

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

1. Introduction

A. Parties

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

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-216, on December 23, 2013, for Data Storage Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-216 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

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, Software License Terms; Appendix E, Texas Ordering Agreement (TOA); Appendix F, Support Agreement to TOA; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-216, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-216, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, 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 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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 may extend the Contract, by amendment for up to three (3) optional one-year terms. Protracted contract negotiations may, in DIR’s sole discretion, result in fewer optional renewal terms.

3. Product and Service Offerings**A. Products**

Products available under this Contract are limited to Data Storage Products and Related Services and Cloud Services as applicable to Data Storage, as specified in Appendix C, Pricing Index. **Stand-alone software is not allowed. For software to be allowed, it must be bundled with hardware products and be shown with bundled pricing only.** Vendor may incorporate changes to their product offering; however, any changes must be within the scope of the RFO and products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

B. Services

Services available under this Contract are limited to Data Storage Related Services and Cloud Services as applicable to Data Storage only. Services in support of products may include Maintenance, Technical Services, Managed Services and Training as specified in the RFO and Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

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

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarters of one percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

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

6. Notification

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

If sent to the State:

Dana L. Collins, CTPM, CTCM
Manager, Contract and Vendor Management
Department of Information Resources

300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 936-2233
Facsimile: (512) 475-4759
Email: dana.collins@dir.texas.gov

If sent to the Vendor:

Mike Parr
EMC Corporation
11044 Research Blvd., Building B, Suite 500
Austin, TX 78759
Phone: (512) 343 - 3353
Facsimile: (512) 527 - 0435
Email: mike.parr@emc.com

7. Software License and Service Agreements

A. Software License Agreement

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the Software License terms set forth in Appendix D of this Contract. No changes to the Software License terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Vendor and Order Fulfiler shall make the Software License terms and conditions available to all Customers at all times.

2) Compliance with the Software License agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software License agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software License agreement terms and conditions.

B. Shrink/Click-wrap License Agreement

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

C. Service Agreement

Services provided under this Contract shall be in accordance with the Service Agreements as set forth in Appendix E and F of this Contract. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

D. 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.

8. Authorized Exceptions to Contract or any Appendices.

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

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.

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

EMC Corporation, dba System Peripherals, Inc.

Authorized By: Signature of File

Name: Joseph F. Spaniol III

Title: V.P. Federal & Public Sector Contracts

Date: September 4, 2014

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

Authorized By: Signature on File

Name: Karen Robinson

Title: Executive Director

Date: September 10, 2014

Office of General Counsel: D.B. / September 10., 2014