

Amendment Number 1
to
Contract Number DIR-TSO-2634
between
State of Texas, acting by and through the Department of Information Resources
and
EMC CORPORATION, DBA SYSTEM PERIPHERALS, INC.

This Amendment Number 1 to Contract Number DIR-TSO-2634 (“Contract”) is between the Department of Information Resources (“DIR”) and EMC CORPORATION, DBA SYSTEM PERIPHERALS, INC. (“Vendor”). DIR and Vendor agree to modify the terms and conditions of the Contract as follows:

1. **Contract, Section 2. Term of Contract** is hereby amended as follows:

DIR and Vendor hereby agree to extend the term of the Contract for one (1) year through September 10, 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 two (2) additional one-year renewal terms.

2. **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 02/04/2015.
3. **Authorized Exceptions to Appendix A, Standard Terms and Conditions For Product and Related Service Contracts** dated 02/04/2015.

- A. **Appendix A, Section 5. Intellectual Property Matters**, is hereby amended by placing the following paragraph at the beginning of this section as follows:

5. Intellectual Property Matters

This contract does not contemplate, authorize, or support acquisition of custom software products or services. If Vendor and Customer seek to contract for such product or service, they must use a separate contract or seek amendment with DIR of this contract. If DIR and Vendor decide to authorize customized software or hardware products, then the below intellectual property language applies.

For services relating to EMC products, the State of Texas or Customer shall own all copyright rights in written reports, analyses and other working papers delivered by EMC to Customer in the course of performing Services, as well as Customer’s derivative works thereof, subject to EMC’s rights in the underlying intellectual property embodied therein or used by EMC to perform the Services.

B. Appendix A, Section 10.A.3 Infringements, is hereby replaced in its entirety as follows:

3. Infringements

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, which pertain to products and services offered under the Contract involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. 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 INCLUDING ATTORNEYS' FEES. The defense shall be coordinated by VENDOR WITH THE Office of the Attorney General WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

b) Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service provided under the Contract in combination with product or services not provided under the Contract, (ii) use of the product or service for a purpose or in a manner for which the product or services was not designed, (iii) any modification made to the product without Vendor's written approval, (iv) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (v) any technology having intellectual property right owned by or licensed to Customer by third party, or (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement, including use of an older version of software when Vendor has informed Customer that use of a newer software release made available to Customer would have avoided the infringement.

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, (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) if neither options (i) and (ii) are available, request return of the infringing product and upon receipt thereof, refund the purchase price paid by Customer, including Customer's related product installation and removal/return expenses.

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

K. Limitation of Liability

For any claim or cause of action arising under or related to the Contract: i) to the extent permitted by the Constitution and the laws of the State, none of the parties shall be liable

to the other for punitive, special, or consequential damages, even if it is advised of the possibility of such damages; and ii) Vendor's liability for damages of any kind to the Customer shall be limited to the total amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action. However, this limitation of Vendor's liability shall not apply to claims of bodily injury; violation of intellectual property rights including but not limited to patent, trademark, or copyright infringement; indemnification requirements under this Contract; and violation of State or Federal law including but not limited to disclosures of confidential information and any penalty of any kind lawfully assessed as a result of such violation.

IN NO EVENT WILL VENDOR OR ITS SUPPLIERS OR SUBCONTRACTORS BE LIABLE TO THE STATE OF TEXAS, CUSTOMERS, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING DOWNTIME COSTS, LOST REVENUE OR LOST PROFITS), REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY.

Vendor will be liable for direct claims for restoration of loss or corruption of data, subject to the liability cap, if Vendor's equipment is found to have caused such data loss or corruption; provided, however, that Vendor shall not be liable for any loss or corruption of data if the State of Texas or Customer, its personnel, or its contractors have contributed to the data loss or corruption by any of the following circumstances: (i) Customer has failed to put in place a reasonable data recovery plan; (ii) Customer does not have a functioning data back-up repository on separate equipment for the affected data with at least weekly back-ups; (iii) Customer has allowed Vendor maintenance services to lapse; (iv) Customer has failed to timely follow a Vendor instruction or EMC Product Documentation concerning equipment on which the affected data is stored; (v) Customer failed to adhere to Vendor's best practices guides; or (vi) the data loss is due to Customer's failure to timely replace a failed disk; (vii) Customer does not have a functioning, uninterruptable power supply enabled.

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. In the event of a conflict among provisions, the order of precedence shall be this Amendment Number 1, and then the Contract.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the parties hereby execute this amendment to be effective as of the date of the last signature, but in all events, no later than September 10, 2015.

EMC CORPORATION, DBA SYSTEM PERIPHERALS, INC.

Authorized By: Signature on File

Name: Joseph F. Spaniol III

Title: Vice President

Date: 9/24/2015

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

Authorized By: Signature on File

Name: Dale Richardson

Title: Chief Operating Officer

Date: 9/29/15

General Counsel: DRBrown 9-28-15