

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES**

CONTRACT FOR SERVICES

DELL MARKETING, L.P.

1. Introduction

A. Parties

This Contract for 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-199, on October 30, 2012, for Cloud Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-199 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, Sample Statement of Work for Cloud Services; Appendix E, Service Level Agreement; Appendix F, Cloud Solutions Schedule; Appendix G, Acceptable Use Policy; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-199, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-199, 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 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substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.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. 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 this 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. Service Offerings

Services available under this Contract are limited to those specified in Appendix C, Pricing Index. Vendor may incorporate changes to their services offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above. Vendor may not add services which were not included in the Vendor's response to the solicitation described in Section 1.B above.

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-fourths of one percent (.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 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:

Shannon Kelley
Enterprise Contract 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:

Executive Director - Legal
Dell Marketing LP
2300 W. Plano Parkway
Plano, Texas 75075
Phone: (972) 577-2000

7. Statements of Work, Service Agreement, Shrink/Click-wrap Agreements, and Software, License Agreements

A. Statement of Work and Service Agreement

Services provided under this Contract shall be based on the Sample Statement of Work as set forth in Appendix D this Contract and the Service Level Agreement as set forth in Appendix E, F and G of this Contract. Customers may negotiate the terms and conditions of a SOW and Service Agreement to suit their business needs, so long as the negotiated terms and conditions do not diminish Vendor's commitments set forth in the Appendix D Sample Statement of Work, Appendix E, F, and G, Service Level Agreements, or this Contract.

B. Shrink/Click-wrap Agreement

Regardless of any other provision or other license or service 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 terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License/Service Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license/service terms, Customer shall be responsible for negotiating with the Vendor to obtain additional changes in the Shrink/Click-wrap Agreement language.**

C. Software License Agreements

To the extent Software is provided as a part of the Solution, such Software is provided subject to the following terms:

- A. License. For the applicable Term, and subject to the restrictions below, Vendor grants Customer a non-exclusive, non-transferable, non-sublicensable, limited, revocable license under Vendor's Intellectual Property rights to access and use the applicable Software as permitted by this Schedule.
- B. Restrictions. Unless otherwise expressly permitted in this Schedule, without Vendor's prior written consent, Customer will not:
 - 1. permit any third-party to use or copy the Software, unless such third-party is an authorized End User;
 - 2. modify, translate, alter, adapt, publish, transmit, remove, reverse engineer, decompile, disassemble, reproduce, distribute, display, create derivative works, compilations or collective works based on or otherwise exploit any of the Software;
 - 3. merge the Software with any other software;

4. sell, sublicense, rent, lease, grant a security interest in, or otherwise transfer rights to the Software;
5. benchmark the performance or the Software of Solution without Vendor's prior written consent; or
6. use the Software to operate in or as a time-sharing, outsourcing or service bureau environment or in any way allow third-party access to the Solution.

Customer acknowledges and agree that Customer is liable for any breach of this Schedule by any End User.

- C. **Rights Reserved. THE SOFTWARE IS LICENSED, NOT SOLD.** Except for the license expressly granted herein, Vendor, on behalf of itself and its licensors and suppliers, retains all right, title and interest in and to the Software and in all related Intellectual Property and its derivative works, including registrations, applications, renewals and extensions of such rights (the "Works"). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereinafter developed and any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, adaptations, translation, display, re-publication or performance of the Works, except as specifically permitted herein, is strictly prohibited. Vendor, on behalf of itself and its licensors and suppliers, retains all rights not expressly granted herein.
- D. **Open Source Software.** A portion of the Software may contain or consist of open source software, which Customer may use under the terms and conditions of the specific license under which the open source software is distributed.

8. Authorized Exceptions to Request for Offer DIR-SDD-TMP-199 for Cloud Services.

- A. **Appendix A, Vendor Information, B. Certification Statement,** Subsections xi, xvi, and xviii are hereby replaced in their entirety as follows:

(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 in the event this section applies to Vendor's circumstances, Vendor may submit these Social Security numbers marked as confidential so that disclosure or confidentiality will determined by the Office of the Attorney General).

(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 the 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;

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

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

A. Section 2. Definitions, F. Purchase Order, is hereby replaced in its entirety as follows:

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 authorization instrument. Neither Vendor nor Customer is or shall be bound by any terms nor conditions imprinted on or embedded in purchase orders, order acknowledgments or in electronic or other communications between the parties relating to orders.

B. Section 3. General Provisions, E. Survival, is replaced in its entirety as follows:

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 4. Intellectual Property Matters, is hereby replaced in its entirety as follows:

Customer shall own all right, title and interest to the Deliverables and Vendor agrees to grant to Customer a perpetual, non-exclusive, non-transferable, royalty-free license to use Vendor’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) Vendor 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 Vendor 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 Vendor 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.

D. Section 5. Terms and Conditions Applicable to State Agency Purchases Only, A. 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 as follows:

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>

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

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.

F. Section 6. Contract Fulfillment and Promotion, C. Services Warranty and Return Policies, is hereby replaced in its entirety as follows:

Vendor warrants that it shall perform the cloud services in a good and workmanlike manner in accordance with the terms set forth in the Cloud Service Agreement.

G. Section 6. Contract Fulfillment and Promotion, E. Vendor Logo, is hereby replaced in its entirety as follows:

DIR may use the Vendor's name and logo in the promotion of the Contract to communicate the availability of 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 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 trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor. Vendor's logo is subject to Vendor's corporate compliance usage rules.

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

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 trade shows 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 booth.

I. Section 7. Pricing, Purchase Orders, Invoices, and Payments, A. Manufacturer's Suggested Retail Price (MSRP) or List Price is hereby replaced in its entirety as follows:

MSRP is defined as Vendor's published retail price for such Cloud Services.

J. Section 7. Pricing, Purchase Orders, Invoices, and Payments, B. Customer Discount, is hereby replaced in its entirety as follows:

The minimum Customer discount for the services will be the percentage off MSRP as detailed in Appendix C Pricing Index.

K. Section 7. Pricing, Purchase Orders, Invoices, and Payments, C. Customer Price, is hereby replaced in its entirety as follows:

- 1) The price to the Customer shall be as set forth in Appendix C.

Customer Price = MSRP – Customer Discount

- 2) During the term of this Contract and subject to all applicable portions of Section 3E of Appendix A (Survival), if pricing for the cloud services available under this Contract are provided by Vendor at a lower price (1) to an Eligible Customer who is not purchasing those cloud services under this Contract, then the available Customer Price in this Contract shall be adjusted to that lower price. This requirement applies to the cloud services by Vendor to an Eligible Customer for a quantity of one (1) under substantially similar terms and conditions, cloud services specified in Appendix C. 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.
- 3) All orders are subject to Vendor’s acceptance. The number of systems, units and End Users for which any Customer has purchased Solution(s) is indicated on the Order Form. Usage in excess of these numbers or for a period of time longer than the Term will result in additional costs. The additional costs per billing period will be determined by multiplying the excess usage by the contracted fee per system, unit or End User in the original Order Form. Charges begin to incur on the Activation Date.

L. Section 7. Pricing, Purchase Orders, Invoices, and Payments, E. Tax Exempt, is hereby replaced in its entirety as follows:

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). Customer shall provide a tax exemption certificate upon request. Customers will provide Vendor with a valid tax exemption certificate upon request.

M. Section 7. Pricing, Purchase Orders, Invoices, and Payments, G. Changes to Prices, is hereby replaced in its entirety as follows:

Vendor may change the price of any service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels set forth in Appendix C, Pricing Index. 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 services currently being performed under a prior purchase order.

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

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.

O. Section 7. Pricing, Purchase Orders, Invoices, and Payments, J. Payments, is hereby replaced in its entirety as follows:

The statute states that payments for goods and services are due thirty (30) days after the goods are provided, the monthly services completed, or a correct invoice is received, whichever is later. For purposes of this Contract each completion of a month's worth of services shall constitute completion of a subset of services for which an invoice may be issued. Payment under the Contract shall not foreclose the right to recover wrongful payments.

P. Section 7. Pricing, Purchase Orders, Invoices, and Payments, K. Acceptance, is hereby added as follows:

With respect to Services provided to Customers by Vendor under the Contract that have Services Descriptions and an Order executed by the Customer and Vendor (respectively, the "Specifications"), Customer shall determine whether such products and Services meet the applicable Services Descriptions and agreed upon performance requirements. If the Service meets the applicable Services Descriptions and agreed upon performance requirements, the Customer agrees to accept such Service. Unless otherwise agreed upon by the Customer and Vendor, Service shall be deemed accepted if the Customer does not, within ten (10) calendar days from the date such service has begun, issue to Vendor a written notice of partial acceptance or rejection of the service based on the fact that the service did not meet the Specifications applicable to it ("Deemed Acceptance" or "Deemed Accepted"). No invoice shall be issued for any such Service until the Customer either accepts the product or service or such product or service is Deemed Accepted.

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

- 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, reporting period, and administrative fee amount on any remittance instruments.

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

- 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 (5) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within a maximum of five (5) 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 (5) 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.

S. Section 8. Contract Administration, C. Records and Audit, Subsections 2), 3) and 4) are hereby replaced in their entirety as follows:

- 2) Vendor shall maintain adequate records relating to the requirements of this Contract and relevant to the performance of the Contract by Vendor 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 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 Fillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with the Vendor's books and records shall be available to the DIR Internal Audit department, DIR Contract Management

staff and designees as needed. Vendor 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 reasonable audit costs.

Material Accounting Error means (a) with regard to audits of invoices, an aggregate variance from all applicable invoices within a Vendor fiscal quarter in excess of 1.5 percent of the invoices reviewed during such audit under this Contract; 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 five (5) percent.

T. Section 9. Vendor Responsibilities, A. Indemnification, is hereby replaced in its entirety as follows:

1) INDEPENDENT CONTRACTOR

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

2) Acts or Omissions

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 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 negligent or wrongful 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. VENDOR SHALL PAY ALL COSTS OF DEFENSE INCLUDING REASONABLE 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. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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 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 Vendor'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 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. 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.

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 for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the products, services, or deliverables without Vendor's written approval, (iii) any modifications made to the products, services, or deliverables by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.

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.

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

1) 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, AND WORKERS' COMPENSATION. 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.

2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION 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 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. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

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

- (a) Vendor 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 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 negligence of its employee or subcontractor. If Vendor 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 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 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, 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 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 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 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. The parties agree that in no event will Vendor's internal practices of replicating data in performance of cloud services be considered Vendor accepting Data backup responsibility.

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

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.

X. Section 9. Vendor Responsibilities, K. Limitation of Liability, is hereby replaced in its entirety as follows:

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 of Texas, 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 aggregate liability for damages of any kind under the Contract other than for claims for third party patent, trademark or copyright infringement ("IP Claims") shall be limited to the lesser of: (A) thirty-six times the average monthly amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action; or (B) \$20,000,000. Vendor's aggregate liability under the Contract for IP Claims shall not exceed \$15,000,000. CUSTOMERS SHOULD EVALUATE THEIR RISK FOR EACH PURCHASE: IF NEEDED, CUSTOMERS MAY NEGOTIATE HIGHER LIMITATIONS OF LIABILITY.

Y. Section 9. Vendor Responsibilities, L. Overcharges, is hereby replaced in its entirety as follows:

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 cloud services purchased by DIR or its Customers under this Contract during the time period referenced in the litigation.

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

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

Vendor agrees that all products and/or services 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 products and/or services, either at the end of the product's and/or services' useful life or the end of the related Agreement for such-products and/or services, and in accordance with 1 TAC 202.28.

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

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.

CC. Section 9. Vendor Responsibilities, U. Drug Free Workplace, is hereby replaced in its entirety as follows:

Drug Free Workplace Policy. 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 in the unlikely event onsite services are required in a mutually agreed statement of work.

DD. Section 10. Contract Enforcement, B. Termination, 1) Termination for Non-Appropriation, is hereby replaced in its entirety as follows:

Customer shall not place Purchase Orders if funds sufficient to pay its obligations under the Contract for the state's current fiscal biennium 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.

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

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 Vendor will not be able to deliver services due to reasons within Vendor's control in accordance with a mutually agreed Statement of Work.

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

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.

GG. Section 10. Contract Enforcement, D. Export Compliance, is hereby added:

Export Compliance; Excluded Data. Customer will comply with all applicable import, re-import, export and re-export control laws, orders and regulations ("Control Laws"), including the Export Administration Regulations, the International Traffic in Arms Regulations ("ITAR") and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, Customer acknowledges that it is solely responsible for compliance relating to the manner in which it chooses to use the Solution, including its transfer and processing of data or software, the provision of data, software or any Customer Solution to End Users, and any Control Laws of the country in which the Services or Software are rendered or received. Data, Software or any Customer Solution that Customer provides in connection with the Solution will not: (i) be classified or listed on the U.S. Munitions list; (ii) contain defense articles or defense services; or (iii) contain ITAR-related data (items (i) – (iii) collectively, the "Excluded Data").

{Remainder of page intentionally left blank}

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

Dell Marketing, L.P.

Authorized By: signature on file

Name: Peter H. Mueller

Title: Director

Date: 6/29/15

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: 7/2/15

Office of General Counsel: signature on file D. Brown 7/2/15