

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Environmental Service  
**AGENDA DATE:** December 2, 2008  
**CONTACT PERSON/PHONE:** Ellen A. Smyth, Director, 621-6700  
Suzanne Santó, Accela Automation Project Manager, 541-4606  
**DISTRICT(S) AFFECTED:** Terrence Freiburg, Purchasing Manager, 541-4313  
All

**SUBJECT: Accela Automation Project Infrastructure – Backend Hardware**

Request that the Purchasing Manager of the Financial Services Department, Purchasing Division be authorized to purchase the backend hardware required for the Accela Automation Project. This purchase is being facilitated through a state of Texas DIR contract with Checkpoint Services, Inc and SHI Government Solutions, Inc. Since the total purchases will be in excess of \$100,000, approval by City Council is required.

**BACKGROUND / DISCUSSION:**

The Environmental Services Department would like to use DIR Contract #SDD-192. The purchase amount will be \$105, 551.81 for the backend hardware infrastructure for the Accela Automation Project.

**PRIOR COUNCIL ACTION:**

Council has approved participation in the Department of Information Resource (DIR) program in February 2007.

**AMOUNT AND SOURCE OF FUNDING:**

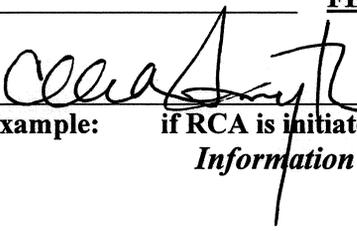
The funding source for this purchase is coming from Fund 40403 (Environmental Services), Deptid 34010289, Account 508010, Class 34000.

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:**  \_\_\_\_\_  
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

JOHN COOK  
MAYOR

JOYCE WILSON  
City Manager

TERRY FREIBURG  
PURCHASING MANAGER



CITY COUNCIL  
ANN MORGAN LILLY, DISTRICT 1  
SUSANNAH M. BYRD, DISTRICT 2  
EMMA ACOSTA, DISTRICT 3  
MELINA CASTRO, DISTRICT 4  
RACHEL QUINTANA, DISTRICT 5  
EDDIE HOLGUIN JR., DISTRICT 6  
STEVE ORTEGA, DISTRICT 7  
BETO O'ROURKE, DISTRICT 8

---

To: Terrence Freiburg, Purchasing Manager  
Ed Hyatt, Administrative Analyst

From: Ellen A. Smyth, Director

Date: November 5, 2008

Re: Accela Automation Infrastructure

  
Authorized Signature

---

The following are the decision factors to be considered in determining whether utilizing a procurement program is the best approach to the purchase of a product (as approved by City Council). This will be the infrastructure required to allow implementation of the Accela Automation Project in 2009.

1. *Is there an urgent need for the product/service? In other words, is time of the essence?*

The project schedule was established in May 2008 to:

- solidify hardware quotes in October 2008
- submit for purchase in November 2008
- install the first of January 2009

This will allow the program team to begin testing the product that will be configured and inserted in the system by January 2009.

2. *Does the purchase through the Program promote the standardization of equipment?*

Yes, the selection of the equipment was performed by the IT Department to meet the standards of the City of El Paso and the requirements as outlined by the vendor of the software that was purchased for the Accela Automation project.

3. *Does the purchase through the Program support local business? If not, is there a comparable product/service available locally?*

Yes, the equipment is supporting local business by using a City of El Paso Hub, Checkpoint Services, Inc approved business.

4. *Do the available vendors have prior work experience and/or familiarity with the City?*

Yes, these are current vendors, Checkpoint Services and SHI Government Solutions; both have working relationship and are very experienced with the City of El Paso.

5. *Is the pricing reasonable as compared to other similar products/work performed for the City of El Paso in the past or as quoted from other companies?*

Yes, this is a Texas DIR contract price and has been reviewed by the IT Department for pricing and performance.

**AMENDMENT NUMBER 14  
TO  
Contract Number DIR-SDD-192  
BETWEEN  
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES  
AND  
DELL MARKETING, L.P.**

This Amendment Number 14 is hereby affixed to and shall become a part of Contract Number DIR-SDD-192, between the Department of Information Resources ("DIR") and Dell Marketing, L.P. ("Contractor" or "Vendor"). DIR and Contractor agree to modify the terms and conditions of the Contract as follows:

1. **Appendix A, Section 2, Term** is hereby restated in its entirety as follows: The term of this Contract is hereby extended through December 21, 2008, unless earlier terminated pursuant to the termination clauses contained in the Contract. No extension options remain.
2. **Contract Section 6, Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts**, is hereby revised to include the following:
  35. All references to Catalog Information System Vendors (CISV) in Appendix A are hereby deleted.
  36. All references to Texas Building and Procurement Commission (TBPC) are hereby revised and replaced with Texas Comptroller of Public Accounts (CPA)
3. **Appendix C, Minimum Discounts to be Applied to Products**, is hereby replaced in its entirety with the restated Appendix C as attached to this Amendment Number 14.
4. **Appendix D, Pricing and Product Offering for Standard Configurations**, is replaced in its entirety with the restated Appendix D, Pricing and Product Index for Standard Configurations Restated: May 16, 2008. The purpose of this restatement is to reflect the current desktop and notebook standard configuration offerings as attached to this Amendment Number 14.

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 14, Amendment Number 13, Amendment Number 12, Amendment Number 11, Amendment Number 10, Amendment Number 9, then Amendment Number 8, then Amendment Number 7, Amendment Number 6, then Amendment Number 5, then Amendment Number 4, then Amendment Number 3, then Amendment Number 2, then Amendment Number 1, and then Contract DIR-SDD-192.

**IN WITNESS WHEREOF**, the parties execute this Amendment to be effective May 16, 2008.

**DELL MARKETING, L.P.**

**STATE OF TEXAS, acting by and through the  
DEPARTMENT OF INFORMATION  
RESOURCES**

Authorized By: signature on file

Authorized By: signature on file

Name: Mark Hovan

Name: Cindy Reed

Title: VP/GM of SPA Sales

Title: Deputy Executive Director, Operations &  
Statewide Technology Sourcing

Date: 5/16/08

Date: 5/17/08  
Legal: Cynthia Kreider, 5/16/08

STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES

CONTRACT FOR PRODUCTS AND RELATED SERVICES

Dell Marketing, LP

1. Introduction

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Dell Marketing, LP (hereinafter "Vendor"), with its principal place of business at One Dell Way, Box 8707, 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 posting on the Texas Building and Procurement Commission's Electronic State Business Daily, posting number DIR-BUSOP-TMP-008 on April 21, 2004, for Manufactured Computer Equipment, Peripherals & Related Services.

**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, Minimum Discounts to be Applied to Products; and Appendix D, Pricing and Product Index for Standard Configurations, 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, and finally Appendix D.

2. Product and Service Offerings

The only products and services to be sold under this contract are those that by Texas Government Code Chapter 2054 are defined as "information resources technologies" and that have a valid business use by Texas State agencies.

**A. Products**

Products available under this Contract are limited to Dell Branded Products, Services as defined in Section 2.B below, and those third-party items listed in Vendor's CISV catalog. Vendor may incorporate changes to branded- product offerings; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above.

**B. Product Standard Configurations**

- 1) Vendor may make available standard configurations, as defined by DIR, for branded products offered under the Contract. Branded products most commonly procured by Customers may be the basis for standard configurations. Products defined as standard

Vendor Contract No. \_\_\_\_\_

configurations may also include component upgrade options that may be selected by the Customer.

- 2) Standard configurations shall be listed in Appendix D, Pricing and Product Index for Standard Configurations. On a quarterly basis, or on a more frequent basis as defined by DIR, Vendor and DIR shall review and update as necessary the products and specifications defined as standard configurations. As needed, the appropriate section of Appendix D of the Contract shall be amended to reflect the then-approved standard configurations.
- 3) Upon DIR approval, Vendor may include other products as promotional offerings, in addition to the product models selected as standard configurations. Vendor may establish qualifying criteria that Customers will need to meet in order to receive such promotional offerings, provided that the established criteria are uniformly applied to all Customers.
- 4) DIR reserves the right to request Vendor to increase or decrease the number of products offered as standard configurations if it is in the best interest of the State to do so.
- 5) Vendor and DIR agree that pricing established for standard configurations will remain in effect until a review, update and agreement has been reached by both parties as to delete or change the standard configuration or pricing.

#### **C. Services**

Services available under this Contract are defined as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Contract. These types of services include warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, image development and maintenance, recycling/disposal, training and certification, pre-implementation design, and service desk/help desk. General consulting and all forms of application development and programming services are excluded.

#### **D. Special Pricing for Products or Services (bundled purchase orders)**

During first quarter (1<sup>st</sup>) of calendar year 2005 Vendor and DIR will work together to develop a plan for bundling Purchase Orders for products and services procured through the Contract.

### **3. Customer Discount**

The minimum Customer discount for products, excluding standard configurations, to be used in the calculation of the Customer Price as specified in Section 7 of Appendix A is set forth in Appendix C, Minimum Discounts to be Applied to Products.

### **4. DIR Administrative Fee**

An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers by Order Fulfillers 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. Any change in the administrative fee shall be incorporated in the price to the Customer.

The administrative fee shall be one-fourth of one percent (.25%) based on the dollar value of all sales to customers pursuant to this Contract, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$250.00. Vendor shall pay DIR the administrative fee thirty (30) days after the close of the end of the previous calendar month, The

cumulative total administrative fee due under this Contract shall not be less than \$500,000.00 for any Annual Period based on the State Fiscal Year.

**5. Notification**

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

If sent to the State:

Sherry Parks, Service Delivery Division  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Facsimile: (512) 475-4759  
Email: sherry.parks@dir.state.tx.us

If sent to the Vendor:

Heather M. Smith  
Dell Marketing, LP.  
One Dell Way, Box 8707  
Round Rock, Texas 78682  
Phone: (512) 723-7380  
Facsimile: (512) 283-9092-  
Email: heather\_m\_smith@dell.com

**6. Authorized Exceptions to Terms and Conditions.**

**1. Section 2, Term is restated in its entirety as follows:**

The term of the Contract shall be two years commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to two additional one-year terms.

**2. Section 4. E, Manufacturer's Suggested Retail Price (MSRP), is restated in its entirety as follows:**

Manufacturer's Suggested Retail Price (MSRP) – Dell's published retail price.

**3. The first sentence of Section 5.B.2 Modification of Contract Terms and/or Amendments, is restated in its entirety as follows:**

Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract and are agreed to by Order Fulfiller and Vendor may be added in a Purchase Order and given effect.

**4. The first sentence of Section 5.E, Survival is restated in its entirety as follows:**

All applicable warranties or service agreements that were entered into between an Order Fulfiller and a Customer through a Purchase Order issued under the terms and conditions of the Contract shall survive the termination of the Contract.

**5. Section 6.B, Commodity Software, is restated in its entirety as follows:**

Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Within the scope of this Contract Order Fulfillers are authorized to sell all Commodity Software listed in the Vendor's CISV catalog as long as it is also listed in the Order Fulfiller's CISV catalog. For Commodity Software not listed in the CISV Catalog, Vendor represents that Order Fulfillers will not license through a signed or unsigned license agreement, volume licensing agreement or a Purchase Order confirmation, any commodity software to State agencies unless the agency is able to provide a DIR granted waiver stating that the State agency is able to purchase the commodity software outside the DIR Commodity Software contracts. Institutions of higher education are exempt from this Section.

**6. Section 6.is amended by adding Subsection C to read as follows:**

**C. Third-Party Products**

**1) Third-party Product Warranties**

Vendor will pass through to Customers all warranties for third-party products that are purchased through this Contract.

**2) Third-party Product Returns**

Customers purchasing third-party product through this Contract will adhere to Vendor's then current published policy on the return of third-party products.

**7. The second sentence of Section 7.A, Customer Price is restated in its entirety as follows:**

**The price to the Customer shall be calculated as follows:**

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

**8. Section 7.B Customer Discount is restated in its entirety as follows:**

- 1) The minimum Customer discount for all products and services will be the percentage off MSRP specified in Section 3 of the Contract. Customers purchasing products and services under the Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.
- 2) The maximum Customer price for the standard configurations shall be as specified in Appendix D, Pricing and Product Index for Standard Configurations. Customers purchasing standard configurations under the contract may negotiate more advantageous pricing. Vendor may establish qualifying criteria that Customers must meet in order to receive more advantageous pricing, provided that the established criteria is uniformly applied to all Customers. Vendor reserves the right to waive such criteria if it is in the best interest of the Customer or the State to do so
- 3) During the contract term, if substantially the same or a smaller quantity of a product is sold by the Vendor outside of this Contract at a lower price, the price under this Contract shall be immediately reduced to the lower price.

**9. The first sentence of Section 7.G, Changes to Prices is restated in its entirety as follows:**

Vendor may change the price of any product or service at any time, based upon changes to MSRP, but discount levels shall remain consistent with the levels specified in Section 3 of the Contract.

**10. The second sentence of Section 8.B.1.a, Designation of Order Fulfillers, is restated in its entirety as follows:**

In designating Order Fulfillers, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses.

**11. Section 8.B.1e, Designation of Order Fulfillers is restated as follows:**

Vendor shall not prohibit an Order Fulfiller from participating in other procurement opportunities offered through DIR. The exception to this Section would be where an Order Fulfiller voluntarily signs an exclusive agreement with the Vendor.

Vendor Contract No. \_\_\_\_\_

**12. Section 8.B.1, Designation of Order Fulfillers, is amended by adding subsection (f), as follows:**

Order Fulfillers may distribute any product or services listed in the Vendor's CISV catalog as long as that product or service is also listed in the Order Fulfiller's CISV catalog.

**13. The second sentence of Section 8.B.2, Changes in Order Fulfiller List, is restated in its entirety as follows:**

Prior to adding or deleting Order Fulfillers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses.

**14. Section 8.E.1, Vendor Website, is restated in its entirety as follows:**

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. All products and services offered under the contract
- D. All product and services specifications for products offered under the contract
- E. Current Contract pricing
- F. Contact information for Vendor business segments (i.e. State and Local, Higher Education, K-12, Health, etc.)
- G. Named Order Fulfillers and contact information for each designated Order Fulfiller
- H. Instructions for obtaining quotes and placing Purchase Orders through Dell direct or through a designated Order Fulfiller. Information should include the Catalog Information Systems Vendor Number (CISV) of the Order Fulfillers.
- I. Warranty policy terms and conditions
- J. Return policy terms and conditions.

**15. The first sentence of Section 8.E.5, Use of Access Data Prohibited, is restated in its entirety as follows:**

If Vendor or Order Fulfillers stores, collects, or maintains data electronically as a condition of accessing Contract Information, such data shall only be used internally by Vendor or Order Fulfillers for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties or used for other marketing purposes.

**16. Section 8.H, Trade Show Participation, is restated in its entirety as follows:**

Upon thirty (30) calendar days from execution of the Contract, Vendor shall develop and submit to the State Contract Administrator an annual detailed plan for promoting and marketing the Contract to DIR Customers. DIR reserves the right to require a change of Vendor's plan if, in the opinion of DIR, it does not adequately promote the Contract. Thirty (30) days prior to the anniversary of the effective date of the Contract, Vendor shall submit an updated plan to the State Contract Administrator.

In addition, Vendor and Order Fulfillers at their expense may, at DIR's discretion, be required to provide a staffed booth at no more than two trade shows each State fiscal year sponsored by DIR's Service Delivery Division. DIR will provide Vendor/Order fulfillers with no less than four (4) months lead notice prior to the date of a show.

Vendor Contract No. \_\_\_\_\_

**17. Section 8.K, DIR Cost Avoidance, is restated in its entirety as follows:**

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance (savings) the State has achieved through the Contract. During the first (1<sup>st</sup>) quarter of calendar year 2005 Vendor will work with DIR to establish methods for calculating Cost Avoidance for procurements made through the Contract.

**18. Section 9.A, Purchase Orders, is amended by adding the following sentence to the end of the existing text:**

Customers shall have the ability to order products through electronic or paper submission of a purchase order.

**19. Section 9, Purchase Orders, Invoices, and Payments, is amended by adding subsection D, as follows:**

**D. Acceptance.**

A Customer shall determine whether all Products and Services delivered meet the Vendor's published specifications. No payment shall be made for any Products or Services until the Customer has accepted the Products or Services. Unless otherwise agreed upon between the Customer and the Vendor, the Customer shall within fifteen (15) calendar days from the date of the receipt of the Vendor's invoice, issue a written notice of partial acceptance or rejection of the Products or Services; otherwise, the Product or Services shall be deemed accepted.

**20. Section 10.A.1 is deleted in its entirety.**

**21. Section 10.A.2 is renumbered to be Section 10.A.1 and restated in its entirety as follows:**

Compliance with any Software License Agreement sold through this Contract is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with any 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.

**22. Section 10.B, Shrink/Click-wrap License Agreement, is restated in its entirety as follows:**

Vendor may sell third-party shrink/click-wrap software products as awarded under this Contract. All software sold is subject to the license agreement provided with the software by the publisher. Customers are bound by, and will abide by all such software licensing agreements.

**23. Section 10.C, Service Agreement, is deleted in its entirety.**

**24. Section 11.A.2, Vendor Contract Administrator, is amended by adding the following sentence to the end of the existing text:**

In such an instance, Vendor requests 20-calendar days notice.

**25. Section 11.B.1.b is amended by adding the following sentence to the end of the existing text:**

Upon receipt of 10 days notice, Vendor shall grant DIR, during normal business hours, necessary access to customer purchase orders and invoices generated under and pertaining to this Agreement.

Vendor Contract No. \_\_\_\_\_

**26. Section 11.B.2 Detailed Monthly Report, is restated in its entirety as follows:**

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 Go DIRect Coordinator. Reports are due on the fifteenth (15<sup>th</sup>) day after the close of the previous month period. It is the responsibility of the Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed sales for the period, the Order Fulfiller's company name, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, 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.

**27. Section 11.B.4.a, DIR Administrative Fee, is restated in its entirety as follows:**

An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The administrative fee shall be specified in the Contract. Payment of the administrative fee shall be due thirty (30) days after the close of the previous month period.

**28. Section 11.B. is amended by adding Subsection 6, Summary Report, as follows:**

**6) Summary Report**

Vendor shall provide a monthly summary report of major Vendor products that are purchased through the Contract. The report shall show the number of Vendor branded units and total dollars for PCs, Servers, Storage Units, and Printers. The summary report should separate those products purchased due to special marketing, such as DIR's Buyer Alerts, from those products sold through the normal course of business. Additional product categories will be added as agreed upon by DIR and Vendor. The Report is due on the fifteenth (15<sup>th</sup>) day after the close of the previous month period.

**29. Section 11.B is amended by adding Subsection 7, Posting on the Texas Marketplace, as follows:**

**7) Postings on the Texas Marketplace**

Order Fulfillers can respond to any posting placed on the Texas Marketplace with pricing equal to that offered through this Contract. Prior to responding to the posting, Order Fulfillers shall first notify Customer that products/services can be purchased through this Contract. For any product that could be purchased through this contract and for which an Order Fulfiller has responded to a Texas Marketplace posting, Vendor shall provide a monthly report to DIR listing the postings and the Customer that posted the solicitation on the Texas Marketplace. The value of any response to be listed in the report shall be equal to or greater than \$100,000. Vendor shall use commercially reasonable effort to ensure the accuracy of the report.

No less than twice each State fiscal year Vendor will hold training sessions with its Order Fulfillers to educate them on the use of the Contract. Vendor will provide DIR with a copy of the presentation and schedule for each session.

**30. Section 12.A.1 Acts or Omissions, is restated in its entirety as follows:**

Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees for personal injury or damage to physical property arising out

Vendor Contract No. \_\_\_\_\_

of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. To the extent permitted by State law, customers agree to be responsible for their own acts, errors, or omissions pertaining to this provision.

**31. Section 12.A.2.a, Infringements, is restated as follows:**

Vendor shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, 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 use of any Vendor branded product or service supplied under the Contract. Vendor agrees to defend against any and all third party claims with regards to Vendor branded product or service at Vendor's expense, whether or not such claims become the subject of litigation provided the Customer: (i) notifies Vendor promptly in writing of such claim, (ii) grants Vendor control over the defense and settlement thereof, and (iii) reasonably cooperates in response to Vendor's requests for assistance. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor. Vendor agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

**32. Section 12.H, Security of Premises, Equipment, Data and Personnel, is amended by adding the following sentence to the end of the existing text:**

Customer shall be solely responsible for backing-up data on a routine basis as mutually agreed to by Order Fulfiller and Customer.

**33. Section 12.J, Limitation of Liability, is added:**

Except as specifically set forth in this Contract, Vendor and DIR each expressly agree and understand that the other party will not have any liability for products not being available for use, or for lost or corrupted data or software. Neither party shall be liable for any incidental, indirect, special or consequential damages under this Contract, even if the party has been advised of their possibility. This limitation of liability applies both to products and services a customer purchases under this Contract. Vendor's total liability arising out of, or in connection with, any event or series of connected events occurring in connection with this Contract shall not exceed the lesser of one million dollars (\$1,000,000) or the U.S. Dollar equivalent of the total dollar amount of products and services purchased by a customer pursuant to this Contract during the twelve (12) months immediately preceding the date Vendor is notified by a Customer of any claim of liability, except where local law, if such local law is found to apply to this Contract, prohibits any such limitation. In the event the law of any jurisdiction which applies to this Contract prohibits in any part any limitation in this paragraph, the parties agree that such limitation shall be modified, without further action of either party, so as to broadly apply to the maximum effect allowed by governing laws.

**34. Section 13.B.3 is amended to add Subsection c, Federal Law Terminations, as follows:**

DIR shall have the absolute right to terminate the Contract without recourse in the event that Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control, or becomes listed on the Excluded Parties List System maintained by the General Services Administration. Vendor shall be provided written notice in accordance with Section 11.A, Notices, of intent to terminate.

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

**Dell Marketing, LP**

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

**Authorized By:** *signature on file*

**Authorized By:** *signature on file*

**Name:** Heather M. Smith

**Name:** Edward Serna

**Title:** Contract Manager, Central U.S.

**Title:** Director of Service Delivery

**Date:** 12/22/04

**Date:** 12/22/04

**Legal:** chk, 12/22/04

**Appendix C: Minimum Discounts to be Applied to Products**  
**Restated: May 16, 2008**

Vendor Discount Category	Vendor Branded Product Classifications	Procured Direct from Vendor	Procured from an Order Fulfiller other than Vendor
		Minimum Discount from Vendor's Retail List Price	
A	PowerEdge Departmental Servers, PowerApp Appliance Servers, PowerVault Storage Products, Precision Workstations, Selected EMC, Selected OptiPlex Desktops, and Selected Latitude Notebooks: Customer Kits	13%	11%
F	Toner, Software and Peripherals Printer	3%	1%
H	Value Latitude, OptiPlex, Workstation	6%	4%
K	Software and Peripherals – Commodity	2%	1%
L	Software/Non-stocked: Selected Application Software, Non-stock Peripherals and Accessories	2%	1%
M	3 <sup>rd</sup> Party Software & Peripherals – Mainstream Products	12%	10%
O	Selected Service on PowerEdge Departmental Servers; Directline Service; 4-HR On-Site Critical Care Plus; Business Care Plus On-Site Service (all years)	15.14%	13.14%
R	On-site Service – NBD On-site Service (extended yrs), Critical Care On-site Service (all yrs)	9.6%	7.6%
S	Selected Promotional Offers; Inspiron; Selected Latitude; SC PowerEdge; Selected EMC; Dell Branded Peripherals/Imaging; Power Connect, Axim, Projector, Printer	4%	2%
T	NBD Service Parts Contracts (extended yrs 3,4)	2%	1%
U	Spare Parts	0%	0%
V	Peripherals and Accessories with Discounts that Vary Based upon the System on Which the item is Installed	Matches discount of base system	Matches discount of base system
W	Selected Dimension Desktops	4%	2%
X	S&P	2%	1%
Z	Selected Dimensions; Non-discountable Service	0%	0%

**Consolidated Purchase Order Minimum Discount**

Vendor supports procurement best-practices in spend consolidation by continuing to provide additional category-A discounts for Customers who consolidate their purchases onto a single purchase order.

The following additional minimum discounts will be applied to consolidated purchase orders to Order Fulfillers:

**Category A Only, Single Purchase Order, Maximum of 10 Ship-to Locations**

<b>Minimum Dollar Volume Associated with Single Transaction</b>	<b>Maximum Dollar Volume Associated with Single Purchase Order</b>	<b>Category A Discount in addition to Initial Pricing Level Discount</b>
\$50,000.00	\$99,999.99	Greater than or equal to 1%
\$100,000.00	\$199,999.99	Greater than or equal to 2%
\$200,000.00	\$499,999.99	Greater than or equal to 4%
\$500,000.00	\$999,999.99	Greater than or equal to 6%
\$1,000,000.00	No Maximum	Greater than or equal to 8%