such person. Unique Digital agrees that, except as directed by County, Unique Digital will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Unique Digital will promptly turn over to County all documents, papers, and other matter in Unique Digital's possession which embody Confidential Information.

Unique Digital acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Unique Digital acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

Unique Digital in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

23. Termination.

23.1. Termination for Convenience. County may terminate this Agreement at any time upon thirty (30) days written notice.

- 23.2. Termination for Default. County may terminate the whole or any part of this Agreement for cause in the following circumstances:
- (a). If Unique Digital fails to timely perform services pursuant to this Agreement or any extension thereof granted by the County in writing;
 - (b). If Unique Digital materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
- 23.3. If, after termination, it is determined for any reason whatsoever that Unique Digital was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with § 23.1 above.
- 23.4. Upon termination of this Agreement, County shall compensate Unique Digital in accordance with § 2, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Unique Digital's final invoice for said services will be presented to and paid by County in the same manner set forth in § 2 above.
- 23.5. If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Unique Digital.
- 23.6. If County terminates this Agreement prior to the termination date, County shall not be subject to any early termination fee or other penalty.
- 23.7 Upon completion, or upon termination of this Agreement for any reason, if Unique Digital has any property in its possession belonging to County, Unique Digital will account for the same, and dispose of it in the manner the County directs. Notwithstanding the above, either party will be permitted to retain records as required by law.
24. **Independent Contractor.** In the performance of work or services hereunder, Unique Digital shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Unique Digital or, where permitted, of its subcontractors. Unique Digital and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

25. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

26. **Dispute Resolution.**

26.1. The parties shall attempt in good faith to resolve promptly any dispute arising out of or relating to this Agreement by negotiation between the parties. In the event the dispute cannot be settled through negotiation, the parties agree to submit the dispute to non-binding mediation.

26.2. The party requesting mediation shall notify the other party in writing of the dispute desired to be mediated. If the parties are unable to resolve their differences within ten (10) days of the receipt of such notice, such dispute shall be submitted for mediation.

26.3. Each party shall be responsible for its own costs associated with the mediation.

26.4. The requirement to seek mediation shall be a condition required before filing an action at law or in equity, unless to do so would prevent either party from seeking relief in a court of law or equity under any applicable statute of limitations.

26.5. Unique Digital acknowledges that County is subject to the requirements of the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, the County will comply with the provisions of the Open Meetings Act.

27. **Insurance.** Prior to commencement of the Services under this Agreement, Unique Digital shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Unique Digital shall provide certified copies of insurance endorsements and/or policies if requested by County. Unique Digital shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Unique Digital shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

(a). Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

(b). Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily

injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.

(c). Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.

(d). Professional Liability insurance with limits not less than \$1,000,000.

(e). Professional Liability insurance for Information Technology, including Cyber Risk may be made on a Claims Made form with limits not less than \$1,000,000 each claim/loss with a \$2,000,000 aggregate. The insurance should provide coverage for the following risks:

(1). Liability arising from theft, dissemination, and/or use of confidential information (a defined term including but not limited to bank account, credit card account, personal information such as name, address, social security numbers, etc.,) stored or transmitted in electronic form.

(2). Network security liability arising from the unauthorized access to, use of, or tampering with computer systems, including hacker attacks or inability of an authorized third party to gain access to your services, including denial of service, unless caused by a mechanical or electrical failure

(3). Liability arising from the introduction of a computer virus into, or otherwise causing damage to, a customer's or third person's computer, computer system, network, or similar computer-related property and the data, software, and programs thereon.

County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Unique Digital shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

If required coverage is written on a claims-made basis, Unique Digital warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

Unique Digital's or Unique Digital's subcontractor's insurance will be primary to any insurance carried or self-insurance program established by the County. Unique Digital's or Unique Digital's subcontractor's insurance will be kept in force until all service have been fully performed and accepted by County in writing. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of the Contractor.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, or faxed to the following County contact:

Name: Wyatt Scott, Director of Risk Management
Address: 301 Jackson St., Suite 224, Richmond, TX 77469
Facsimile Number: 281-341-3751

28. Notices.

28.1. Each party giving any notice or making any request, demand, or other communication (each, a "Notice") pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).

28.2. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County Information Technology Department
Attn: Information Technology Director
301 Jackson Street
Richmond, Texas 77469

With a copy to: Fort Bend County
Attn: County Judge
301 Jackson Street
Richmond, Texas 77469

Contractor: Unique Digital, Inc.
10595 Westoffice Drive
Houston, Texas 77042

28.3. A Notice is effective only if the party giving or making the Notice has complied with subsections 28.1 and 28.2 and if the addressee has received the Notice. A Notice is deemed received as follows:

28.3.1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.

28.3.2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

(Execution Page Follows)

(Remainder of Page 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 attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will. This Agreement is effective upon execution by both parties.

FORT BEND COUNTY

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

REVIEWED:

Robyn Doughtie
Information Technology Department

UNIQUE DIGITAL, INC.

DocuSigned by:
Jenny Knesek
5884572226F740C...
Authorized Agent – Signature

Jenny Knesek

Authorized Agent- Printed Name

VP Financial Services

Title

9/1/2021

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 Ed Sturdivant, County Auditor

Exhibit A: Unique Digital's Quote (dated July 6, 2021), Statement of Work (dated July 18, 2021), and the Master Services Agreement

Exhibit A



Quote

Date	Quote #
6-Jul-21	FortBend_VxRail_26901_v01

Bill To:	Ship To:	Account Executive
Fort Bend County	Fort Bend County	Lauren Plante
		10595 Westoffice Drive
		Houston, TX 77042
		(713) 777-0447

DIR-TSO-4299

Item SKU	Description	Qty	UOM	Unit List Price (USD)	Customer Discounted Unit Price (USD)	Customer Discounted Total Price (USD)
VxRail - 4 Nodes						
HARDWARE						
210-AUJY	VxRail E560 NVMe	4	EA	\$2,504.00	\$943.51	\$3,774.04
325-BDPO	E560N Branding	4	EA	\$0.00	\$0.00	\$0.00
329-BDWH	PSNT Info	4	EA	\$0.00	\$0.00	\$0.00
384-BCTB	VxRail E560/PV570/S570 Hardware Component Firmware Lock	4	EA	\$0.00	\$0.00	\$0.00
321-BDKH	Chassis up to 10 x 2.5 Hard Drives including 10 NVMe, Max of 8 SAS/SATA, 3 PCIe Slots, 2 CPU only	4	EA	\$250.00	\$94.20	\$376.80
350-BBSY	VxRail E560/F Bezel	4	EA	\$149.00	\$56.14	\$224.56
338-BVKH	Intel Xeon Gold 6248R 3.0G, 24C/48T, 10.4GT/s, 35.75M Cache, Turbo, HT (205W) DDR4-2933	8	EA	\$4,899.00	\$1,845.94	\$14,767.52
379-BDCO	Additional Processor Selected	4	EA	\$0.00	\$0.00	\$0.00
370-AEVR	3200MT/s RDIMMs	4	EA	\$0.00	\$0.00	\$0.00
370-AEVQ	16GB RDIMM, 3200MT/s, Dual Rank	48	EA	\$639.00	\$240.78	\$11,557.44
400-BKGF	1.6TB Enterprise NVMe Mixed Use AG Drive U.2 Gen4 with carrier	8	EA	\$2,979.00	\$1,122.49	\$8,979.92
400-BKGL	3.84TB Enterprise NVMe Read Intensive AG Drive U.2 Gen4 with carrier	16	EA	\$4,554.00	\$1,715.95	\$27,455.20
384-BCJM	VxRail Drive Configuration Info (10,2,2,8)	4	EA	\$0.00	\$0.00	\$0.00
555-BCKP	Intel X710 Quad Port 10GbE SFP+, rNDC	4	EA	\$849.00	\$319.90	\$1,279.60
461-AAEL	Trusted Platform Module 1.2	4	EA	\$59.00	\$22.23	\$88.92
770-BBHJ	No Rack Rails or Cable Management Arm	4	EA	\$0.00	\$0.00	\$0.00
450-AFMQ	Dual, Hot-plug, Redundant Power Supply (1+1), 1600W, 250 Volt Power Cord Required for Use C13 to C14, PDU Style, 12 AMP, 6.5 Feet (2m)	4	EA	\$850.00	\$320.28	\$1,281.12
492-BBDI	Power Cord, North America	8	EA	\$20.00	\$7.54	\$60.32
389-DSVF	PowerEdge R640 CE and BIS Marking, No CCC Marking	4	EA	\$0.00	\$0.00	\$0.00
330-BBJZ	Riser Config 2, 3x16 LP	4	EA	\$19.00	\$7.16	\$28.64
329-BEIJ	PowerEdge R640 MLK Motherboard	4	EA	\$0.00	\$0.00	\$0.00
370-ABWE	DIMM Blanks for System with 2 Processors	4	EA	\$0.00	\$0.00	\$0.00
412-AAIP	1U Pipe LowProfile Heatsink	8	EA	\$29.00	\$10.93	\$87.44
370-AAIP	Performance Optimized	4	EA	\$0.00	\$0.00	\$0.00
780-BCNW	C31, No RAID NVMe Drive	4	EA	\$0.00	\$0.00	\$0.00
405-AAJU	HBA330 12Gbps SAS HBA Controller (NON-RAID), Minicard	4	EA	\$269.00	\$101.36	\$405.44
403-BCHI	BOSS controller card + with 2 M.2 Sticks 240G (RAID 1),LP	4	EA	\$879.00	\$331.21	\$1,324.84
379-BCRB	DHCP with Zero Touch Configuration	4	EA	\$0.00	\$0.00	\$0.00
385-BBLE	IDSDM and Combo Card Reader	4	EA	\$59.00	\$22.23	\$88.92
385-BBCF	Redundant SD Cards Enabled	4	EA	\$0.00	\$0.00	\$0.00
385-BBKI	64GB microSDHC/SDXC Card	8	EA	\$199.00	\$74.98	\$599.84
384-BBQI	8 Performance Fans for R640	4	EA	\$199.00	\$74.98	\$299.92
800-BBDM	UEFI BIOS Boot Mode with GPT Partition	4	EA	\$0.00	\$0.00	\$0.00
387-BBEY	No Energy Star	4	EA	\$0.00	\$0.00	\$0.00
429-AAIQ	No Internal Optical Drive	4	EA	\$0.00	\$0.00	\$0.00
631-AACK	No Systems Documentation, No OpenManage DVD Kit	4	EA	\$0.00	\$0.00	\$0.00
470-ACPE	VxRail Small Form Factor Pluggable Cable Kit	4	EA	\$19.00	\$7.16	\$28.64
540-BBDV	Intel Ethernet I350 QP 1Gb Ser ver Adapter, Low Profile, CusKit	4	EA	\$491.66	\$185.26	\$741.04
470-AAVG	Dell Networking, Cable, SFP+ to SFP+, 10GbE, Copper Twinax Direct Attach Cable, 5 Meter, CusKit	8	EA	\$135.00	\$50.87	\$406.96
VxRail - 4 Nodes Hardware Sub-Total						\$73,857.12

SOFTWARE						
634-BXOU	VxRail Software 4.7.520 Factory Install	4	EA	\$0.00	\$0.00	\$0.00
379-BDYQ	No Transformational License Agreement	4	EA	\$0.00	\$0.00	\$0.00
634-BSJW	VxRail VMware,vSAN Advanced, 3 Years	8	EA	\$0.00	\$0.00	\$0.00
634-BSKL	VxRail HCI System Software, All-Flash, A	8	EA	\$8,770.00	\$3,201.05	\$25,608.40
634-BUWF	VxRail HCI System Software, NVME, Read Intensive, 3.84TB	16	EA	\$1,763.00	\$643.50	\$10,296.00
634-BRKG	VxRail VMware vSphere Enterprise Plus for 1 processor, 3 Years	8	EA	\$6,946.86	\$2,535.60	\$20,284.80
634-BWRZ	HClA RecoverPoint for VMWare for 1 node VT	4	EA	\$0.00	\$0.00	\$0.00
385-BBKT	iDRAC9,Enterprise	4	EA	\$489.00	\$178.49	\$713.96
379-BCQY	iDRAC Group Manager, Disabled	4	EA	\$0.00	\$0.00	\$0.00
379-BCRF	iDRAC,Legacy Password	4	EA	\$0.00	\$0.00	\$0.00
350-BBKB	No Quick Sync	4	EA	\$39.00	\$14.24	\$56.96
VxRail - 4 Nodes Software Sub-Total						\$56,960.12
SUPPORT						
819-0336	Dell Hardware Limited Warranty 1 Year	4	EA	\$500.00	\$185.00	\$740.00
819-0440	ProSupport Plus Mission Critical 4-Hour 7x24 On-Site Service with Emergency Dispatch, 2 Years Extended	4	EA	\$3,237.00	\$1,197.69	\$4,790.76
819-0445	ProSupport Plus Mission Critical 4-Hour 7x24 On-Site Service with Emergency Dispatch, 1 Year	4	EA	\$1,070.00	\$395.90	\$1,583.60
819-0452	ProSupport Plus 7x24 HW Tech Support and Assistance, 3 Years	4	EA	\$10,727.00	\$3,968.99	\$15,875.96
819-0614	Series-E, All-Flash, Add-On Support, 3 Years	4	EA	\$4,557.60	\$1,686.31	\$6,745.24
819-0588	3 Years, ProSupport Plus With Mission Critical, Software Support	4	EA	\$0.00	\$0.00	\$0.00
823-4137	ProSupport Plus Mission Critical,vSAN, Advanced, 1 Processor, 3 Years	8	EA	\$4,137.00	\$1,530.69	\$12,245.52
819-6383	ProSupport Plus Mission Critical,vSphere Enterprise Plus, 1 Processor, 3 Years	8	EA	\$5,626.96	\$2,081.98	\$16,655.84
VxRail - 4 Nodes Support Sub-Total						\$58,636.92
PROFESSIONAL SERVICES						
UDI-PS-VxRAIL	Unique Digital implementation of one VxRail E, P, S, or V series appliance cluster. Implementation of VxRail E, P, S, or V series Appliance cluster of up to 4 nodes; installation to include burn-in, rack and stack, and cluster configuration; Does not include data migration or advanced feature functionality. Note: it is the customers responsibility to ensure that their network and Top-of-Rack switch is configured correctly for the VxRail appliance.	1			\$6,000.00	\$6,000.00
Services Sub-Total						\$6,000.00

Configuration Total		\$195,454.16
Tax	Exempt	
Shipping	Included	
Total Price	\$195,454.16	

SIGNATURE

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



Unique Digital Technology, LLC

10595 Westoffice Dr., Houston, TX 77042-5310 | 800-777-0447 | www.uniquedigital.com

Statement of Work

for

Fort Bend County

VxRail Four Node Cluster

July 18, 2021

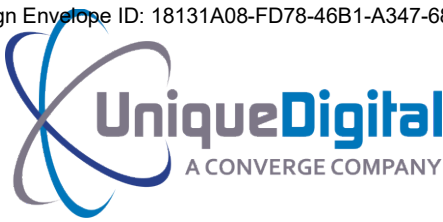
Presented By:
Lauren Plante
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713-777-0447

Prepared For:
Matthew Macha
Matthew.macha@fortbendcountytexas.gov
281-238-3077

Document ID #: FBC071821VXC-UDI

Offer is valid for thirty (30) days from the date shown above.

Confidentiality Notice: This Statement of Work ("SOW") may contain non-public, confidential information and shall neither be disclosed outside of Fort Bend County nor be duplicated, used or disclosed in whole or in part by Fort Bend County except to evaluate the services described herein. This restriction does not limit the right to use the information contained in this SOW if it is obtained from another source without confidentiality restrictions.



1. SOW Revision History

Date	By	Description of Revision
07/18/2021	Bradley Sutter	Initial Release
08/26/2021	Bradley Sutter	Modified Scope

2. Summary

Fort Bend County ("Client") has engaged Unique Digital Technology, LLC ("Unique Digital") to assist with implementing a VxRail 4 node cluster (the "Services").

This SOW shall be governed by the terms and conditions of the Master Services Agreement which can be found at https://www.uniquedigital.com/wp-content/uploads/Unique-Digital_Master-Services-Agreement_Online-Version.pdf (the "Agreement"). By signing this SOW, Client agrees to be bound by the aforementioned online terms and conditions. Any third-party products, software, or subscription services applicable to the Services under this SOW are subject to the terms and conditions of the third-party manufacturer or licensor.

3. Scope of Work

Staging:

- Unpack all VxRail hardware
- Power up and bench test hardware
- Validate version of VxRail/VMware, RASR if needed
- Set iDRAC IPs
- Pack/Ship rack to customer site

Deployment:

- Unique Digital engineers to perform on-site installation of hardware
 - Rack nodes and switches in customer defined rack locations
 - Connect power to customer defined PDU locations
 - Connect network connections to appropriate top of rack switches
- Perform initial VxRail node setup for their network
- Deploy VxRail cluster
- Validate VxRail cluster is working and communicating on customer network

4. Deliverables

- As-built documentation

Unless otherwise stated, any documentation deliverables shall be provided in electronic format.



5. Acceptance Procedure

Client shall have fourteen (14) business days from the date that work ceases in which to notify Unique Digital that (i) the Services provided meet Client's satisfaction or (ii) the Services do not conform with the Scope of Work, in which event, Client shall describe the specific basis for such nonconformity. If Client indicates nonconformance, the parties shall promptly meet and use good faith to resolve the issues. If Client indicates satisfaction with the Services or does not respond within the fourteen (14) day period, this engagement shall be considered complete and the Services accepted.

6. Exclusions

Unique Digital is only responsible for completing the Services listed in the above Scope of Work. Services requested outside the Scope of Work may be subject to additional charges. The following are expressly excluded from the scope of this SOW:

- Configuration of customer network
- Data migration of current systems to VxRail
- Data wipe/erasure
- Hardware disposal
- Documentation outside any explicitly included within the Deliverables section herein
- Configuration, upgrades, or troubleshooting of third-party applications
- Network and/or firewall configuration

7. Client Responsibilities

Client shall be responsible for:

- Configure network switches and ports for VxRail, per UDI's recommendations
- Identifying a primary point of contact with overall responsibility for the project who will assist with managing Client's obligations under this SOW and to whom project communications can be addressed.
- Supplying timely access to Client's subject matter experts and business stakeholders as may be required for Unique Digital to obtain sufficient information pertaining to the Services. Failure of Client to provide timely responses to requests for information may result in delays to the Services.
- Providing a safe and suitable workspace, security clearance, building access, parking accommodation, and office supplies (such as furniture, telephone, internet connectivity) for any Services performed at Client's premises. If necessary, Client shall provide a tour of Client's facility and inform the Unique Digital engineer(s) of facility safety requirements.
- Providing sufficient access to Client's environment as necessary, including VPN access where appropriate for any Services provided remotely.
- Providing user ID's and passwords to be used by Unique Digital engineer(s), if required.
- Validating that a full backup of the affected system(s) is completed prior to commencement of the Services. Unique Digital cannot be held responsible for loss of data on Client's systems due to Client's failure to maintain sufficient backups.
- Supplying power, network availability, and environmental requirements (e.g. rack space) prior to commencement of the Services.
- Insuring any/all Client-owned equipment and verifying any effects to their insurance coverage/policy which may result from the Services contemplated herein.



- Maintaining active maintenance contracts for deployed hardware, software, and subscription services.
- Compliance with all applicable laws, rules and regulations pertaining to Client with respect to the Services, including any import/export laws and tax requirements.
- Fulfilling its obligations in this section at no charge to Unique Digital.

8. Project Assumptions

- Adequate power, rack space and network is available to satisfy the needs of the equipment bring installed.
- Services may be performed remotely, where applicable and appropriate. Any onsite work shall be performed at Client's location(s).
- Services under this SOW shall commence on a mutually agreeable date after this SOW is fully executed and Client has delivered a Purchase Order ("PO"), if required, to Unique Digital.
- Where feasible, Services shall be provided during standard business hours, defined as Monday through Friday, 8:00am-5:00pm in Client's time zone, excluding nationally observed holidays.
- Any knowledge transfer provided under this SOW does not constitute formal product training and shall not result in certifications of any kind.
- The pricing listed in this SOW is for the Services only and is not inclusive of any hardware, software, or subscription services costs. Client shall be responsible for payment, fees, and applicable tax pertaining to any hardware, software, and subscription services necessary for this engagement, excluding the industry-standard equipment Unique Digital provides to its own engineers.
- Unique Digital engineers are not licensed electrical contractors and, as such, all advisory information should be evaluated by appropriately licensed professionals. Any electrical advice provided is for informational/consultative purposes and is in no way intended to replace the recommendations of a licensed electrical contractor or facilities engineer.
- Unique Digital reserves the right to use its affiliates and subcontractors in any role within this SOW as it may deem appropriate and Client hereby consents to such use. However, Unique Digital shall remain fully responsible for the acts and omissions of any affiliates and subcontractors it retains hereunder.
- Unique Digital cannot be responsible for the acts, omissions, or timeliness of responses from third parties, nor can Unique Digital be liable for any defects, incompatibility or performance issues resulting from any technology solutions designed by, or purchased from, a third party.

9. Protected Information Disclosure

Unique Digital does not expect to create, receive, maintain, store, or transmit any regulated or personally identifiable information (PII) during the course of the Services. Client agrees not to place or allow any regulated data or content within the Services that require or impose any legal or regulatory compliance by Unique Digital.

10. Security Systems Disclosure

Client shall be responsible for the ongoing governance and security of their environment without limitation and shall be responsible for applying appropriate security controls required to protect and maintain their infrastructure. Client acknowledges that they are accountable for compliance with any regulations or industry standards that may be applicable to Client and may not transfer associated risk to Unique Digital.



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11. Pricing and Payment Terms

Fixed Price: Client is invoiced a fixed fee inclusive of project management and expenses for the Services. Pricing is exclusive of, and Client shall be responsible for, applicable tax. All pricing is quoted in USD. Net payment term is thirty (30) days.

Services Description	Price
VxRail Deployment	\$6,000.00
Services Total	\$6,000.00

Expenses: In the event onsite work is requested/required, Client will be invoiced separately for actual accumulated mileage of the assigned Unique Digital resource(s) for personal vehicle use at the current IRS rate, as well as any actual out-of-pocket expenses (e.g. lodging, meals, airfare) incurred during travel for this engagement. Expenses will be itemized on the invoice. Any expense estimate provided in this SOW is an approximation for budgetary purposes only; actual expenses may vary. Any onsite work is limited to that which can be performed within the United States of America.

If non-local travel is required, Client will be billed at \$125.00 per hour for actual travel time, less 1 hour in each direction. To keep this cost to a minimum, all parties agree, on a "best-effort" basis, to schedule work during consecutive days and in full-day increments.

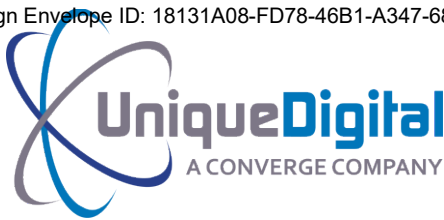
Expenses for reasonable and appropriate project-related materials shall be invoiced to Client as incurred. These items may include but are not limited to, tools, office supplies, and miscellaneous equipment which may be required for the performance of the Services.

In the event Services must be rescheduled at no fault of Unique Digital, Client shall be invoiced for any fees (e.g. airfare cancellation fees, hotel reservation cancellation fees) Unique Digital incurs as a result of rescheduling the Services, in addition to the travel expenses incurred for the rescheduled onsite visit. Should Services need to be postponed at no fault of Unique Digital after Unique Digital engineer(s) arrive onsite as scheduled, Client shall be invoiced for actual onsite standby hours of the Unique Digital engineer(s) at \$225.00/hr. Delays extending longer than eight (8) business hours may require Services to be rescheduled.

12. Project Change Procedure

The following steps provide a detailed process to follow if a change to this SOW is required:

- A Project Change Request (PCR) will be the vehicle for communicating the change. The PCR must describe the change, the rationale for the change, and the effect the change will have on the project.
- Client's point of contact will review the proposed change with Unique Digital and approve it for further investigation or reject it. The investigation will determine the effect that the implementation of the PCR change will have on price, schedule and other terms and conditions of this SOW.
- The PCR must be signed by both parties prior to the implementation of the changes.



13. Term and Termination

This SOW shall be considered complete upon the earlier of the following:

- All tasks set forth within the Scope of Work have been provided and the Acceptance Procedure has been fulfilled.
- This SOW has been terminated by Unique Digital or Client pursuant to the terms of the Agreement. In absence of such SOW termination provisions within the Agreement, the following shall apply:
 - i. Either party may terminate this SOW for convenience upon written notice.
 - ii. Either party may terminate this SOW upon written notice in the event the other party has failed to fulfill their material obligations as specified herein and has not cured such breach within thirty (30) days of the non-breaching party's request.
 - iii. All Services properly provided and costs incurred (e.g. travel expenses) by Unique Digital up to and including the date of termination shall be due and payable.
- This SOW reaches its one (1) year anniversary from the last date of signature, unless the parties agree in writing to extend the term of the SOW.



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14. Acceptance

This SOW and any PCRs, shall upon execution by both parties below, together with the Agreement, constitute the complete and exclusive understanding between Unique Digital and Client with respect to the Services described herein. Unique Digital hereby expressly rejects all additional or different terms, including but not limited to those which may be listed on Client's PO (if any). Unless and until the mutual execution of this SOW, neither party shall have any obligation to the other hereunder. The commitments, including pricing, offered by Unique Digital herein are predicated on such execution prior to the expiration of the offer as designated on the cover page hereof. In the event this SOW is signed by Client after said offer expiration, Unique Digital reserves the right to (i) reject the signed SOW, (ii) present an updated SOW version for Client's signature, or (iii) execute the signed SOW at its sole discretion.

The parties hereby acknowledge that they have read and accept this SOW and all attachments hereto. The undersigned further represent that they are duly authorized to sign on behalf of the respective entities.

Unique Digital Technology, LLC
10595 Westoffice Dr.
Houston, TX 77042-5310

Fort Bend County
500 Liberty St.
Richmond, TX 77469

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please return all pages of the signed SOW to Lauren Plante.



Appendix A

Rates for Support Services

In the event Client requests services that are excluded from the Scope of Work, Unique Digital may accommodate Client's request at Unique Digital's sole discretion. Any such out of scope services provided will be performed at Client's direction and Unique Digital shall invoice Client at the rates reflected below on a monthly basis for actual hours worked and expenses incurred. Nothing in this section shall preclude either party from proposing (i) a PCR to document the requested out of scope services, or (ii) a fixed price for said services in lieu of the below hourly rates.

Description	Rate
Support Services (Standard Business Hours)	\$225.00
Support Services (Afterhours/Weekends)	\$325.00

- a) Standard business hours are defined as Monday through Friday, 8:00am-5:00pm in Client's time zone, excluding nationally observed holidays.

Expenses: In the event onsite work is requested/required, Client will be invoiced separately for actual accumulated mileage of the assigned Unique Digital resource(s) for personal vehicle use at the current IRS rate, as well as any actual out-of-pocket expenses (e.g. lodging, meals, airfare) incurred during travel for the out of scope services. Expenses will be itemized on the invoice. Any onsite work is limited to that which can be performed within the United States of America.

If non-local travel is required, Client will be billed at \$125.00 per hour for actual travel time, less 1 hour in each direction. To keep this cost to a minimum, all parties agree, on a "best-effort" basis, to schedule work during consecutive days and in full-day increments.

Expenses for reasonable and appropriate project-related materials shall be invoiced to Client as incurred. These items may include but are not limited to, tools, office supplies, and miscellaneous equipment which may be required for the performance of the out of scope services.



Master Services Agreement

This MASTER SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between Unique Digital Technology, LLC (“**Unique Digital**”) and “**Client**” as defined within the applicable Statement of Work, proposal, or similar instrument (each an “**SOW**”) referencing this Agreement. This Agreement is effective upon the date of Client’s acceptance of such SOW (the “**Effective Date**”), whether by issuance of a purchase order, signature, or other manifestation of Client’s assent. Unique Digital and Client may hereinafter individually be referred to as a “**Party**” and collectively referred to as the “**Parties**.”

1. Term; Termination. The term (“**Term**”) of this Agreement will begin on the Effective Date and continue until its termination as described herein. This Agreement may be terminated at any time by either Party: (i) upon thirty (30) days’ prior written notice without cause or (ii) upon written notice if the other Party breaches any material term of this Agreement and such breach remains uncorrected for fifteen (15) business days following written notice from the other Party. Upon any termination, Unique Digital shall be entitled to be paid for all work performed, all deliverables provided, all accrued charges and all costs incurred up to and including the effective date of termination. Client may additionally be liable to Unique Digital for payment of an early termination fee if specified within the applicable SOW(s).

2. Statements of Work. During the Term, Unique Digital and Client may agree upon SOWs defining (i) services (“**Services**”) and deliverables (“**Deliverables**”) to be provided by Unique Digital, (ii) Unique Digital’s compensation, (iii) the period during which the Services will be provided (if applicable) (the “**Service Period**”), and (iv) any additional terms and conditions. Each SOW shall be incorporated into and governed by this Agreement. Any changes to an SOW shall be agreed upon in writing by the Parties. The Parties agree that this Agreement and the applicable SOW(s) for Services or Deliverables shall govern and supersede any terms and conditions stated on any purchase order submitted by Client for such Services or Deliverables. In the event of any conflict between this Agreement and an SOW, the SOW will control. Whenever used herein or in any SOW, the term “Agreement” shall mean and include this Master Services Agreement and all SOWs executed in connection herewith.

3. Services; Warranty; Acceptance.

(a) In consideration of the fees stated in the SOW (“**Fees**”), Unique Digital will provide the Services and Deliverables (collectively, the “**Work Product**”) described in the SOW.

(b) Unique Digital warrants that at the time of performance all Services will be performed in a good and workmanlike manner and in accordance with generally accepted industry standards. EXCEPT FOR THE FOREGOING, UNIQUE DIGITAL MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AND UNIQUE DIGITAL SPECIFICALLY DISCLAIMS ALL OTHER SUCH WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE OR USE. FURTHER, UNIQUE DIGITAL DOES NOT WARRANT THAT CLIENT WILL NOT EXPERIENCE INADVERTENT OR DELIBERATE BREACHES OF SECURITY FROM THREATS OUTSIDE UNIQUE DIGITAL’S DIRECT CONTROL DUE TO THE INTERNET BEING INHERENTLY INSECURE.

(c) Client shall accept or reject the Work Product in writing within fourteen (14) business days from receipt of Deliverables (if any) and upon completion of the Services. If Client does not accept or reject in writing as set forth above, that Work Product shall be deemed accepted by Client. Client shall clearly state in writing the reasons for any rejection. Client may not reject any Work Product if the grounds for rejection are based, in whole or in part, on (i) Client’s use of a Deliverable other than in accordance with applicable documentation or instructions provided by Unique Digital, (ii) modification of any Deliverable other than by Unique Digital, (iii) the use or combination of any Deliverable with materials not supplied by Unique Digital (iv) information supplied by Client to Unique Digital that is included in or relied upon to provide any Service or Deliverable or (v) Client’s negligence, breach or willful misconduct. Within five (5) business days of a notice of a proper rejection, Unique Digital shall present a commercially reasonable corrective plan of action to Client. Unique Digital, at no additional expense to Client, shall then make the corrections (and Client shall permit Unique Digital to make such corrections) at Unique Digital’s reasonable expense and, where applicable, Unique Digital shall resubmit the corrected Deliverable or Service to Client.

4. Fees; Payment; Taxes. Client shall pay Unique Digital the Fees for the Services and Deliverables as set forth in the fee schedule contained in the applicable SOW. Unless otherwise indicated in the SOW, Client shall also pay the reasonable travel and living expenses of Unique Digital’s employees that are incurred in the course of Unique Digital’s performance of Services. Client payment terms shall be net cash thirty (30) days from the invoice date. Client shall also be responsible for taxes applicable to Client arising out of this Agreement, except for taxes imposed on Unique Digital’s income or arising from the employment relationship between Unique Digital and its personnel.



5. Confidentiality. To the extent that confidential and proprietary information of each Party (“**Confidential Information**”) is exchanged or received in connection with the Services, each Party agrees not to use the other Party’s Confidential Information except in the performance of, or as authorized by, this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties without the other Party’s prior written consent. Use by affiliates and third party contractors may be permitted so long as such affiliate or contractor has a need to know and is required to maintain the confidentiality of such information as required by this Section 5. Confidential Information includes, without limitation, Unique Digital Information (as defined in Section 6(b) hereof), but does not include: (i) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (ii) information already known by the receiving Party independent of the Confidential Information as evidenced by written records, (iii) information developed by the receiving Party independent of the Confidential Information, and (iv) information that the receiving Party rightfully obtains without restrictions on use and disclosure. Further, in the event the receiving Party becomes legally compelled to disclose any Confidential Information, the receiving Party shall notify the disclosing party so that the disclosing Party may seek a protective order or other remedy. At any time after the Effective Date, each Party shall be entitled to request the return or, at its discretion, the destruction of its Confidential Information in the possession of the other Party.

Nothing in this Agreement shall be construed to obligate either Party to disclose its Confidential Information to the other Party. THE PARTIES MAKE NO WARRANTY EXPRESS OR IMPLIED AS TO THE ACCURACY, COMPLETENESS OR ADEQUACY OF ANY CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER. ALL SUCH INFORMATION SHALL BE DISCLOSED ON AN “AS IS” BASIS. The obligations set forth in this Section 5 shall continue for two (2) years after the termination of this Agreement.

6. Rights in Work Product.

(a) Subject to Sections 6(b) and (c) below, and except for materials that Unique Digital acquires under license from a third party, all Deliverables created specifically for and provided to Client by Unique Digital under an SOW shall be the property of Client for Client’s internal use.

(b) Any Unique Digital proprietary or Confidential Information used to perform the Services, included in any Deliverable, or acquired, conceived, or developed at any time independent of Unique Digital’s work under any SOW, including but not limited to software, appliances, methodologies, code,

templates, tools, policies, records, working papers, knowledge, data, know-how, architectures, concepts, techniques, templates, works of authorship or other intellectual property, written or otherwise (collectively, “**Unique Digital Information**”), shall remain the exclusive property of Unique Digital. To the extent that Unique Digital incorporates any Unique Digital Information into the Deliverables, Unique Digital hereby grants to Client a royalty-free, non-exclusive, non-transferable license to use such Unique Digital Information solely for Client’s internal business purposes and as part of the Deliverables, in accordance with the limitations set forth in this Agreement and any applicable SOW.

(c) Client acknowledges that Unique Digital provides similar services to other clients and that nothing in this Agreement shall be construed to prevent Unique Digital from carrying on such business or from acquiring, licensing, marketing, distributing, developing for itself or others or having others develop for it similar products, services or materials performing the same or similar functions as the Services and Deliverables contemplated by this Agreement or any SOW. Therefore, notwithstanding Section 6(a), Unique Digital has the right to retain and use internally copies of the Deliverables, *provided, however*, that the foregoing does not include rights to distribute, disclose or create derivative works from Client’s Confidential Information that is incorporated into the Deliverables. Similarly, notwithstanding Section 6(a), Client acknowledges that the Work Product is not a work for hire and that Client shall not sell, transfer, publish, disclose, display or otherwise make available the Work Product or any Unique Digital Information except as expressly permitted herein.

7. Indemnification.

(a) Unique Digital shall defend and indemnify Client against any costs, liabilities or damages (including attorney’s fees) arising from a claim that Client’s authorized use of any Deliverable other than materials that Unique Digital acquires under license from a third party infringes any patent, copyright, trademark or trade secret, provided that Client promptly notifies Unique Digital in writing of any such claim or suit. Notwithstanding the foregoing, Client’s failure to so notify Unique Digital shall not diminish Unique Digital’s indemnity obligations hereunder except to the extent such delay prejudices Unique Digital’s defense of such matter. Unique Digital shall have sole control of any such suit (including without limitation the right to settle on behalf of Client), and Client shall cooperate with Unique Digital in connection with its defense at the reasonable expense of Unique Digital. If Client is enjoined from using any Deliverable, or if Unique Digital believes that any Deliverable is likely to become the subject of an infringement claim, Unique Digital shall (i) obtain the right for Client to continue to use such



Deliverable or (ii) replace or modify the Deliverable so as to make it non-infringing and substantially comparable in functionality. If after using commercially reasonable efforts Unique Digital is unable to do either (i) or (ii) above, such Deliverable shall be returned to Unique Digital and Unique Digital's sole liability shall be to refund Client the amount paid to Unique Digital for such item or portion thereof. Notwithstanding the foregoing, Unique Digital will have no liability to indemnify Client hereunder based on (i) use of a Deliverable other than in accordance with applicable documentation or instructions provided by Unique Digital, (ii) modification of any Deliverable other than by Unique Digital, (iii) the use or combination of any Deliverable with materials not supplied by Unique Digital (iv) information supplied by Client to Unique Digital that is included in any Service or Deliverable (v) Client's use of a superseded version of the Deliverable if the infringement could have been avoided by using the latest version of the Deliverable provided by Unique Digital (vi) Client's failure to comply with the terms of any license agreement or other licensor or manufacturer requirements applicable to any software or other products provided by Unique Digital or (vii) Client's negligence, breach or willful misconduct.

(b) In the event that any willful misconduct or negligent act or omission of either Party or its employees during the performance of Services on Client's premises causes or results in the (i) loss, damage to or destruction of physical property of the other Party or third parties, and/or (ii) death or injury to any person, then such Party shall indemnify, defend and hold the other Party harmless from and against any and all resulting claims, damages, liabilities, costs and expenses (including reasonable attorney's fees).

8. Limitation Liability.

(a) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, LOST BUSINESS PROFITS OR LOST DATA ARISING OUT OF THIS AGREEMENT OR ANY SERVICES, DELIVERABLES OR WORK PRODUCT.

(b) UNIQUE DIGITAL'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT, INCLUDING IN CONNECTION WITH ANY SERVICES, DELIVERABLES OR WORK PRODUCT PROVIDED BY UNIQUE DIGITAL, SHALL BE LIMITED TO THE FEES THEREFORE PAID BY CLIENT TO UNIQUE DIGITAL UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.

(c) IN NO EVENT SHALL UNIQUE DIGITAL BE LIABLE FOR ANY CLAIM MADE BY CLIENT OR ANY OTHER PERSON TO THE

EXTENT SUCH CLAIM ARISES OUT OF MATERIALS PROVIDED BY CLIENT TO UNIQUE DIGITAL TO USE IN DEVELOPING, PERFORMING OR CUSTOMIZING ANY SERVICES OR DELIVERABLES.

9. Employee Solicitation. During the term of this Agreement and for one (1) year thereafter, Client agrees not to solicit or recruit for employment any current employee of Unique Digital contacted in connection with this Agreement without Unique Digital's prior written consent. Notwithstanding the foregoing, nothing in this Agreement shall prohibit Client from making solicitations which are directed to the general public in the ordinary course of business and which do not specifically target Unique Digital's employees.

10. Force Majeure. Neither Party will be liable for any loss, damage or delay resulting from any event beyond such Party's reasonable control (a "Force Majeure Event") and delivery and performance dates will be extended to the extent of any delays resulting from a Force Majeure Event. Each Party will promptly notify the other upon becoming aware that any Force Majeure Event has occurred or is likely to occur and will use its best efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement.

11. Miscellaneous. Unique Digital will ensure that its personnel obey all reasonable instructions and directions issued by Client when on Client's premises. Unique Digital is an independent contractor and shall not be deemed an employee or agent of Client. This Agreement, including all exhibits and any SOWs, contains the complete agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations, representations and understandings. Any and all different or additional terms and conditions contained on Client's ordering instrument, whether printed or written, shall be of no force or effect. Sections 4, 5, 6, 7, 8, 9 and 10 shall survive the termination of this Agreement. This Agreement shall be governed by the laws of the State of Texas. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be in any way affected or impaired thereby. Unique Digital reserves the right to modify this Agreement at any time by sending written notice to Client. Any notices sent under this Agreement shall be delivered by reliable means to the addresses specified by authorized representatives of the Parties.