

Amendment Number 5
to
Contract Number DIR-SDD-1951
between
State of Texas, acting by and through the Department of Information Resources
and
Dell Marketing, L.P.

This Amendment Number 5 to Contract Number DIR-SDD-1951 (“Contract”) is between the Department of Information Resources (“DIR”) and Dell Marketing, L.P. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

- 1. Contract, Section 1, Introduction, C. Order of Precedence** is hereby restated in its entirety as follows:

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; Appendix G, SecureWorks Security Services Schedule; 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 G, SecureWorks Security Services Schedule; 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 Appendix G, 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 Appendix G, 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. Contract, Section 2, Term of Contract, is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for eleven (11) months through January 9, 2016 or until terminated pursuant to the termination clauses contained in the Contract. Prior to expiration of the term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to one (1) additional one-year terms.

3. Contract, Section 6, Notification, is hereby restated in its entirety as follows:

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

If sent to the State:

Dana L. Collins, CTPM, CTCM
Contract and Vendor Management
Department of Information Resources
300 West 15th Street, Suite 1300
Austin, Texas 78701
Phone: 512-936-2233
Facsimile: 512-475-4759
Email: dana.collins@dir.texas.gov

If sent to the Vendor:

Cyndi Radel
Dell Marketing L.P.
1044 Woodside Road
Muskegon, MI 49441
Phone: (231) 747-9294
Facsimile: (512) 283-9092
Email: Cyndi_Radel@Dell.com

4. Contract, Section 7, Software License, Service and leasing Agreements, F. Conflicting or Additional Terms, is hereby amended by adding in its entirety as follows:

F. Conflicting or Additional Terms

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

5. Appendix A, Standard Terms and Conditions For Product and Related Services Contracts, is hereby restated in its entirety and replaced with the attached **Appendix A, Standard Terms and Conditions For Product and Related Services Contracts** dated 05/02/2014.

6. Authorized Exceptions to Contract, Appendix A, Standard Terms and Conditions for Product and Related Services Contracts, is hereby Amended and renumbered in its entirety as follow:

A. Contract, Appendix A, Section 6. 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 amended and renumbered 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>

B. Contract, Appendix A, Section 6. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract, is hereby amended and renumbered 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.

C. Contract, Appendix A, Section 7. Contract Fulfillment and Promotion, C. Product Warranty and Return Policies, is hereby amended and renumbered 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.
- 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.

D. Contract, Appendix A, Section 7. Contract Fulfillment and Promotion, E. Internet Access to Contract and Pricing Information 1) Vendor Website, is hereby amended and renumbered 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.

E. Contracts, Appendix A, Section 9, Contract Administration, B. Reporting and Administrative Fees, 2) Detailed Monthly Report, is hereby revised by adding the second paragraph below in its entirety as follow:

2) Detailed Monthly Report

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. The monthly report shall include, per transaction: the detailed sales for the period, Customer name, invoice date, invoice number, description, quantity, manufacturer's suggested retail price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as 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.

If Vendor submits three (3) monthly sales reports or administrative fee payments late within a 12-month period, DIR reserves the right to suspend or terminate this Contract for cause per Section 11.B.4.a. of Appendix A, Termination for Cause. If Vendor is late with its monthly sales report, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly report is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly sales reports. If Vendor is late with its monthly administrative fee payment, Vendor will pay DIR one hundred dollars (\$100) per day ("Late Payment"), for each day the monthly administrative fee payment is late, up to ten (10) days per month for a maximum monthly Late Payment amount of \$1000 for late monthly administrative fee payments. DIR does not waive any other contractual remedy pursuant to this Contract.

F. Contracts, Appendix A, Section 9, 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.

G. Contract, Appendix A, Section 14, Export Compliance, is hereby amended and renumbered in its entirety:

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.

7. Appendix G – SecureWorks Security Services Schedule is hereby added as attached hereto as Appendix G – SecureWorks Security Services Schedule.

All other terms and conditions of the Contract as amended, not specifically modified herein, shall remain in full force and effect. In the event of conflict among the provisions, the order of precedence shall be Amendment Number 5, then Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then Amendment Number 1 and then the Contract DIR-SDD-1951.

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IN WITNESS WHEREOF, the parties hereby execute this Amendment Number 5 to be effective as of the date of last signature, but in all events not later than February 9, 2015.

Dell Marketing, L.P.

Authorized By: Signature on file

Name: Cynthia B. Radel

Title: Public Contract Manager, Legal

Date: January 30, 2015

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

Authorized By: Signature on file

Name: Dale Richardson

Title: Chief Operations Officer

Date: 2/6/15

Office of General Counsel: Signature on file 2-5-15