



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

08/22/2016

The Austin City Council approved the execution of a contract with your company for Deployment Services in accordance with the referenced solicitation.

Responsible Department:	CTM
Department Contact Person:	Jim Roberts
Department Contact Email:	jim.roberts@austintexas.gov
Department Contact Telephone:	512 974-5183
Project Name:	Dell Deployment Services
Contractor Name:	<ul style="list-style-type: none">Brandon Canaday – Sales Account Executive, Brandon.Canaday@Dell.com 512 423-4581Elizabeth Kenney – Inside Sales Account Manager, Elizabeth.Kenney@Dell.com 512-513-8217Tony Davis – Services Sales Account Executive, Tony.Davis@Dell.com 512-818-2375Cyndi Radel – Dell Contracts, Cyndi.Radel@Dell.com 231-747-9294Shannon Mueller – Client Deployment Services Project Manager, Shannon.Mueller@Dell.com, 512- 728-6057
Contract Period:	60 months
Dollar Amount	\$875,000
Extension Options:	None
Agenda Item Number:	13
Council Approval Date:	08/11/2016

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Sai Xoomsai Purcell
Senior Buyer Specialist
City of Austin
Purchasing Office

CONTRACT BETWEEN THE CITY OF AUSTIN
And
DELL MARKETING, L.P.
For
DEPLOYMENT SERVICES
MA 5600 GC160000014

Mail Stop RR1-33

This Contract is between DELL MARKETING L.P. having offices at One Dell Way, ~~MSRR8-06~~, Round Rock, TX 78682 and the City, a home-rule municipality incorporated by the State of Texas. Solicitation requirements are met by using Department of Information Resources Contract No. DIR-SDD-1951

- 1.1 **This Contract is composed of the following documents:**
- 1.1.1 DIR-SDD-1951
 - 1.1.2 This Contract
 - 1.1.3 Exhibit A, Supplemental Terms
 - 1.1.4 Exhibit B, DELL MARKETING LP's Offer
 - 1.1.5 Exhibit C, Scope of Services
 - 1.1.6 Exhibit D, Non-Discrimination Certification
 - 1.1.7 Exhibit E, Non-Suspension or Debarment Certification
- 1.2 **Order of Precedence.** Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:
- 1.2.1 DIR-SDD-1951
 - 1.2.2 This Contract
 - 1.2.3 Exhibit A
 - 1.2.4 Exhibit B
 - 1.2.5 Exhibit C
- 1.3 **Quantity.** Quantity of goods or services as described in Exhibit B.
- 1.4 **Term of Contract.** The Contract will be in effect on the date executed by the City (Effective Date) and shall remain in effect for 60 months or the City terminates the Contract.
- 1.5 **Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$875,000 including all fees and expenses.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

DELL MARKETING, L.P.

Cynthia B. Radel

Printed Name of Authorized Person
cyndi_radel@dell.com
Digitally signed by
cyndi_radel@dell.com
DN: cn=cyndi_radel@dell.com
Date: 2016.10.06 11:23:36 -04'00'

Signature

Contract Program Manager, Legal

Title:

October 6, 2016

Date:

CITY OF AUSTIN

Sai Xoomsai Purcell

Printed Name of Authorized Person



Signature

Senior Buyer Specialist

Title:

10/6/2016

Date:

Exhibit Listing

Exhibit A	Supplemental Terms
Exhibit B	DELL MARKETING LP'S Offer
Exhibit C	Scope of Services
Exhibit D	Non Discrimination Certification
Exhibit E	Non Suspension or Debarment Certification

Exhibit A
Supplemental Terms

1. **Designation of Key Personnel.**

- a. The Contractor's Contract Managers for this engagement shall be:
- Brandon Canaday – Sales Account Executive, Brandon_Canaday@Dell.com 512 423-4581
 - Elizabeth Kenney – Inside Sales Account Manager, Elizabeth_Kenney@Dell.com 512-513-8217
 - Tony Davis – Services Sales Account Executive, Tony_Davis@Dell.com 512-818-2375
 - Cyndi Radel – Dell Contracts, Cyndi_Radel@Dell.com 231-747-9294
 - Shannon Mueller – Client Deployment Services Project Manager, Shannon_Mueller@Dell.com, 512- 728-6057
- b. The City's Contract Manager for the engagement shall be Jim Roberts, IT Corporate Manager, jim.roberts@austintexas.gov, 512 974-5183

2. **Invoices.**

Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management (CTM)
Attention	Accounts Payable
Email Address	CTMAPInvoices@austintexas.gov

3. **Travel Expenses.** Travel expenses are not authorized under this Contract.

4. **Equal Opportunity**

4.1.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as **Exhibit D**. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

4.1.2 **Americans With Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5. **Right To Audit**

5.1.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

5.1.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

6. **Insurance:** The following insurance requirements apply.

6.1.1 **General Requirements.**

6.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

6.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

6.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

6.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

6.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

6.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

6.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

6.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

6.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

6.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

6.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

6.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

6.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

6.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

6.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

6.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

6.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

6.1.2.1.2 Contractor/Subcontracted Work.

6.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

6.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

6.1.2.1.5 Thirty (30) calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

6.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

6.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

6.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

6.1.2.2.2 Thirty (30) calendar days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

6.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

6.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

6.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

6.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

6.1.2.3.3 Thirty (30) calendar days' Notice of Cancellation, Form WC420601, or equivalent coverage.

Exhibit B
DELL's Offer



QUOTATION

Quote #: 724794460
Customer #: 133483254
Contract #: 42AFU
Customer Agreement #: DIR-SDD-1951
Quote Date: 02/19/2016
Customer Name: CITY OF AUSTIN

Date: 2/19/2016

Thanks for choosing Dell! Your quote is detailed below; please review the quote for product and informational accuracy. If you find errors or desire certain changes please contact your sales professional as soon as possible.

Sales Professional Information			
SALES REP:	SHAWN MINIX	PHONE:	1800 - 4563355
Email Address:	Shawn_Minix@Dell.com	Phone Ext:	5139394

SOFTWARE & ACCESSORIES		GROUP TOTAL: \$90.50	
Product	Quantity	Unit Price	Total
Dell Services (934-9479)	1	\$76.20	\$76.20
Dell PM (933-6367)	1	\$14.30	\$14.30

Product Subtotal:	\$90.50
Tax:	\$0.00
Shipping & Handling:	\$0.00
State Environmental Fee:	\$0.00
Shipping Method:	LTL 5 DAY OR LESS

(* Amount denoted in \$)

This quote is for a single installation.



Texas Department of
Information Resources

1951



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you're looking for?

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[Home](#) / [All Contracts & Services](#) / [Contract Detail](#)

Dell Marketing LP

Vendor ID	1742616805400	DIR Contract Number	DIR-SDD-1951
URL	Vendor Website	Contract Term End Date	1/9/2017
HUB Type	Non HUB	Contract Exp Date	1/9/2017

Contact Dell Marketing LP

Contact [Addam Chandler](#)
Phone (512) 513-9361
Fax (512) 283-9092

Contact DIR

Contact [Linda Hart](#)
Phone (512) 936-1775
Fax (512) 475-4759

How To Order

1. For product and pricing information, visit the [Dell Marketing LP website](#) or contact [Addam Chandler](#) at (512) 513-9361. Authorized DIR Resellers are available through this

[Show more](#)

Available Brands (1364 total)

1E Limited
20TH CENTURY FOX (CANADA)
2FA, Inc.
360 Degree Web

[Show more](#)

Available Products & Services (17 total)

Computer Peripherals
Computers
Computers - Desktop
Computers - Laptops

[Show more](#)

Commodity Codes (93 total)

204-10 - Cabinets and Cases: Desktop Cases, Tower Cases, Drive Cabinets, etc.
204-13 - Cables: Printer, Disk, Network, etc.
204-16 - Chips: Accelerator, Graphics, Math Co-

[Show more](#)

Contract Overview

Dell offers computers, laptops, tablets, servers, printers, peripherals and other technology products and services through this contract. Dell offers their entire product catalog through this contract. Contracts may be used by state and local government, public education, other public entities in Texas, as well as public entities outside the state. This contract has a number of resellers, many of which are HUB vendors.

Contract Documents

- [DIR-SDD-1951 Contract PDF \(481.4KB\)](#)
- [DIR-SDD-1951 Appendix A Standard Terms and Conditions \(per Amendment 7\) PDF \(430.46KB\)](#)
- [DIR-SDD-1951 Appendix B HUB Subcontracting Plan \(approved on 08-04-2016\) PDF \(1.32MB\)](#)
- [DIR-SDD-1951 Appendix C Pricing Index \(per Amendment 6\) PDF \(155.73KB\)](#)
- [DIR-SDD-1951 Appendix D Dell Service Agreement PDF \(243.81KB\)](#)

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES
DELL MARKETING, L.P.

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 Dell Marketing, L.P. (hereinafter “Vendor”), with its principal place of business at One Dell Way, Round Rock, Texas 78682.

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-SDD-TMP-190, on August 6, 2012, for Dell Branded Manufacturer Hardware, Software and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-190 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, Services Agreement; Appendix E, Master Operating Lease Agreement; Appendix F, Master Lease Agreement; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-190, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-190, 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, Services Agreement; Exhibit 1, Vendor’s Response to RFO DIR-SDD-TMP-190, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-190, 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 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 term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR's sole discretion, result in fewer optional terms.

3. Product and Service Offerings

A. Products

This Contract is a full Catalog contract, offering all products Dell is authorized to sell or manufacture.

B. Services

Related services include but are not limited to: deployment, help desk, managed services, storage and server assessment services, product installation, Custom Factory Integration of Customer Imaged Software ("CFI"), maintenance and support, asset recovery services, product training, and future services Dell may offer upon DIR approval (note Deliverable Based IT Services are offered under a separate contract, DIR-SDD-1961).

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as Dell's published retail price.

B. Customer Discount

The minimum Customer discount for all products and services will be set forth in Appendix C Pricing Index.

Vendor agrees that the DIR standard pricing discounts contained in Appendix C will remain one percent (1%) better than the Western States Contracting Alliance (WSCA) Category A level, standardized discounts. This extension of competitive volume sales pricing is intended solely to insure that DIR will, at a minimum, remain competitive with the standard price rates set for WSCA as a whole. DIR may not apply, without the express consent of Vendor, any pre-existing discount structure to the WSCA pricing being offered to DIR by Vendor. DIR may either use DIR discounted pricing or the WSCA pricing but may not combine, or compound the two.

In the event that DIR pricing fails to remain competitive to WSCA standardized, category level pricing, Vendor shall extend such pricing to DIR. Vendor shall use its commercially reasonable best efforts to notify DIR of such WSCA price change and amend this Contract within thirty (30) days after the amendment to the Vendor's WSCA contract. The introduction of the WSCA pricing to the DIR contract shall be effective from the date of execution into the Contract by amendment. Both parties agree that the pricing shall not be retroactive for DIR and shall not extend back to the date that Vendor reduced WSCA catalog pricing. Further, the parties agree that DIR, or the State of Texas, does not have the right to audit the WSCA contract held by the Vendor. References to the Vendor's WSCA contract are only contained in this Contract for purposes of referencing the pricing discounts contained therein. Both parties acknowledge that the Vendor's WSCA contract and pricing are readily available to the public and may be freely accessed by the internet for the purposes of validation under the terms and conditions of this Contract.

C. Customer Price

- 1) The price to the Customer shall be as set forth in Appendix C, Pricing Index.
- 2) 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.
- 3) During the term of this Contract, if pricing for products or non-customized services (e.g., CFI, Imaging, and Asset Tagging) available under this Contract are provided by Vendor at a lower price to an Eligible Customer 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.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board Customer's destination, provided the products are shipped to locations in the State of Texas. Except as noted, no additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery. Title to all products shall pass upon shipment to Customer's dock; however, risk of loss shall pass to the Customer upon delivery to Customer.

F. Delivery

Shipment of Dell-branded systems from Dell's facility is estimated at between fifteen (15) and twenty-five (25) days after receipt of a valid and complete order. While there may be industry-wide situations of constrained product, current manufacturing lead times for desktop and notebook systems are ten (10) to fourteen (14) business days. Current lead times for server systems are nine (9) to twelve (12) business days; this is specifically designed for extensive testing on these mission-critical systems.

Shipment of third party software and peripheral items is estimated at between seven (7) and ten (10) days after receipt of a valid and complete order.

Please note that customization through Dell's Configuration Services may increase lead times. While Dell does not guarantee specific delivery dates, Customers providing Dell with an accurate quarterly forecast will greatly enhance Dell's ability to be prepared for Customer orders and to meet your needed delivery timeframes in accordance with the Deployment Plan outlined below.

Sample Deployment Plan for Dell's Configuration Services Projects

Activity	Timeframe
Customer to select Dell as vendor.	One (1) business day
Dell will begin to manufacture Customer's evaluation unit. The Project Manager will work directly with manufacturing to ensure that lead times are not exceeded and that the agreed upon schedule for delivery is met. Evaluation unit is received by Customer.	Six (6) business days
Customer will create ghost images and return these images to Dell within 24 hours to factory install on all remaining units prior to shipment.	Three (3) to five (5) business days
Dell will produce hard copy Technical Specifications within twenty-four (24) hours for Customer's approval. Customer will review and approve the specifications and return to Dell within twenty-four (24) hours. Once approval is received, the Configuration Services engineering process can begin provided the image has also been received.	One (1) business day – Technical Specifications One (1) business day – Review, approve, return to Dell Ten (10) business days – Hardware Customization engineering
A Customer Master Services Agreement must be executed prior to the release of any First Article units by Dell Marketing L.P.	Two (2) business days – Customer executes and returns IS Agreement.
Dell will manufacture the First Article order. Customer will receive the First Article and approve.	Six (6) business days – First Article manufacture Three (3) business days – Receive and approve
Upon approval of First Article order, Dell will begin production of the balance of units in accordance with the Customer's mutually agreed to delivery schedule.	Ten (10) business days – Manufacture additional units Five (5) business days - Shipping
All systems will be delivered according to the mutually agreed upon schedule.	On-going

G. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j). Customers will provide Vendor with tax exempt certificate upon request.

H. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

I. Changes to Prices

Vendor or Order Fulfiller 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.

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 one quarter of one percent (.25%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$250.

B) All prices quoted to Customers shall include the administrative fee. DIR may change administrative fee amounts; however, no revision will take effect before ninety (90) days following written notice. Vendor may revise pricing to reflect the change in administrative fees.

6. Notification

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

If sent to the State:

Robin Abbott, Manager
Contract and Vendor Management
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759

If sent to the Vendor:

Diane Wigington
Dell Marketing, LP
One Dell Way, Mail Stop RR8-06
Round Rock, Texas 78682
Phone: (512) 728-4805
Facsimile: (512) 283-9092
Email: Diane.Wigington@Dell.com

7. Software License, Services and Leasing Agreements

A. Software License Agreement

- A. Software shall mean any software, library, utility, tool, or other computer or program code, in object (binary) or source-code form, as well as the related documentation, provided by Dell to you. Software includes software locally installed on your systems and software accessed by you through the Internet or other remote means (such as websites, portals, and "cloud-based" solutions).
- B. Software is subject to the separate software license agreements accompanying the software, along with any product guides, operating manuals, or other documentation included with the software media packaging or presented to Customer during the installation or use of the Software. Customer agrees that Customer will be bound by such license agreement.
- C. With respect to Software provided or otherwise made available to you by Dell in connection with any Services hereunder, if no license terms accompany the Software, then subject to your compliance with the terms set forth in this Agreement, including payment for such Software, Dell hereby grants Customer a personal, non-exclusive license to access and use such Software only during the duration of the Services and solely as necessary for Customer to enjoy the benefit of the Services as stated in the applicable Service Agreements (or SOW's).
- I. Restrictions. Customer may not copy, modify, or create a derivative work, collective work, or compilation of the Software, and may not reverse engineer,

decompile or otherwise attempt to extract the code of the Software or any part thereof. Customer may not license, sell, assign, sublicense, or otherwise transfer or encumber the Software; may not use the Software in a managed-services arrangement; and may not use the Software in excess of the authorized number of licensed seats for concurrent users, sites, or other criteria specified in the applicable Service Agreements or Statements of Work. In addition, Customer may not access the Software to monitor its availability, performance, or functionality, or for any other benchmarking or competitive purpose.

- II. Customer is further prohibited from (1) attempting to use or gain unauthorized access to Dell or to any third party's networks or equipment; (2) permitting other individuals or entities to use the Software or copy the Software or Services; (3) attempting to probe, scan, or test the vulnerability of Software or a system, account, or network of Dell or any of its customers or suppliers; (4) interfering or attempting to interfere with service to any user, host, or network; (5) engaging in fraudulent activity of any nature; (6) transmitting unsolicited bulk or commercial messages; (7) restricting, inhibiting, or otherwise interfering with the ability of any other person, regardless of intent, purpose, or knowledge, to use or enjoy the Software (except for tools with safety and security functions); or (8) restricting, inhibiting, interfering with, or otherwise disrupting or causing a performance degradation to any Dell (or Dell Service supplier) facilities used to deliver the Services.
- III. Audit. DIR, on behalf of Customers, hereby grants Dell, or an agent designated by Dell, the right to perform an audit of any Customers' use of the Software during normal business hours; and to cooperate with Dell in such audit; and such Customer agrees to provide Dell with all records reasonably related to Customers' use of the Software. The audit will be limited to verification of Customer's compliance with the terms of this Agreement.
- IV. Open Source Software. A portion of the Software may contain or consist of open source software, which you may use under the terms and conditions of the specific license under which the open source software is distributed.

THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL DELL, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE

USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.**B. Shrink/Click-wrap License Agreement**

Customer understands and agrees that the third party software is subject to the license agreement shipped with the software or in a separate agreement between Customer and the software licensor. Dell is authorized to provide the software provided hereunder. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms.** If the Customer does not agree with the license terms, Dell shall provide reasonable assistance; however, 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.

C. Services Agreement

Services provided under this Contract shall be in accordance with the Services Agreement as set forth in Appendix D of this Contract. No changes to the Services 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.

8. Intellectual Property Matters

Customer shall own all right, title and interest to the Deliverables and Dell agrees to grant to Customer a perpetual, non-exclusive, non-transferable, royalty-free license to use Dell's Background IP (defined below), Utilities, and Residual IP solely for Customer to use the Deliverables, subject to the following:

- (i) each party will retain all Intellectual Property Rights that it owned or controlled prior to the effective date of this Agreement or that it develops or acquires from activities independent of the Services performed under this Agreement ("Background IP"),
- (ii) Dell will retain all right, title and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited

- to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software or development tools used in performing the Services (collectively, the “Utilities”), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates or output which are developed, created or otherwise used by or on behalf of Dell in the course of performing the Services or creating the Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or data of Customer (collectively, the “Residual IP”), even if embedded in the Deliverable, and
- (iii) Customer use of software, online services, or software-enabled services in connection with the Services is pursuant to the terms of the applicable software license or Cloud Computing Terms.

As used herein, “Deliverables” means the work product or tangible embodiment of the Services that are (i) prepared or performed by Dell or its subcontractors uniquely and exclusively for a Customer and (ii) specifically identified in a signed Statement of Work as Deliverables. “Intellectual Property Rights” means rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications.

9. Authorized Exceptions to Request for Offer DIR-SDD-TMP-190 for Dell Branded Manufacturer Hardware, Software and Related Services.

A. Section 2. Scope, 2.1 Products is hereby replaced in its entirety:

DIR intends to contract for all Dell branded product categories, including but not limited to desktops, laptops, printers, servers, and the related accessories, software, and/or supplies applicable to each product category.

This Contract is a full Catalog contract, offering all products Dell is authorized to sell or manufactures and services Dell offers, including, but not limited to deployment, help desk, outsourcing, IT security services, managed services, storage and server assessment services, and future services Dell may offer subject to DIR approval (note Deliverable Based IT Services are offered under a separate contract, DIR-SDD-1961). In addition, third party products are included, with the exception noted herein. NOTE: DIR has established Microsoft Volume Licensing agreements directly with the Publisher of the software, Microsoft Licensing, GP to consider the State of Texas as a single customer and grant discounts based on the volume of the State of Texas as a whole. Therefore, for any contract awarded as a result from this RFO, Customers may not issue purchase orders and Vendors are prohibited from selling any Microsoft Volume Licensing software licenses that may infringe on any Volume Licensing program and related agreements that DIR has established directly with the Publisher. Vendors may sell software that is installed/loaded as part of an operating system at the time of configuration.

Customers may submit or request that Vendor prepare a statement of work when obtaining a quote based on their service needs.

Any Vendor responding to this RFO must submit pricing for the products requested herein. A representative sample of Dell branded products has been included for the purposes of obtaining pricing and evaluating the responses to this RFO. This sample is contained in the Excel spreadsheet attached as “bid package 2” to the posting for this RFO, requisition number DIR-SDD-TMP-190, on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>. “Bid package 2” is a representative sample only. All products of Dell Marketing, L.P. may be made available through a Contract.

In addition to purchase sales, DIR and any Vendor awarded a Contract as a result of this RFO may agree to provisions that allow leasing of the products offered under the resulting Contract.

DIR is not soliciting Dell branded hardware, software and related services for the agency. DIR establishes statewide master contracts for use by DIR eligible customers (state agencies, higher education, K-12 independent school districts, and local governments). DIR competitively bids for information technology products and services.

Note to customers: This Contract complies with state purchasing requirements. Eligible customers may procure directly from the Contract and are not required to issue requests for proposals or take other additional procurement actions.

Customers must identify their own needs, then contact an awarded DIR Vendor and obtain a price quote for products/services. Customers may submit a statement of work to the vendor when obtaining a quote based on their needs. The Customer makes the best value determination and issues a purchase order directly to the Vendor.

Vendors may propose their catalog of Dell branded hardware, software, and related services.

Under Texas Government Code, Chapter 2054, Subchapter M, and DIR implementing rules, DIR state agency Customers must procure products that comply with the Accessibility Standards defined in the Texas Administrative Code, 1 TAC 206 and 1 TAC 213, when such Products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Accordingly, Vendor must provide electronic and information resources and associated Product documentation and technical support that comply with these Accessibility Standards in its response to this RFO. Vendors who do not already have accessibility documentation should complete the form located here: <http://www.itic.org:8080/dotAsset/5644ecd2-5024-417f-bc23-a52650f47ef8.doc>.

Vendors that claim their products are exempt from accessibility requirements must

present that position to DIR as a question to be handled in the question and answer period of the solicitation.

Customer may go to this page to request VPATs:

<http://content.dell.com/us/en/corp/d/corp-comm/cr-diversity-customer-disabilities.aspx>

B. Section 3.7.3, Mandatory Response Documents, 6. Voluntary Product Accessibility Templates, is hereby replaced in its entirety:

Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) or a copy of the applicable VPAT for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration “Buy Accessible Wizard” (<http://www.buyaccessible.gov>). Vendors not listed with the “Buy Accessible Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov>. <http://content.dell.com/us/en/corp/d/corp-comm/cr-diversity-customer-disabilities.aspx>

C. Appendix A of the RFO, Item 20B, Certification Statement, is hereby replaced in its entirety:

The undersigned hereby certifies on behalf of Dell Marketing, L.P. that RFO DIR-SDD-TMP-190 has been read and understood. In submitting its response Dell Marketing, L.P. represents to DIR the following:

- i) Vendor is capable of providing the products and services as described in the RFO;
- ii) Vendor is offering true and correct pricing and discounts for the products and services;
- iii) Vendor agrees, if awarded a contract, to abide by the terms and conditions of the resulting contract;
- iv) as of the date of signature below, Vendor is not listed in the prohibited vendors list authorized by Executive Order #13224, *"Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"*, published by the United States Department of the Treasury, Office of Foreign Assets Control;
- v) Vendor is not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration;
- vi) Vendor certifies, under Texas Government Code, Sections 2155.004 and 2155.006, that the individual or business entity named in this bid or contract is not

ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;

(vii) Vendor certifies that, to the extent applicable to this scope of this RFO, Vendor is in compliance with Health and Safety Code, Chapter 361, Subchapter Y, related to the Computer Equipment Recycling Program, and the related rules found at 30 TAC Chapter 328;

(viii) Vendor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response;

(ix) Vendor has not received compensation for participation in the preparation of specifications for this solicitation as required by Texas Government Code, Section 2155.004(a);

(x) Vendor has not, nor has anyone acting for Vendor, violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;

(xi) Vendor is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under Section 231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate, and any Vendor subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the response, prior to award (the parties agree that Vendor may submit these Social Security numbers marked as confidential so that disclosure or confidentiality will be determined by the Office of the Attorney General);

(xii) Vendor agrees that any payments due under this Contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;

(xiii) Vendor agrees to comply with Texas Government Code, Section 2155.4441, relating to use of service contracts for products produced in the State of Texas;

(xiv) Vendor certifies it is in compliance with Texas Government Code, Section 669.003, relating to contracting with executive head of a state agency;

(xv) Vendor certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on this DIR Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, Vendor certifies it shall disclose for itself and on behalf of subcontractors the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;

(xvi) Vendor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest;

(xvii) Vendor certifies that if a Texas address is shown as the Principle Place of Business in Appendix A, Vendor Information Form, Vendor qualifies as a Texas

Resident Bidder as defined in Texas Administrative Code, Title 34, Part I, Chapter 20;

(xviii) Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions (that do not conflict with the terms and conditions of this Contract) or certifications that an individual Customer may require due to state and federal law (e.g., privacy and security requirements); and

(xix) Vendor agrees that these representations will be incorporated into any subsequent agreement(s) between Vendor and Customer that result from this RFO.

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

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

A. Customer - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government 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;
- 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. 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 – the party, either Vendor or a party that may be designated by Vendor, who is fulfilling a Purchase Order pursuant to the Contract. May include Order Fulfillers, Resellers and/or Agents.

G. Purchase Order - 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 Dell nor Customer is or shall be bound by any terms and conditions imprinted on or embedded in orders, order acknowledgments or other communications between the parties relating to orders.

H. Reseller – any third party approved by Dell to sell to Eligible Customers under this Contract. Dell will flow this Contract's terms and conditions to its Resellers under this Contract, except that pricing shall be as follows: Dell offers pricing to its Reseller(s) and such Resellers shall resale to Eligible Customers products under this Contract at a price it sets and that will not exceed the maximum price as set forth in Appendix C, Pricing Index, of this Contract.

I. State – refers to the State of Texas.

B. Section 4. General Provisions, E. Survival, is hereby replaced in its entirety:

Each applicable service agreement that was entered into between Vendor and a Customer under the terms and conditions of the Contract that is still in existence as of the date of the expiration or termination of the Contract shall survive the expiration or termination of the Contract until the expiration or termination of such service agreement. Each Purchase Order issued and accepted by Vendor that is still in existence on the date of the expiration or termination of the Contract shall survive expiration or termination of the Contract until the expiration or termination of such Purchase Order.

C. Section 5. Product Terms and Conditions, Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases Only), is hereby replaced in its entirety:

Upon request by DIR, Vendor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) or a copy of the applicable VPAT for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). Vendors not listed with the "Buy Accessible

Wizard” or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the “Buy Accessible Wizard” or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

Customer may go to this page to request VPATs:

<http://content.dell.com/us/en/corp/d/corp-comm/cr-diversity-customer-disabilities.aspx>

D. Section 6. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract, is hereby replaced in its entirety:

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 services available under the Contract. Vendor shall use commercially reasonable efforts to ensure that potential Customers are made aware of the existence of the Contract.

E. Section 6. Contract Fulfillment and Promotion, C. Product Warranty and Return Policies, is hereby replaced in its entirety:

Products Warranty:

A. **Limited Warranty.** Dell warrants that the Dell-branded hardware Products will conform to the Dell specifications current when the Product is shipped and will be free from material defects in materials and workmanship during the applicable warranty period (“Limited Warranty”). The Limited Warranty period for Product begins on the Product ship date. Dell has the right to grant the licenses to the Software licensed under this Agreement, and such Software will substantially conform to the functional specifications and current documentation provided by Dell.

B. **Disclaimers.** EXCEPT AS EXPRESSLY STATED IN THE PRECEDING PARAGRAPH, DELL, (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS (COLLECTIVELY, THE “DELL PARTIES”) DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY OF THE PRODUCTS, SOFTWARE, OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (1) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (2) RELATING TO THIRD-PARTY PRODUCTS, SOFTWARE, OR SERVICES; (3) RELATING TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE, OR DELL’S PERFORMANCE OF THE SERVICES; OR (4) REGARDING THE RESULTS

TO BE OBTAINED FROM THE PRODUCTS, SOFTWARE, SERVICES, OR THE RESULTS OF ANY RECOMMENDATION BY DELL.

C. **High-Risk Activities.** The Products, Software, and Services are not fault-tolerant and are not designed or intended for use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, life-support machines, or any other application in which the failure of the Products, Software, or Services could lead directly to death, personal injury, or severe physical or property damage (collectively, “**High-Risk Activities**”). Dell expressly disclaims any express or implied warranty of fitness for High-Risk Activities.

D. **Warranty Exclusions.** Warranties do not cover damage due to external causes, such as accident, abuse, misuse, problems with electrical power, service not performed or authorized by Dell (including installation or de-installation), usage not in accordance with product or software instructions, normal wear and tear, or use of parts and components not supplied or intended for use with the products, software, or services. **These warranties do not apply to Third-Party Products.** Any warranty on a Third-Party Product is provided by the publisher, provider, or original manufacturer. All Third-Party Products are provided by Dell “as is.” WHETHER DIRECT OR INDIRECT, NEITHER PARTY SHALL HAVE LIABILITY FOR THE FOLLOWING, (A) LOSS OF REVENUE, INCOME, PROFIT, OR SAVINGS, (B) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK, OR THE RECOVERY OF SUCH, (C) LOSS OF BUSINESS OPPORTUNITY, (D) BUSINESS INTERRUPTION OR DOWNTIME, OR (E) SERVICES, VENDOR PRODUCTS OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE BY CUSTOMER.

- A. With respect to Customer’s use of the Software (1) neither Dell nor any of the Dell Parties makes any express or implied warranty that Software provided to Customer in connection with this Agreement is or will be secure, accurate, complete, uninterrupted, without error, or free of viruses, worms, other harmful components, or other program limitations; or that any errors in the Software will be corrected; (2) Customer assumes the entire cost of all necessary servicing, repair, or correction of problems caused by viruses or other harmful components, unless such errors or viruses are the direct result of Dell’s gross negligence or willful misconduct; (3) Dell and the Dell Parties, jointly and severally, disclaim and make no warranties or representations as to the accuracy, quality, reliability, suitability, completeness, truthfulness, usefulness, or effectiveness of any reports, data, results, or other information obtained or generated by Customer related to Customer’s use of the Software; and (4) use of the Software is entirely at Customer’s own risk and neither Dell nor the Dell Parties shall have any liability relating to such use.

THIRD PARTY PRODUCTS. To the extent Dell has the right to do so under its agreements with any third parties Dell shall pass through to Customer all third Party warranties as Dell receives from such third party in its contracts.

Dell Return Policy (U.S. only)

Dell offers Customers the option to return most products Customer purchases directly from Dell. Customer may return eligible products for a credit or a refund of the purchase price paid, less shipping and handling and any applicable restocking fees, as set forth in detail below.

30-Day Return Period for Certain Hardware and Software Products and Accessories: Except as provided below, all hardware, accessories, peripherals, parts, and certain media-based software that is unopened and still in its sealed package may be returned within 30 days from the date on the packing slip or invoice for a credit or a refund of the purchase price paid, less shipping and handling and any applicable restocking fees. Any product returned to Dell **without prior authorization** from Dell will be considered an **unauthorized** return, and the customer will not receive credit for the product and Dell will not ship the product back to you.

Notations and Exceptions to Dell's 30-Day Return Period:

- New **PowerEdge, PowerConnect, and PowerVault** products purchased directly from Dell may be returned within 30 days from the date on the packing slip or invoice. N
- New **Vostro, Optiplex, Latitude, and Dell Precision** systems purchased directly from divisions designated by Dell as Commercial or Public may be returned within 30 days from the date on the packing slip or invoice.
- Application software and operating systems that have been installed by Dell may be returned only if installed on a returnable system, and only if Customer returns that system within the applicable return period.
- Software licenses purchased under any type of volume license agreement may be returned only with the express approval of the publisher, which in many circumstances will not be granted.

Restocking Fees: Unless the product is defective or the return is a direct result of a Dell error, Dell may charge a restocking fee of up to 15% of the purchase price paid, plus any applicable sales tax.

How to Return a Product: Before returning a product, Customer must first contact Dell customer service and obtain a Credit Return Authorization (CRA) number before the end of the applicable return period. Dell will not accept returns without a CRA number. To find the appropriate phone number or to send an e-mail to customer

service to request a CRA number, go to www.dell.com/contact, or see the "Contacting Dell" or "Getting Help" section of a Customer's specific documentation.

NOTE: Customer must ship the product to Dell within 5 days of the date that Dell issues the Credit Return Authorization number as follows:

- Ship back **all** products Customer is seeking to return to Dell and for which Customer received a CRA number. For partial returns, a Customer's credit may be less than the invoice or individual component price due to bundled or promotional pricing or any unadvertised discounts or concessions.
- Return the products in their original packaging, in as-new condition, along with any media, documentation, and any other items that were included in Customer's original shipment.
- Ship the products at Customer's expense, and insure the shipment or accept the risk of loss or damage during shipment.

Upon receipt of Customer's return, Dell will issue a credit or a refund of the purchase price paid, less shipping and handling and any applicable restocking fees subject to this policy.

Note: Before a Customer returns the product to Dell, make sure to back-up any data on the hard drive(s) and on any other storage device in the product. Remove any and all confidential, proprietary, and personal information as well as removable media such as floppy disks, CDs, and PC Cards. Dell is not responsible for any confidential, proprietary, or personal information; lost or corrupted data; or damaged or lost removable media that may be included with a Customer's return.

Services Warranty:

Limited Warranty. VENDOR WARRANTS THAT SERVICES WILL BE PERFORMED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCE, VENDOR (INCLUDING ITS AFFILIATES, SUBCONTRACTORS AND AGENTS) AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS (COLLECTIVELY, THE "VENDOR PARTY(IES)") MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO ANY OF THE SERVICES OR DELIVERABLES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY OR NON-INFRINGEMENT; OR ANY WARRANTY RELATING TO THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES.

High-Risk Application Disclaimer. THE SERVICES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING WITHOUT LIMITATION, IN THE

OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, LIFE-SUPPORT MACHINES, OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE SERVICES COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE (COLLECTIVELY, "HIGH-RISK ACTIVITIES"). VENDOR EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH-RISK ACTIVITIES.

F. Section 6. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information 1) Vendor Website, is hereby replaced in its entirety:

Vendor will maintain a website specific to the products and services being offered under the Contract which is clearly distinguishable from other, non-DIR contract offerings at the Vendor's website. The website must include at a minimum:

- A. The Contract number and a statement that the customer must reference the Contract Number on their purchase order.
- B. A statement designating who can procure through the Contract.
- C. Examples of products and services offered under the Contract.
- D. Examples of product and services specifications, to the extent they exist and are offered under the Contract.
- E. Current Contract pricing – or how to obtain pricing.
- F. Contact information for Vendor business segments (i.e., State and Local, Higher Education, K-12, Healthcare, etc.).
- G. Named Order Fulfillers and contact information for each designated Order Fulfiller.
- H. Instructions for obtaining quotes and placing Purchase Orders through Vendor direct or through a designated Order Fulfiller.
- I. Warranty policy terms and conditions, if applicable.
- J. Return policy terms and conditions, if applicable.

The Vendor's website shall list the DIR Contract number, reference the DIR Cooperative Contracts program, display the DIR logo in accordance with the requirements in paragraph F of this Section, and contain a link to the DIR website for the Contract.

G. Section 6. Contract Fulfillment and Promotion, G. Vendor and Order Fulfiller Logo, is hereby replaced in its entirety:

DIR may use the Vendor's and Order Fulfiller's name and logo in the promotion of the Contract to communicate the availability of products and services under the

Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's and Order Fulfiller's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's or Order Fulfiller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor and Order Fulfiller. Dell's logo is subject to Dell's corporate compliance usage rules.

H. Section 6. Contract Fulfillment and Promotion, H. Trade Show Participation, is hereby replaced in its entirety:

At DIR's discretion, Vendor may be required to participate in no more than two (2) 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 such trade shows in the State of Texas 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 or Order Fulfiller's booth.

I. Section 7. Purchase Orders, Invoices and Payments, is hereby replaced in its entirety:

A. Purchase Orders

All Customer Purchase Orders will be placed directly with the Order Fulfiller. Accurate Purchase Orders shall be effective and binding upon Order Fulfiller when accepted by Order Fulfiller.

B. Invoices

Invoices shall be submitted by the Vendor directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for services purchased under the Contract and any provision and receipt of such services shall be made by the Customer to the Vendor.

Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to services, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the services by the Customer.

C. Payments

The parties shall comply with Chapter 2251, Texas Government Code, in invoicing and making payments. Payments for goods and services are due thirty (30) days after the goods are provided, the services completed, or a correct invoice is received, whichever is later. Payment under the Contract shall not foreclose the right to recover wrongful payments.

D. Acceptance

Customer and Vendor may establish terms for acceptance of Products and Services. Absent other terms of acceptance agreed to by Customer and Vendor, the following terms will apply. With respect to Vendor-branded products delivered to Customers under the Contract that have Vendor-published specifications, and with respect to Services provided to Customers by Vendor under the Contract that have mutually agreed upon specifications described in a Purchase Order executed by the Customer and Vendor (respectively, the "Specifications"), Customer shall determine whether such products and Services meet the applicable Specifications. If the product or Service meets the Specifications applicable to it, the Customer agrees to accept such product or Service. Unless otherwise agreed upon by the Customer and Vendor, a product or service shall be deemed accepted if the Customer does not, within ten (10) calendar days from the date such product or service is delivered, issue to Vendor a written notice of partial acceptance or rejection of the product or service based on the fact that the product or service did not meet the Specifications applicable to it ("Deemed Acceptance" or "Deemed Accepted").

No payment shall be due for any such product or Service until the Customer either accepts the product or service or such product or service is Deemed Accepted.

J. Section 8. Contract Administration, B. Reporting and Administrative Fees, 2) Detailed Monthly Report, is hereby replaced in its entirety:

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at ict.sales@dir.texas.gov. Reports are due on the fifteenth (15th) calendar day after the close of the previous month period. If such date falls on a holiday or weekend, the report shall be due the first business day following. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Filler's company name, if applicable, Customer name, invoice date, invoice number, description, SKU, manufacturer, quantity, unit price, extended price, Customer Purchase Order number, contact name if provided, Customer's complete billing address, Manufacturer's Suggested Retail Price and other information as reasonably required by DIR. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this section.

K. Section 8. Contract Administration, B. Reporting and Administrative Fees, 4) DIR Administrative Fee, is hereby replaced in its entirety:

a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of

negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the fifteenth (15th) calendar day after the close of the previous month period. DIR may change administrative fee amounts; however, no revision will take effect before ninety (90) days following written notice. Vendor may revise pricing to reflect the change in administrative fees.

b) Vendor shall reference the DIR Contract number on any remittance instruments.

L. Section 8. Contract Administration, B. Reporting and Administrative Fees, 5) Accurate and Timely Submission of Reports, is hereby replaced in its entirety:

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this section. Vendor shall correct any inaccurate reports or administrative fee payments within a maximum of five business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within a maximum of five business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within a maximum of five business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section, at DIR's expense.

c) Failure to timely submit three (3) reports within any rolling twelve (12) month period may, at DIR's discretion, result in termination of Vendor's Contract.

M. Section 8. Contract Administration, C. Records and Audit, is hereby replaced in its entirety:

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, 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 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.

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2) Vendor shall maintain adequate records relating to the requirements of this Contract and relevant to the performance of the Contract to DIR, 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: Customer name, invoice date, invoice number, description, quantity, 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 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 any audit reveals a Material Accounting Error, Vendor must reimburse DIR for actual and reasonable costs of such audit. Material Accounting Error means (a) with regard to audits of invoices, an aggregate variance from all applicable invoices of Vendor reviewed during such audit in excess of 1.5% of the aggregate amount shown on all of the invoices reviewed during such audit; and (b) with regard to audits of fees, an aggregate underpayment of all fees due to DIR under this Contract during a Vendor fiscal quarter in excess of 5%.

N. **Section 9. Vendor Responsibilities, A. Indemnification, 1) Acts and Omissions** is hereby replaced in its entirety:

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 AND AGAINST 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 Dell or its Order Fulfillers, Agents, Resellers or subcontractors. VENDOR'S OBLIGATIONS TO INDEMNIFY AND HOLD HARMLESS ARE NOT SUBJECT TO OR LIMITED BY CONTRIBUTORY NEGLIGENCE. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS FEES. The defense shall be coordinated by the Office of the Attorney General FOR TEXAS STATE AGENCIES OR BY CUSTOMER'S LEGAL COUNSEL FOR NON-STATE AGENCY CUSTOMERS, VENDOR'S COUNSEL FOR VENDOR, AND BY CUSTOMERS 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.

O. **Section 9. Vendor Responsibilities, A. Indemnification, 2) Infringements** is hereby replaced in its entirety:

a) Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES, 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 PERFORMANCES of Services or the provision of Dell-branded Products by VENDOR PURSUANT TO THIS CONTRACT. "Dell-Branded Products" shall mean hardware products (including all Dell standard components and parts contained within the Dell system), components, or parts bearing the Dell logo that are included on Seller's standard price list.

VENDOR and the CUSTOMER agree to furnish timely written notice to each other of any such claim. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE OF THE CLAIMS AS SPECIFIED IN THIS SECTION INCLUDING ATTORNEYS' FEES. 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, 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.

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b) Notwithstanding the foregoing, Vendor shall have no obligation under this Section 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, provided that, in the first case, Vendor's employees who complied with Customer's specifications did not have actual knowledge that such specifications infringe one or more United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights and fails to so inform 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-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 refund provided to such Customer pursuant to subpart (iii), above, and Vendor will pay such claim.

P. Section 9. Vendor Responsibilities, B. Taxes/Worker's Compensation/ UNEMPLOYMENT INSURANCE is hereby replaced in its entirety:

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,

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AND WORKERS' COMPENSATION. VENDOR AGREES AND ACKNOWLEDGES THAT VENDOR ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS SHALL NOT BE ENTITLED TO ANY STATE BENEFIT OR BENEFIT OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER AS A RESULT OF WORKING UNDER THIS CONTRACT. 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, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR EXPECTATIONS OF BENEFITS BY VENDOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS OR SUBCONTRACTORS IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE ATTORNEYS' FEES FOR CLAIMS UNDER THIS CLAUSE AS A RESULT OF ITS PERFORMANCE UNDER THIS CONTRACT.

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.

Q. **Section 9. Vendor Responsibilities, C. Vendor Certifications,** is hereby replaced in its entirety:

Vendor certifies as of the effective date of this Contract, on behalf of Vendor and its designated Order Fulfillers that they:

- (i) have not given, offered to give, and do not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with obtaining the Contract;
- (ii) are not currently delinquent in the payment of any franchise tax owed the State of Texas and are not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledge the Contract may be terminated and payment withheld if this certification is inaccurate;

- (iii) neither they, nor anyone acting for them, have violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) have not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) to the best of their knowledge and belief, there are no suits or proceedings pending or threatened against or affecting them, which if determined adversely to them will have a material adverse effect on the ability to fulfill their obligations under the Contract;
- (vii) are not suspended or debarred from doing business with the federal government as listed in the *Excluded Parties List System (EPLS)* maintained by the General Services Administration;
- (viii) as of the effective date of the Contract, are not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control; (ix) to the extent applicable to this scope of this Contract, Vendor hereby certifies that it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (ix) agree that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed by Vendor to the State of Texas;
- (x) are in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xi) have identified all current or former, within the last five years, employees of the State of Texas assigned to work on the DIR Contract 20% or more of their time and have disclosed them to DIR and have disclosed or do not employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, certify they shall disclose the name and other pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity;
- (xii) represent and warrant that the provision of goods and services or other performance under the Contract will not constitute an actual conflict of interest, and, if these facts change during the course of the Contract, certify they shall disclose the actual or potential conflict of interest and any

circumstances that create the appearance of impropriety;

- (xiii) under Section 2155.006, Government Code, are not ineligible to receive the specified contract and acknowledge that this contract may be terminated and payment withheld if this certification is inaccurate; and
- (xiv) they acknowledge the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract.

During the term of the Contract, Vendor shall, for itself and on behalf of its Order Fulfillers, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor covenants to fully cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to applicable state and federal law (e.g, privacy and security requirements).

R. **Section 9. Vendor Responsibilities, G. Responsibility for Actions**, is hereby replaced in its entirety:

- 1) Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

S. **Section 9. Vendor Responsibilities, I. Security of Premises, Equipment, Data and Personnel**, is hereby replaced in its entirety:

- (a) Vendor and/or Order Fulfiller may, from time to time during the performance of the Contract, have access to the personnel of Customers and the premises, equipment, and other tangible property belonging to the Customer. Vendor shall use commercially reasonable efforts to preserve the safety of such personnel and the safety, security, and the integrity of such premises, equipment, and other tangible property, in accordance with the instruction of the applicable 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 shall be responsible for damage to Customer's premises, equipment and other tangible property when such damage is caused by its employee or subcontractor. If Vendor and/or an Order Fulfiller materially fails to comply with the applicable Customer's security requirements, then such Customer may immediately terminate its Purchase Order and related Service Agreement.
- (b) In addition, Vendor and/or Order Fulfiller may, from time to time 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 Agreement, including this Section 9.1, 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 (or Customer's applicable third party vendor's) failure to use standard industry practices relating to data backups and retrieval of Data.
- (iv) If Vendor has Data backup responsibility under the applicable Statement of Work, Vendor shall be operationally and financially responsible for restoring such Data that is lost or corrupted as soon as reasonably practicable in accordance with its Data restore responsibilities set forth in the Statement of Work, provided that, if the loss or corruption of Data results from a Force Majeure Event or other event for which Vendor's non-performance is excused, then Vendor and Customer will equitably adjust the charges to account for the additional effort incurred by Vendor in restoring the Data to the extent such additional charges result from activities in addition to the responsibilities Vendor is expressly obligated to perform under the applicable Statement of Work. In either of the foregoing cases in which additional charges may apply, Vendor will consult with the applicable Customer before performing such restoration, and the applicable Customer may, at its discretion, direct Vendor not to restore the Data.

T. **Section 9. Vendor Responsibilities, J. Background and/or Criminal History Investigation**, is hereby replaced in its entirety:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by Vendor or Customers (as required by Customer) , provided this requirement is added to the applicable specific Purchase Order between such Customer and Vendor. Should any employee or subcontractor of the Vendor who will be providing services to the Customer under such Purchase Order 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 employee or subcontractor in question. If Vendor fails to promptly replace the employee or subcontractor personnel, then Customer may immediately terminate its Purchase Order and related Service Agreement.

U. **Section 9. Vendor Responsibilities, K. Limitation of Liability**, is hereby replaced in its entirety:

For any claim or cause of action arising out of or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State of Texas, 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 all Customers 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 9.A.3.

V. **Section 9. Vendor Responsibilities, L. Overcharges**, is hereby replaced in its entirety:

Vendor hereby assigns to DIR any and all of its claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. and Comm. Code Section 15.01, et seq., to the extent that such overcharge was, in fact, passed on to DIR or its Customers in the computer products or other goods and/or services purchased by DIR or its Customers under this Contract during the time period referenced in the litigation.

W. **Section 9. Vendor Responsibilities, M. Prohibited Conduct**, is hereby deleted in its entirety.

X. **Section 9. Vendor Responsibilities, N. Required Insurance Coverage**, is hereby replaced in its entirety:

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

1) Commercial General Liability

Commercial General Liability must include a combined single limit of \$500,000 per occurrence for coverage A, B, & C including products/completed operations, where appropriate, with a separate aggregate of \$500,000. The policy shall contain the following provisions:

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

2) Workers' Compensation Insurance

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$250,000 bodily injury per accident, \$500,000 bodily injury disease policy limit and \$250,000 per disease per employee.

3) Business Automobile Liability Insurance

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

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

Y. Section 9. Vendor Responsibilities, S. Secure Erasure of Hard Disk Products and/or Services, is hereby replaced in its entirety:

Vendor agrees that all products that are equipped with hard disk drives (e.g., computers, servers, printers, scanners, multifunction devices) shall have the capability to erase data written to the hard drive prior to final disposition of such managed service products and/or services, either at the end of the managed service product and/or services' useful life or at the end of the Customer's managed service product and/or services' useful life or the end of the related Customer Managed Services Agreement for such products and/or services, in accordance with 1 TAC 202.28.

Z. Section 9. Vendor Responsibilities, T. Deceptive Trade Practices; Unfair Business Practices, is hereby replaced in its entirety:

Vendor represents and warrants 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.

Vendor certifies 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.

AA. Section 9. Vendor Responsibilities, U. Drug Free Workplace Policy, is hereby replaced in its entirety:

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.

BB. Section 10. Contract Enforcement, B. Termination, a) Termination for Non-Appropriation by Customer, is hereby replaced in its entirety:

Customer shall not place Purchase Orders if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. 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. 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 products and discontinue using services under any return provisions that Vendor offers.

CC. Section 10. Contract Enforcement, B. Termination, 3) Termination for Convenience, is hereby replaced in its entirety:

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 if it is determined by the Customer that Order Fulfiller will not be able to deliver product or services prior to manufacturing process for products, and for services, in accordance with a mutually agreed Statement of Work. For qualifying products, Customer may return following receipt, in accordance with the Return Policy in Appendix A, Section 6C.

DD. Section 10. Contract Enforcement, C. Force Majeure, is hereby replaced in its entirety:

DIR, Customer, or Vendor 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 Vendor will not be able to deliver services in a timely manner to meet the business needs of the Customer.

EE. **Section 13. Export Compliance**, is hereby added:

Compliance/Export Restrictions. Dell and Customer acknowledge that Products licensed or sold under this Agreement are subject to the export control laws and regulations of the United States or those of other countries from which they were supplied and in which they are used. Under U.S. laws and regulations, Products purchased under this Agreement may not be sold, leased or otherwise transferred to restricted end-users or to restricted countries. In addition, the products may not be sold, leased or otherwise transferred to, or utilized by, an end-user engaged in activities related to weapons of mass destruction, including but not necessarily limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. Customer warrants that any software provided by Customer and used as part of the Services contains no encryption or, to the extent that it contains encryption, such software is approved for export without a license. If Customer cannot make the preceding representation, Customer agrees to provide Dell with all of the information needed for Dell to obtain export licenses from the United States government and to provide Dell with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Customer is solely responsible for obtaining any specific licenses relating to the export of software if a license is needed. Dell may also require export certifications from Customer for Customer provided software. Dell's acceptance of any order for Services is contingent upon the issuance of any applicable export license required by the United States Government; Dell is not liable for delays or failure to deliver a product resulting from Customer's failure to obtain such license or to provide such certification.

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

Dell Marketing, L.P.

Authorized By: signature on file

Name: Kelly L. O'Shieles

Title: Contracts Consultant

Date: 1/8/13

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

Authorized By: signature on file

Name: Carl Marsh

Title: Chief Operating Officer

Date: 1/9/13

Office of General Counsel: signature on file 1/9/13

Exhibit C

Scope of Services

1. INTRODUCTION

This Statement of Work ("SOW") describes the managed deployment services (the "Services") to be provided by Dell Marketing L.P. ("Contractor") to the City of Austin, Texas ("City"). The Services provided under this SOW are governed by the terms and conditions specified in the State of Texas DIR-SDD-1951 Hardware Contract (Dell Contract Code 42AFU) (the "DIR Contract"). Terms contained in this SOW shall have the meaning set forth in the DIR Contract unless otherwise defined hereunder.

2. SCOPE OF WORK SUMMARY

- 2.1 The City will purchase approximately 9000 desk-top PCs, laptops, and workstations *over a five (5) year period*.
- 2.2 The City will provide a complete list of locations with number of end users per site, identify the sites that require CJIS certification, and the end users and sites that require after hours deployment services within sixty (60) days of the start of each deployment phase.
- 2.3 The Contractor shall deploy Dell Desktop and Laptop PCs using Dell's Automated Deployment (DAD) tool.
- 2.4 The equipment shall receive image services in the Dell factory and all equipment shall be shipped to a local Dell warehouse in Multi-pack containers. The equipment shall be transported by the Contractor to the designated deployment locations.
- 2.5 Contractor shall unbox the equipment and then *move* the equipment to the assigned City location and shall set up the new equipment, affix the City provided asset tag, complete the data transfer and personality settings migration, and de-install the legacy equipment. The Contractor assumes an *average* of one additional application per user shall be loaded as per the end user profile provided by the City. If the City requests that a hard *drive* be *removed*, the Contractor shall *remove* the hard drive and identify it by the serial number before giving it to the City point of contact. If the City does not request the hard drive be *removed*, the hard drive is to stay with the CPU for recycling. The Contractor shall pack the legacy equipment in the Multi-pack container and *move* the legacy equipment to the central on-site location for pick up by Customer's designated carrier. Any additional packaging or trash will be disposed of in the on-site recycling area or dumpster.
- 2.6 A report of all completed systems shall be provided.

3. BACKGROUND

The City is working in conjunction with Dell Marketing, LP. Through the State of Texas Department of Information Resources (DIR) cooperative purchase program to deploy Dell personal computers (PCs) and laptops to replace the City's aging computers. Contracted deployment services used during the previous 5 years have saved approximately 10,000 City staff hours. The existing deployment service allows Communication Technology Management staff to maintain the existing customer service level to the City while thousands of Personal Computers and laptops are deployed each year in a condensed timeframe.

The City is running Microsoft Windows 7 and 8.1 and soon will upgrade to Windows 10 on the desktop in a Microsoft Windows 2012 Active Directory environment.

Detail Project Schedule will be developed as each phase kicks off.

4. BUSINESS REQUIREMENTS

- 4.1 **Project Manager** - Contractor and the City will each assign a project manager who will coordinate the activities to be performed under this SOW ("Program Manager"). The Project Manager for each party will

serve as the point-of-contact for all communications, escalation of issues, and any modification to the scope, requirements, or responsibilities under this SOW

a. Contractor Project Management Responsibilities

- Serve as central point of contact for all service delivery issues.
- Manage Dell tasks, resources associated with the Services, and coordinate activities with Customer.
- Conduct meetings to communicate roles, responsibilities, review assumptions, and schedule activities.
- Use standard industry recognized project management tools and methodologies.
- Employ a reporting mechanism to identify project tasks, next steps, and issues.
- Implement changes associated with the Services in compliance with the Change Management Process described in this SOW.

b. City Program Management Responsibilities

- Provide reasonable assistance, cooperation, timely decisions and support in connection with the provision of the Services by the Contractor.
- Coordinate the scheduling of all City designated resources required for the Services.
- Obtain all consents, approvals, and licenses required by City's suppliers, licensors, and lessors necessary to support or permit the provision of Services under this SOW.
- Assign a site coordinator for each City site where Services will be provided.

4.2 General Requirement

a. Contractor shall:

- Contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials.
- Obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor").
- Be able to of physically lifting and moving a minimum 50 lbs.
- Provide transportation to and from multiple sites around the City.
- Be proficient in a Windows and Active Directory environment. This includes:
 - a. Basic troubleshooting of Windows operating systems
 - b. Basic understanding of Windows Active Directory environment
 - c. Basic knowledge of mapping network drives and printers

5. PRE-DEPLOYMENT ACTIVITIES

The parties will complete the activities listed below before managed deployment Services begin. These activities will validate the assumptions, requirements, procedures, and responsibilities set forth in this SOW. In the event any assumption, requirement, procedure, or responsibility is found to be incorrect, the pricing and/or scope of Services will be modified using the Change Management Process to reflect the actual operating environment.

Site Survey and End-User Profiles

Customer will complete a site survey for each Customer Site. The site survey is used to collect information needed for the deployment. Customer will complete end-user profile surveys, if applicable.

Exhibit C

Scope of Services

1. INTRODUCTION

This Statement of Work ("SOW") describes the managed deployment services (the "Services") to be provided by Dell Marketing L.P. ("Contractor") to the City of Austin, Texas ("City"). The Services provided under this SOW are governed by the terms and conditions specified in the State of Texas "DIR SDD 890 Hardware Contract (Dell Contract Code 48 ABO) (the "DIR Contract"). Terms contained in this SOW shall have the meaning set forth in the DIR Contract unless otherwise defined hereunder.

2. SCOPE OF WORK SUMMARY

- 2.1 The City will purchase approximately 9000 desk-top PCs, laptops, and workstations *over a five (5) year period*.
- 2.2 The City will provide a complete list of locations with number of end users per site. Contractors are required to complete the specific COA certification and background check process through the Austin Police Department to receive their deployment badge. COA will also identify the end users and sites that require after hours deployment services within sixty (60) days of the start of each deployment phase.
- 2.3 The equipment shall receive the standard factory OS load, Asset Tag application and BIOS update with Asset Tag information in the Dell factory. All equipment shall be shipped to the City of Austin warehouse in Multi-pack boxes when the quantity of client systems allows for it. The equipment shall be transported to the designated deployment locations based on deployment schedule.
- 2.4 Contractor shall move client systems from deployment location staging area to assigned deskside and unbox the equipment. Contractor shall de-install the legacy equipment and set up the new equipment.. If the City requests that a hard *drive* be *removed*, the Contractor shall *remove* the hard drive and identify it by the serial number before giving it to the City point of contact. If the City does not request the hard drive be *removed*, the hard drive is to stay with the CPU for recycling. The Contractor shall pack the legacy equipment in the new client system box and *move* the legacy equipment back to the City of Austin's warehouse. Any additional packaging or trash will be disposed of in the on-site recycling area or dumpster.
- 2.5 A report of all completed systems shall be provided.

3. BACKGROUND

The City is working in conjunction with Dell Marketing, LP. Through the State of Texas Department of Information Resources (DIR) cooperative purchase program to deploy Dell personal computers (PCs) and laptops to replace the City's aging computers. Contracted deployment services used during the previous 5 years have saved approximately 10,000 City staff hours. The existing deployment service allows Communication Technology Management staff to maintain the existing customer service level to the City while thousands of Personal Computers and laptops are deployed each year in a condensed timeframe.

The City is running Microsoft Windows 7 and 8.1 and soon will upgrade to Windows 10 on the desktop in a Microsoft Windows 2012 Active Directory environment.

Detail Project Schedule will be developed as each phase kicks off.

4. BUSINESS REQUIREMENTS

- 4.1 **Project Manager** - Contractor and the City will each assign a project manager who will coordinate the activities to be performed under this SOW ("Program Manager"). The Project Manager for each party will serve as the point-of-contact for all communications, escalation of issues, and any modification to the scope, requirements, or responsibilities under this SOW

- a. **Contractor Project Management Responsibilities**

- Serve as central point of contact for all service delivery issues.
- Manage Dell tasks, resources associated with the Services, and coordinate activities with Customer.
- Conduct meetings to communicate roles, responsibilities, review assumptions, and schedule activities.
- Use deployment processes and documentation developed by City of Austin CTM.
- Implement changes associated with the Services in compliance with the Change Management Process described in this SOW.

b. City Program Management Responsibilities

- Provide reasonable assistance, cooperation, timely decisions and support in connection with the provision of the Services by the Contractor.
- Coordinate the scheduling of all City designated resources required for the Services.
- Obtain all consents, approvals, and licenses required by City's suppliers, licensors, and lessors necessary to support or permit the provision of Services under this SOW.
- Assign a site coordinator for each City site where Services will be provided.

4.2 General Requirement

a. Contractor shall:

- Contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. This certification is required every year.
- Obtain a certified criminal background report with fingerprinting (referred to as the "report") for all persons performing on the contract, including all Contractor, Subcontractor, and Supplier personnel (for convenience referred to as "Contractor").
- Be able to of physically lifting and moving a minimum 50 lbs.
- Provide transportation to and from multiple sites around the City.
- Be proficient in a Windows and Active Directory environment. This includes:
 - a. Basic troubleshooting of Windows operating systems
 - b. Basic understanding of Windows Active Directory environment
 - c. Basic knowledge of mapping network drives and printers

5. PRE-DEPLOYMENT ACTIVITIES

The parties will complete the activities listed below before managed deployment Services begin. These activities will validate the assumptions, requirements, procedures, and responsibilities set forth in this SOW. In the event any assumption, requirement, procedure, or responsibility is found to be incorrect, the pricing and/or scope of Services will be modified using the Change Management Process to reflect the actual operating environment.

Site Survey and End-User Profiles

Customer will complete a site survey for each Customer Site. The site survey is used to collect information needed for the deployment. Customer will complete end-user profile surveys, if applicable.

6. SCHEDULES

The parties will mutually agree in writing to a deployment schedule by City Site and Schedule Group (collectively, the "Deployment Schedule"). The Deployment Schedule will be distributed by the City to end-users identified in each Schedule Group prior to the scheduled installation of their Client Systems.

The City will promptly notify the Contractor of any conflicts in order to lock the schedule prior to the scheduled installation date. Any modifications or cancellations occurring prior to the scheduled installation date may be subject to additional fees.

7. CITY RESPONSIBILITIES

The City will provide:

1. Access to City Site(s), including any necessary keys or badges. Advise Contractor prior to locking schedule of any unique site entry requirements.
2. Physical location of each end-user desk where the services are to be performed as well as location of printers to be mapped per system, if applicable
3. Prepare City sites and end-user locations to receive Services (e.g., installing cables, network jacks, and power outlets and ensuring connectivity)
4. Procure all hardware components and software licenses in advance of deployment activities to meet the Deployment Schedule.
5. Provide safe access to the Project site, a safe working environment, an adequate office space, and parking as required.
6. Access to and use of information, data, Customer facilities, equipment, and internal resources as reasonably necessary to deliver the Services Ensure all systems and related equipment are easily accessible by Dell without the need to move furniture, and provide keys to any cable locks as needed to remove or secure systems during de-installation and/or installation and disable any BIOS passwords currently configured on Legacy Systems prior to a service call for installation.
7. Service account IDs, passwords, domain specifications, and personal settings necessary to perform the Services for each system prior to scheduled deployment
8. In the event Dell encounters problems loading Customer-provided software, Customer will contact the proper help resources for that application to complete the installation
9. local administration rights necessary to perform the Services and ensure the domain login is enabled
10. A complete list of all approved peripherals to be installed on the new Client System, and supply all applicable drivers at the Customer Site
11. Adequate storage area for de-installed Legacy Systems and a common area for debris at each Customer Site (to be located within the building where the deployment occurs)
12. Staff to perform quality assurance after login is complete, including access to Active Directory profile to allow end users to access specific software applications and load personalities
13. Post-installation support and troubleshooting assistance as needed to address software application performance, software application and operating system conflicts, software application version issues or co-existence issues
14. Customer will maintain a backup of all data and programs on affected systems prior to Dell performing the Services and during the term of the SOW. Dell will have no liability for loss or recovery of data, programs or loss of use of system(s) arising out of or in connection with the Services provided under this SOW.
15. Customer may be responsible for developing or providing documentation, materials and assistance to Dell and agrees to do so in a timely manner. Dell shall not be responsible for any delays in completing its assigned tasks to the extent that they result from Customer's failure to provide such timely documentation, materials and assistance.

8. SCOPE OF WORK

8.1 Work Hours - Most systems will be deployed during business hours of 8:00am to 5:00pm Monday through Friday. The expected timelines will be based on the deployment of approximately 150-200 systems per week.

Contractor shall ensure that adequate staffing is available for each phase which will be agreed upon prior to each phase.

This project will include:

1. Transportation of new client systems from COA warehouse to installation sites.
2. Transportation of legacy client systems from installation sites to COA warehouse.
3. On-site services for boxing/unboxing of new and legacy hardware
4. Deployment of new hardware to COA employees

8.2 MATERIAL MANAGEMENT - Contractors shall assist with the current City asset management processes. This shall include:

- a. Movement of new equipment in a warehouse environment.
- b. Packing and unpacking of hardware.
- c. Assist in the tracking process to include maintaining spreadsheets of Serial Numbers, City asset tags, and end user information
- d. Assist in asset recovery
 - o Responsible for removal of hard drives from recovered assets
 - o Responsible for packing recovered assets for disposal

8.3 DEPLOYMENT – Contractor shall assist in the deployment of new PC hardware to City personnel. The basic process is as follows:

Contractor shall:

1. Pickup new PC (CPU & monitor) from customer warehouse
2. Delivery new PC (CPU & monitor) to install site
3. Basic install/connection of CPU & monitor
4. Confirm with end user that all applications needed and specified on cut sheet/work order are loaded on the end user's PC
5. Confirm with end user that all data is present on new PC
6. Get sign off from end user on cut sheet/work order. If end user is not present get sign off from site contact.
7. If data or applications are missing, Dell tech will contact site SPOC and/or main IT project contact and report issue as well as document this on cut sheet/work order.
8. De-install legacy CPU& monitor
9. Transport legacy CPUs & monitors at end of each work day back to City of Austin warehouse.
10. Document legacy and new CPU service tag and City asset tag and provide reporting daily to City of Austin during deployment.
11. Get sign off from site contact for new systems picked up from warehouse, installed, de-installed, and legacy systems delivered back to City of Austin warehouse.
12. Dell will provide deployment services for City sites requiring deployment of nine (9) or fewer units at the standard install prices.

Assumptions:

1. Deployment services for City sites requiring deployment of 9 or fewer units will be scheduled to ensure maximum efficiency of resources.
2. Dell is not responsible for any data lost or stolen during the transport of the hardware to and from the City of Austin warehouse and deployment site should the hardware be damaged or stolen.

8.4 GENERAL REQUIREMENTS

c. Project Plan and Controls

1. The City will provide a detailed project plan for the implementation. Provide an estimated project timeline for the PC deployment.

2. Contractor shall clearly outline in its proposal all assumptions and all tasks it foresees will be required of City staff. Those tasks shall indicate who, by role, the Contractor recommends perform each task.

d. Testing /Quality Assurance

3. Contractors shall be responsible for following all established procedures and guidelines for PC deployment.
4. Contractors shall be responsible for documenting all established procedure results.

9. Pricing Table

CLIENT SYSTEM BLENDED SERVICES	Units	P/U Cost
<ul style="list-style-type: none"> Pickup and redelivery of new system (CPU & monitor) to install location Basic Installation of a Client System (CPU and Monitor) De-installation of Legacy System (CPU and Monitor) Confirmation and signoff with end user that applications and data are correct on new system Transport legacy system back to customer warehouse 	9000	\$90.50

As Needed	Units	P/U Price
Uplift per unit for after standard business hours	TBD	\$13.38

10. Timing Assumptions

Client Deployment Services	Disposition	Total Units	Timing
Basic Installation Service- Client System (CPU and Monitor)	System	9000	45
De-installation of Legacy System (CPU and Monitor)	System	9000	15
Pickup and redelivery of new system (CPU & monitor) to install location	System	9000	45
Confirmation and signoff with end user that applications and data are correct on new system	System	9000	15
Transport legacy system back to customer warehouse	System	9000	45

11. Time & Materials Pricing Table

Time & Materials Concepts	Disposition	Price
Time & Materials Rates - (During Service Hours - Per Hour)	Time Unit	\$53.50
Time & Materials Rates - (Outside Service Hours - Per Hour)	Time Unit	\$61.00
Program Management Office (Extension Fee for Services Beyond Term - Per Week)	Week	\$3,325.00

a. Pricing Notes

1. Time and Materials Rates will be invoiced to and will be paid by Customer for the following:
 - a. Customer delays exceeding fifteen (15) minutes beyond the scheduled time for the Services to be performed; such charges will be invoiced in thirty (30) minute increments.
 - b. Services requested when the technician is not currently onsite are charged based on a 2-hour minimum per incident.
 - c. Out-of-scope services
 - d. Services performed outside the defined Service Hours
 - e. Services designated as Time & Materials
 - f. Any change to the defined scope of work listed in this statement of work
2. Program duration is 60 Month(s). Should the program extend beyond 60 Month(s), Customer will be invoiced in accordance with the program extension weekly rate or will provide a Change Order.
3. Prices exclude costs for procurement of any hardware or software.

4. Price excludes travel incurred due to schedules that cause excessive travel between customer sites. See Scheduling Assumptions.
5. Price includes travel expenses within fifty (50) miles of the Austin, Texas major metropolitan area
6. Payment for any hardware ordered from Dell is due in accordance with State of Texas DIR Contract DIR-SDD-1951 (Dell Contract Code 42AFU); payment for the hardware is due in accordance with such agreement and shall in no case be contingent upon performance or delivery of the Services and/or installation described in this SOW.
7. For clarity, any hardware failures that are discovered in connection with Dell's delivery of the Services will be resolved via the Customer's existing warranty for such failed hardware. In the event warranties for failed hardware are expired or otherwise not effective, Dell will provide reasonable support to Customer to facilitate resolution of the failed hardware so that Services hereunder may be completed. In no event will Dell assume financial responsibility for Customer's failed hardware where such failure is not the direct result of Dell's actions as indicated by root cause analysis.

12. ACCEPTANCE OF WORK

Acceptance of work is considered to be when all PCs have been deployed, all established procedures have been followed, and documentation has been completed.

13. TRAINING

The City will be responsible for training contractors on the established deployment procedures prior to each phase.

Exhibit D
Non Discrimination Certification

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 6th day of October, 2016

CONTRACTOR

Dell Marketing, L.P.

Authorized
Signature

cyndi_radel@dell.com

Digitally signed by cyndi_radel@dell.com
DN: cn=cyndi_radel@dell.com
Date: 2016.10.06 11:24:16 -04'00'

Title

Contracts Program Manager

Exhibit E
Non Suspension or Debarment Certification

City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:	■	Dell Marketing, L.P.	
<hr/>			
Signature of Officer or Authorized Representative:		Digitally signed by cyndi_radel@dell.com DN: cn=cyndi_radel@dell.com Date: 2016.10.06 11:24:32 -04'00'	Date: ■ October 6, 2016
<hr/>			
Printed Name:	■	Cynthia B. Radel	
<hr/>			
Title	■	Contracts Program Manager	
<hr/>			

6. SCHEDULES

The parties will mutually agree in writing to a deployment schedule by City Site and Schedule Group (collectively, the "Deployment Schedule"). The Deployment Schedule will be distributed by the City to end-users identified in each Schedule Group prior to the scheduled installation of their Client Systems.

The City will promptly notify the Contractor of any conflicts in order to lock the schedule prior to the scheduled installation date. Any modifications or cancellations occurring prior to the scheduled installation date may be subject to additional fees.

7. CITY RESPONSIBILITIES

The City will provide:

1. Access to City Site(s), including any necessary keys or badges. Advise Contractor prior to locking schedule of any unique site entry requirements.
2. Physical location of each end-user desk where the services are to be performed as well as location of printers to be mapped per system, if applicable
3. Prepare City sites and end-user locations to receive Services (e.g., installing cables, network jacks, and power outlets and ensuring connectivity)
4. Procure all hardware components and software licenses in advance of deployment activities to meet the Deployment Schedule.
5. Provide safe and adequate parking facilities.
6. Access to and use of information, data, Customer facilities, equipment, and internal resources as reasonably necessary to deliver the Services Ensure all systems and related equipment are easily accessible by Dell without the need to move furniture, and provide keys to any cable locks as needed to remove or secure systems during de-installation and/or installation and disable any BIOS passwords currently configured on Legacy Systems prior to a service call for installation.
7. Service account IDs, passwords, domain specifications, and personal settings necessary to perform the Services for each system prior to scheduled deployment
8. In the event Dell encounters problems loading Customer-provided software, Customer will contact the proper help resources for that application to complete the installation
9. local administration rights necessary to perform the Services and ensure the domain login is enabled
10. A complete list of all approved peripherals to be installed on the new Client System, and supply all applicable drivers at the Customer Site
11. Adequate storage area for de-installed Legacy Systems and a common area for debris at each Customer Site (to be located within the building where the deployment occurs)
12. Staff to perform quality assurance after login is complete, including access to Active Directory profile to allow end users to access specific software applications and load personalities
13. Post-installation support and troubleshooting assistance as needed to address software application performance, software application and operating system conflicts, software application version issues or co-existence issues

8. SCOPE OF WORK

8.1 Work Hours - Most systems will be deployed during business hours of 8:00am to 5:00pm Monday through Friday. The expected timelines will be based on the deployment of approximately 150-200 systems per week.

Contractor shall ensuring that adequate staffing is available for each phase which will be agreed upon prior to each phase.

This project will include:

1. On-site services for boxing/unboxing of new hardware
2. Basic inventory management
3. Backup PCs
4. Imaging PCs
5. Deployment of new hardware to COA employees
6. Asset recovery

8.2 MATERIAL MANAGEMENT - Contractors shall assist with the current City asset management processes. This shall include:

- a. Movement of new equipment in a warehouse environment.
- b. Packing and unpacking of hardware.
- c. Assist in the tracking process to include maintaining spreadsheets of Serial Numbers, City asset tags, and end user information
- d. Assist in asset recovery
 - o Responsible for removal of hard drives from recovered assets
 - o Responsible for packing recovered assets for disposal

8.3 IMAGING – Contractor shall image PC hardware to meet specifications defined on an individual user basis. The Contractor shall follow the imaging process provided by the City. The basic process are as follows:

1. PC deployment form for each individual user. These forms will define OS and additional applications required by each user.
2. The basic Windows OS image.
3. Access to a networked installation point, from which additional applications can be installed.
4. Installation instructions/training on above processes to Contractor.
5. Training overview of the deployment process to the deployment team.

8.4 DEPLOYMENT – Contractor shall assist in the deployment of new PC hardware to City personnel. The basic process is as follows:

Contractor shall:

1. Pickup new PC (CPU & monitor) from customer warehouse
2. Delivery new PC (CPU & monitor) to install site
3. Basic install/connection of CPU & monitor
4. Confirm with end user that all applications needed and specified on cut sheet/work order are loaded on the end user's PC
5. Confirm with end user that all data is present on new PC
6. Get sign off from end user on cut sheet/work order. If end user is not present get sign off from site contact.
7. If data or applications are missing, Dell tech will contact site SPOC and/or main IT project contact and report issue as well as document this on cut sheet/work order.
8. De-install legacy CPU& monitor
9. Transport legacy CPUs & monitors at end of each work day back to City of Austin warehouse.
10. Document legacy and new CPU service tag and City asset tag and provide reporting daily to City of Austin during deployment.
11. Get sign off from site contact for new systems picked up from warehouse, installed, de-installed, and legacy systems delivered back to City of Austin warehouse.
12. Dell will provide deployment services for City sites requiring deployment of nine (9) or fewer units at the standard install prices.

Assumptions:

1. Deployment services for City sites requiring deployment of 9 or fewer units will be scheduled to ensure maximum efficiency of resources.
2. Dell is not responsible for any data lost or stolen during the transport of the hardware to and from the City of Austin warehouse and deployment site should the hardware be damaged or stolen.

8.5 GENERAL REQUIREMENTS

a. **Project Plan and Controls**

1. The City will provide a detailed project plan for the implementation. Provide an estimated project timeline for the PC deployment.
2. Contractor shall clearly outline in its proposal all assumptions and all tasks it foresees will be required of City staff. Those tasks shall indicate who, by role, the Contractor recommends perform each task.

b. **Testing /Quality Assurance**

- a. Contractors shall be responsible for following all established procedures and guidelines for PC deployment.
- b. Contractors shall be responsible for documenting all established procedure results.

9. ACCEPTANCE OF WORK

Acceptance of work is considered to be when all PCs have been deployed, all established procedures have been followed, and documentation has been completed.

10. TRAINING

The City will be responsible for training contractors on the established deployment procedures prior to each phase.

Exhibit D
Non Discrimination Certification

City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 22nd day of August, 2016

CONTRACTOR
Authorized
Signature

Dell Marketing, L.P.
cyndi_radel@dell.com
om

Digitally signed by
cyndi_radel@dell.com
DN: cn=cyndi_radel@dell.com
Date: 2016.08.22 15:24:57 -0400

Title






Contract Program Manager, Legal

Exhibit E
Non Suspension or Debarment Certification

City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:	 Dell Marketing, L.P.
<hr/>	
Signature of Officer or Authorized Representative:	<div style="display: flex; align-items: center;"><div style="flex: 1;"> cyndi_radel@ l@dell.com</div><div style="font-size: small; margin-left: 10px;">Digitally signed by cyndi_radel@dell.com DN: cn=cyndi_radel@dell.com Date: 2016.08.22 15:24:41 -04'00'</div><div style="margin-left: 10px;">Date:  August 22, 2016</div></div>
<hr/>	
Printed Name:	 Cynthia B. Radel
<hr/>	
Title	 Contracts Program Manager, Legal
<hr/>	

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS FORM**

SOLICITATION NUMBER: Original Contract MA 5600 NC110000037

PROJECT NAME: PC Refresh

The City of Austin has determined that no goals are appropriate for this project. Even though no goals have been established for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

No _____ If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope.

Yes XX _____ If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, subconsultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.


I understand that even though no goals have been established, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Dell Marketing, L.P.

Company Name

Cynthia B. Radel, Contract Program Manager, Legal

Name and Title of Authorized Representative (Print or Type)


Signature

7-28-2016
Date

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
NO GOALS UTILIZATION PLAN**

(Please duplicate as needed)

SOLICITATION NUMBER: Original Contract MA 5600 NC110000037

PROJECT NAME: PC Refresh

PRIME CONTRACTOR/CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant	Dell Marketing, L.P.		
Address	One Dell Way, RR1-33		
City, State/Zip	Austin, Texas 78682		
Phone	231-747-9294	Fax Number	
Name of Contact Person			
Is company City certified:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>	

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Cynthia B. Radel, Contract Program Manager, Legal

Name and Title of Authorized Representative (Print or Type)

Signature

7-28-2016

Date

Provide a list of all proposed subcontractors/subconsultants/suppliers that will be used in the performance of this Contract. **Attach Good Faith Efforts documentation if non MBE/WBE firms will be used.**

Sub-Contractor/Consultant	Summus Industries, Inc.		
City of Austin Certified	MBE <input checked="" type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	1760532202508 VS0000022603		
Contact Person	Jennifer Sturdivant	Phone Number:	(281) 640-1765, Ext. 108
Amount of Subcontract	\$52,000 \$298,100		
List commodity codes & description of services	92031 Installation of Computers, peripherals, and related services		

Sub-Contractor/Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/>	Ethnic/Gender Code:	<input type="checkbox"/> NON-CERTIFIED
Vendor ID Code			
Contact Person		Phone Number:	
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the proposer (HAS, or HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.

Reviewing Counselor _____ Date _____ Director/Deputy Director _____ Date _____