

Spec. No. 105081
P.O. No. 29656
Vendor No. 1055527B

AGREEMENT

BETWEEN

**THE CITY OF CHICAGO
DEPARTMENT OF INFORMATION AND TECHNOLOGY**

AND

DELL MARKETING, L.P.



PROVISION OF HARDWARE AND RELATED SERVICES
(Subject of Agreement)

**RAHM EMANUEL
MAYOR**

PRODUCT AND SERVICES AGREEMENT

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List of Exhibits

EXHIBIT 1	SOLUTIONS SCHEDULE and SCHEDULE OF COMPENSATION
EXHIBIT 2	Intentionally deleted
EXHIBIT 3	SPECIAL CONDITIONS REGARDING MBE/WBE COMMITMENT
EXHIBIT 4	ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT
EXHIBIT 5	INSURANCE REQUIREMENTS AND EVIDENCE OF INSURANCE
EXHIBIT 6	CONTRACTUAL REQUIREMENTS RELATED TO HIPAA
EXHIBIT 7	LIST OF KEY PERSONNEL
EXHIBIT 8	PROTOCOLS FOR ORDERS AND REQUESTS
EXHIBIT 9	DELL SOFTWARE LICENSE TERMS
EXHIBIT 10	CITY DATA SECURITY POLICY

AGREEMENT

This Agreement is entered into as of the 30th day of June, 2014 ("**Effective Date**") by and between Dell Marketing L.P., a Texas limited partnership ("**Contractor**" or "**Dell**"), and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, acting through its Department of Innovation and Technology ("**City**" or "**Customer**"), at Chicago, Illinois. The City and Contractor agree as follows:

TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS

1.1 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

"**Additional Services**" means those services which are within the general scope of services of this Agreement, but beyond the description of services required under Section 2.1, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department require the approval of the City in a written amendment under Section 9.3 of this Agreement before Contractor is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

"**Agreement**" means this Agreement, including all exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

"**Chief Information Officer**" means the Chief Information Officer of the City and any representative duly authorized in writing to act on her behalf.

"Chief Procurement Officer" means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his behalf.

"CSC" means the distribution warehouse operated by Dell in the City of Chicago limits. For any particular Order, Dell may be required by the terms of such Order to take delivery at such facility of Equipment ordered by the City and to perform at such facility various services described herein.

"Dell Catalog" means the online catalog published by Dell, of general applicability to commercial and Public customers of Dell, containing item descriptions and prices of Dell Equipment and certain Peripherals that are non-Dell Equipment. As of the Effective Date of this Agreement, Dell Catalog means the publicly available, online catalog posted at <http://ftpbox.us.dell.com/slgl/Weekly/dellpricereport.pdf>.

"Commissioner" means the commissioner of the Department, and any representative authorized in writing to act on the Commissioner's behalf.

"Department" means the City Department of Information and Technology. The Department may also be referred to herein as DOIT.

"Equipment" means the computer hardware and computer peripherals generally described in Exhibit 1. Equipment may be **"Dell Equipment,"** i.e., computer hardware and Peripherals manufactured by Dell (with the Dell brand or logo), or **"Non-Dell Equipment,"** i.e., Peripherals manufactured by a manufacturer other than Dell. It is not the intention of this Agreement to permit Dell to sell the City computer hardware not manufactured by Dell.

"Non-Dell Catalog Peripherals" means computer peripherals generally described in this Agreement, including in Exhibit 1, that are neither Dell branded, nor offered by Dell in its catalogs.

"Order" means an order issued under this Agreement for Dell Equipment. The protocols for Orders, including lists of persons authorized to make Orders, are set forth in this Agreement, including in Exhibit 8. The protocols may change from time to time upon notice from the City to the Contractor.

"Peripherals" means external auxiliary devices that connect to a computer, and include those that are Dell Equipment, those that are non-Dell Equipment but which are contained in the Dell Catalog, and those that are Non-Dell Equipment are not contained in the Dell Catalog. The latter category may be referred to herein as "Non-Dell Catalog Peripherals."

"Price List" means that list of offerings of Equipment or services, and associated pricing schemes, including fixed pricing and discount off list, set forth in Exhibit 1, Appendix A. "Price List" may also be referred to as Schedule of Compensation.

“Request” means a request for SOW Services that may be issued by the City to Dell subject to the terms of this Agreement. The protocols for Requests, including lists of persons authorized to initiate them, are included in Exhibit 8. The protocols may change from time to time upon notice in writing from the City to the Contractor.

“Services” means, collectively, the services, duties and responsibilities described in Article 2 and Exhibit 1 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement. “Services” does not include SaaS or cloud-based services or leasing and asset buyback services unless additional terms for such are provided for in an Amendment to this Agreement.

“Software” means the software that may be embedded in or required for use of the Equipment.

“Solution(s)” means the Equipment, Services (including Deliverables), Software licenses or any combination thereof provided by Contractor under this Agreement.

“Standards” means that Equipment that the Chief Information Officer identifies as City standard configuration/core Equipment.

“Statement of Work” or “SOW” means any mutually agreed document describing the SOW Services to be provided by Dell to City and setting forth any additional terms applicable to the SOW Services project contemplated therein. The protocols for entering into an SOW, including lists of persons authorized to initiate them, are included in Exhibit 8.

“SOW Services” means those installation, configuration, implementation, integration, or other similar IT professional services, relating to Dell Equipment, as may be further described in Section 1.6 of Exhibit 1 of this Agreement, which are compensated pursuant to the rate card fees set forth in Exhibit 1, and which are further defined in, and are mutually agreed upon, in a Statement of Work.

“Subcontractor” means any person or entity with whom Contractor contracts to provide any part of the Services, including subcontractors and Subcontractors of any tier, suppliers and materials providers, whether or not in privity with Contractor.

1.2 Interpretation

- (a) The term **“include”** (in all its forms) means “include, without limitation” unless the context clearly states otherwise.
- (b) All references in this Agreement to Articles, Sections or Exhibits, unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement.
- (c) Words importing persons include firms, associations, partnerships, trusts,

corporations and other legal entities, including public bodies, as well as natural persons.

(d) Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.

(e) Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders.

(f) All references to a number of days mean calendar days, unless indicated otherwise.

1.3 Incorporation of Exhibits

The following attached Exhibits are made a part of this Agreement:

Exhibit 1	Solutions Schedule and Schedule of Compensation
Exhibit 2	Intentionally Deleted
Exhibit 3	Special Conditions Regarding MBE/WBE Commitment
Exhibit 4	Economic Disclosure Statement and Affidavit
Exhibit 5	Insurance Requirements and Evidence of Insurance
Exhibit 6	Health Insurance Portability and Accountability Act
Exhibit 7	List of Key Personnel
Exhibit 8	Protocols for Orders and Requests
Exhibit 9	Dell Software License Terms
Exhibit 10	City Data Security Policy

1.4 Order of Precedence

In the event of a conflict or inconsistency between terms within the component parts of the Agreement, the following order of precedence shall govern:

- (1) Articles 1 through 11
- (2) Exhibits
- (3) SOW
- (4) Any Dell documentation that is generally made available to the public or to similarly situated Dell customers and that is incorporated by reference, either directly or indirectly, in this Agreement.

Further, any provision in any Dell documentation that is incorporated by reference directly or indirectly in this Agreement with regard to which the City is prohibited by law from agreeing to or abiding by is deemed to be of no effect as applied to the City.

ARTICLE 2. GENERAL CONDITIONS

2.1 General Purpose

Under this Agreement, Contractor will sell to the City, as requested in Orders to be issued by the City, Dell Equipment, and will assist the City in its purchase of Non-Dell Equipment, as requested by the City. Contractor understands and acknowledges that it does not have an exclusive right to sell Equipment to the City, and that the City accordingly may buy Equipment, during the term of this Agreement, from other sources. The Solutions Schedule and Schedule of Compensation, Exhibit 1, contains a more detailed scope of services, which covers, in addition to the obligations to sell Equipment to the City, such ancillary Services related to such sales, including, as requested by the City in any particular Order, services relating to tagging of Equipment, installation of Equipment, and maintenance services with respect to the Equipment. The description of Services in Exhibit 1 is intended to be general in nature and is neither a complete description of Contractor's Services nor a limitation on the Services that Contractor is to provide under this Agreement. This Agreement does not involve the purchase of software except for the Software that is embedded in or required for use of the Equipment.

2.2 General Requirements with Respect to the Solution

All Equipment provided under this Agreement must be new, except with respect to replacement parts as further specified in this Agreement, and shall be fully compliant with the manufacturer's specifications for such Equipment. All Equipment provided hereunder shall be free and clear of all liens and encumbrances, and clean title shall pass to the City upon the City's acceptance of the Equipment (except title to any Software included with the Equipment remains with the applicable licensors). Contractor shall be the manufacturer or authorized distributor of any Equipment provided under this Agreement. With respect to any Software, Contractor shall ensure that the City has a perpetual, irrevocable, fully paid right to use it. Contractor shall be an authorized reseller of any Software provided under this Agreement.

2.3 Quotes and Orders

2.3.1 Quotes

City must identify Dell's quotation (if any), the Dell Contract Code assigned to the Agreement (if any as per the quote), and the Solutions ordered, the requested shipment dates, and shipping and invoice addresses on all orders. All orders are subject to acceptance by Dell. City shall place all orders in the country where the Equipment and Software are to be shipped and where Services are to be performed, and payment of the corresponding price and costs shall be made in U.S. dollars. Each accepted order will be interpreted as a single acceptance, independent of any other orders. Neither Dell nor City is bound by any terms on orders or transactional documents that are not signed by both parties. Payment to Dell in respect of Products, Software licenses and Services, as applicable, shall be made to Dell. Dell cannot ship Products and Software or perform Services outside of the country in which the applicable order is accepted. This

Agreement will apply to any on-line quote from a web-site personalized by Dell for use by City, if available, and any quote received by City directly from City's Dell sales representative. City may change or cancel an order up until the time Contractor begins manufacturing the Dell Equipment or as set forth in the applicable Dell quote or as expressly agreed by both parties.

2.3.2 Dell Equipment and Non-Dell Peripherals Contained in Dell Catalog

Orders for Dell Equipment and Non-Dell Peripherals Contained in Dell Catalog will be in the form of a written City of Chicago Blanket Release (also known as "purchase order release" or "sub-order") that will be issued by the City and sent to the Contractor. Blanket Releases will indicate the specification number, Contract/purchase order number, product description, quantities order for each line item, unit cost based upon the Dell Catalog or Price List, total cost, shipping and invoice address, requested shipment dates, fund chargeable information, and other pertinent instructions regarding delivery. The Contractor must not honor any verbal orders or make deliveries without receipt of a written Blanket Release issued by the City. With the exception of the Department of Innovation and Technology, departments of the City may place orders under this Agreement only when the value of such order is less than \$50,000 and only when the items ordered are pre-approved for such purchase by the Chief Information Officer, and Contractor must not honor orders from City departments (other than the Department of Innovation and Technology) that exceed these restrictions. For orders over \$50,000, departments of the City must obtain approval from the Chief Information Officer prior to placing order with Dell.

Any items provided by Contractor without a signed Blanket Release are made at the Contractor's risk. Consequently, in the event a written Blanket Release is not provided by the City in accordance with the requirements set forth in this Agreement, the Contractor releases the City from any liability whatsoever to pay for any items provided without a signed Blanket Release. Contractor will confirm, in writing, the information included by the City in the Blanket Release, or will indicate, in writing, any corrections or additional information pertinent to the Order. Blanket Releases modified by Dell must be signed by the City prior to Dell's fulfillment of the Order.

2.3.3 Non-Dell Catalog Peripherals

From time to time, the City may issue requests to Dell to assist the City in the purchase of Non-Dell Catalog Peripherals. The City will do so by issuing a written request from the Chief Information Officer to Dell for such Equipment. Dell shall then undertake the Services, set forth in this Agreement, including in Exhibit 1, with respect to such Non-Dell Catalog Peripherals, which shall involve, as requested by the City, obtaining bids from authorized distributors of such equipment and advising the City on issues pertaining to pricing. If the City decides to purchase the Equipment, it will request Dell to place the order on its behalf. If Dell is able, and agrees, to provide such Equipment to the City, Dell will include it in its catalog, subject to the pricing requirements set forth on Exhibit 1 and the City may place any orders for such Equipment pursuant to the process set forth above, in Section 2.3.2.. With regard to the Services pertaining to Non-Dell Catalog Peripherals, Dell shall owe a fiduciary duty to the City. Orders for Non-

Dell Equipment are subject to availability. The City may also request that Dell store such equipment in its storage facilities and deliver to the City as required by the City (both at additional cost).

2.3.4 SOW Services.

The City may procure SOW Services (beyond warranty-related services) from Contractor pursuant to an SOW, entered into by the parties in accordance with the procedures set forth in Exhibit 8 Protocols for Orders and Requests. Contractor shall perform or cause to be performed such Services for no more than the hourly rates set forth in Exhibit 1, Appendix A. Unless alternate SOW terms are expressly provided for in this Agreement, any terms and conditions in a SOW that conflict with, are inconsistent with, or shift the allocation of risk contemplated in this Agreement, are void and of no effect, unless accepted in writing as an amendment to this Agreement pursuant to Section 9.3 in this Agreement. For clarification, such Services with regard to which legal or business provisions of this Agreement are deficient, may be entered into only pursuant to Section 9.3 of this Agreement.

2.3.5 Protocols for Orders and Requests.

Contractor agrees to accommodate and abide by the regulations related to ordering procedures, as set forth herein, or the extent it is capable, as may be promulgated by the Chief Procurement Officer, from time to time. The procedures currently in effect are set forth in Exhibit 8 Protocols for Orders and Requests.

2.3.6 Changed or Discontinued Products, Software, or Services.

A change in a Product, Software or Service may occur after City places an order but before Dell ships the Product or Software, or performs the Service. As a result, Products, Software, and Services that City receives may display minor differences from the Products, Software, and Services City ordered, but they will meet or exceed all material specifications of such Products, Software or Services ordered, at the same price as the Equipment, Software or Service originally ordered.

2.3.7 Electronic Ordering and Invoices

The Contractor shall cooperate in good faith with the City in implementing electronic ordering and invoicing, including but not limited to catalogs, purchase orders, releases, and invoices. Contractor shall accept electronic purchase orders and releases upon request of the Chief Procurement Officer. Contractor shall provide or make available to the City electronic catalogs, copies of invoices and other electronic documents upon request. The electronic ordering and invoice documents shall be in a format specified by the City and transmitted by an electronic means specified by the City. Such electronic means may include, but are not limited to, disks, e-mail, EDI, FTP, web sites, and third party electronic services. The Chief Procurement Officer reserves the right to change the document format and/or the means of transmission upon

written notice to the Contractor. Contractor shall ensure that the essential information, as determined by the Chief Procurement Officer, in the electronic document, corresponds to that information submitted by the Contractor in its paper documents. The electronic documents shall be in addition to paper documents required by this contract, however, by written notice to the Contractor, the Chief Procurement Officer may deem any or all of the electronic ordering and invoice documents the official documents and/or eliminate the requirement for paper ordering and invoice documents.

If City orders on-line, Dell will issue to City user names and passwords the ("Purchase Codes"). By accepting and using the Purchase Codes, City acknowledges the electronic order shall be deemed to be a writing for all purposes hereunder, and agrees to be responsible for full payment of any Equipment or Services ordered, in accordance with the terms of the Agreement, using City's Purchase Codes. City is responsible for keeping the Purchase Codes confidential and controlling their use.

2.3.8 Binding Quotes and Orders

Quotes and Orders will remain in effect only until the expiration date of the quote (or thirty (30) days if there is no expiration date), Dell's withdrawal of the quote or Dell's acceptance of City's order, whichever occurs first. Such prices are subject to modification, in accordance with the terms of this Agreement.

2.4 Shipment and Inspection

Loss or damage to Equipment that occurs during shipping by a carrier selected by Dell is Dell's responsibility. Loss or damage to Equipment that occurs during shipping by a carrier selected by City is City's responsibility. Unless Dell is notified otherwise by the City, all shipments will be made by a carrier selected by Dell.

2.4.1 Shipment of Dell Equipment

Shipment of Dell Equipment and Non-Dell Peripherals contained in the Dell Catalog will be made within a reasonable, specified period following issuance to Dell of a Blanket Release, at the location specified in the Blanket Release. All deliveries will be F.O.B. destination (City of Chicago). Shipping and delivery dates are provided as estimates only.

2.4.2 Shipment of Non-Dell Equipment

Shipment of Non-Dell Equipment may include direct from the manufacturer or its supplier to the City, unless specified by the City in writing to Dell and upon mutual agreement, in which case Dell must conform to the reasonable delivery requirements stated in the request (such as place and manner, but not timing of delivery).

2.4.3 Inspection and Defects

The City will have the right to inspect any Equipment provided under this Agreement. Upon delivery of the Equipment, the City will conduct an in-depth initial visual examination solely for the purpose of identifying gross and obvious damage, defects or non-conformance with specifications. This does not limit the City's right to conduct subsequent inspection of the Equipment delivered, including inspections conducted after the Equipment is installed.

If defects or omissions are discovered in the initial or subsequent inspections of Equipment, the City may exercise any or all of the following remedies, in addition to any other remedies specified in this agreement:

- (a) Refuse acceptance to the carrier of any/all Non-conforming Equipment.
- (b) Require the Contractor to make on-site repairs consistent with the applicable Contractor warranty.
- (c) Require the Contractor, at Contractor's expense, to pick up the rejected, Non-conforming Equipment and, with respect to Non-conforming Equipment that is defective or damaged, require the Contractor to repair or replace it, in the discretion of the City, at Contractor's expense.

"Non-conforming" Equipment shall mean Equipment that was mis-shipped (but not due to City error), that is received by City damaged or defective (except where damage is caused by City designated carrier), or Equipment that otherwise does not conform with the order, its specifications or this Agreement.

The City may return non-defective Equipment for any reason for full refund or exchange within the time period specified in and consistent with the Dell Return Policy (in Exhibit 1 Solutions Schedule and Schedule of Compensation). Contractor must pick up from City facilities the rejected, Non-conforming Equipment within a reasonable period of time after notification by Department.

City must notify Dell within thirty (30) days of delivery if City believes any part of its order is missing, wrong, or damaged.

Contractor must promptly supply any under-shipment of Equipment promptly after notification by the Department.

The City of Chicago will not be subject to restocking charges with respect to Non-conforming Equipment.

Failure to repair or replace unacceptable Equipment, or repeated delivery of unacceptable Equipment, will be an event of default under this Agreement.

2.4.4 Intentionally deleted

2.4.5 Deemed Acceptance

Equipment provided under this Agreement will be deemed to be accepted by the City thirty (30) days after delivery, unless previously rejected.

2.5 Warranties

Dell Equipment and Non-Dell Peripherals Contained in the Dell Catalog

All Dell Equipment and Non-Dell Peripherals Contained in the Dell Catalog supplied hereunder must carry all original product warranties, including manufacturer's genuine parts/product information, recall notices, manuals, licenses, assemblies and accessories. Dell will pass through to Customer the end-user warranty, support, and other benefits that such manufacturer of Non-Dell Equipment provides to the end users of its products. The City reserves the right to negotiate with Dell an additional warranty for any Equipment, above the standard warranties, in which case such warranty would be reflected in the Order for such Equipment.

Non-Dell Catalog Peripherals

In the event such product warranties, manuals, etc. are not already provided by the original manufacturer or distributor, Dell shall make a commercially reasonable effort to assist the City in obtaining all applicable warranties from the manufacturers of any Non-Dell Equipment requested by the City hereunder.

2.5.1 Limited Warranty

(a) THE LIMITED WARRANTIES FOR DELL EQUIPMENT CAN BE FOUND AT www.Dell.com/Warranty OR IN THE DOCUMENTATION DELL PROVIDES WITH SUCH PRODUCTS. SUCH DOCUMENTS ARE AVAILABLE IN HARD COPY FROM DELL UPON REQUEST. THE SERVICES WILL BE PROVIDED IN A GOOD AND WORKMANLIKE MANNER. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN THE APPLICABLE SOLUTION DOCUMENTATION, DELL (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS (COLLECTIVELY, THE "DELL PARTIES") MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS, SOFTWARE, DELIVERABLES OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (a) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (b) RELATING TO NON-DELL EQUIPMENT; OR (c) RELATING TO THE RESULTS OR PERFORMANCE OF THE SOLUTION, INCLUDING THAT THE SOLUTION WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR.

(b) WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY DELL (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH THE DOCUMENTATION, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE SOLUTION. WARRANTIES DO NOT APPLY TO

NON-DELL EQUIPMENT. ANY WARRANTY ON NON-DELL EQUIPMENT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER.

(c) NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT DELL'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO CITY IN CITY'S JURISDICTION WILL APPLY TO CITY, AND DELL'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

(d) High-Risk Disclaimer. Contractor shall not be liable to the City for use of the Solution in hazardous or high-risk environments requiring fail-safe performance, in which the failure or malfunction of the Solution could lead directly to death, personal injury, or severe physical or property damage. Such use is at City's own risk, even if Contractor knows of such use, and Contractor expressly disclaims any express or implied warranty of fitness for such high-risk activities.

2.5.2 Support Services.

(a) Warranty Services. When Services consist of repair of Dell Equipment, such Services shall be those repair services that are necessary to fix a defect in materials or workmanship of such Dell Equipment or any standard system component of Dell Equipment covered by this Agreement. Preventive maintenance is not included. Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included under this Agreement. Unless otherwise expressly provided in a SOW, Services do not include repair of any Dell Equipment system or system component that has been damaged as a result of (1) accident, misuse, or abuse of the system or component (such as use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell (or its representatives); (2) the moving of the system from one geographic location or entity to another; or (3) an act of nature such as lightning, flooding, tornado, earthquake, or hurricane.

(b) City Authorization for Provision of Services. Some warranties or service contracts for Non-Dell Equipment may become void if Dell or anyone other than an authorized service provider provides services for or works on such hardware or software (such as providing maintenance or repair services for the Non-Dell Equipment). DELL DOES NOT TAKE RESPONSIBILITY FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON THOSE WARRANTIES OR SERVICE CONTRACTS.

City authorizes Dell to use or otherwise access any and all City-provided Non-Dell Equipment as necessary or as requested by City in Dell's performance of the Services, including copying, storing, and reinstalling backup systems or data.

c. City to Back up Data. Unless otherwise stated in a Statement of Work, it is City's responsibility to back up its data on City systems with respect to Dell Equipment being serviced under this Agreement, and to carry out any equipment and technology upgrades, refreshes and replacements on such Dell Equipment.

2.6 Deliverables

In carrying out its SOW Services, Contractor may be required to prepare or provide to the City various Deliverables. "**Deliverables**" means the work product or tangible embodiment of the SOW Services such as studies, base cases, drawings, findings, software, manuals, procedures, written reviews, recommendations, reports and analyses, that are: produced by Contractor uniquely and exclusively for the City and (ii) specifically identified in a signed Statement of Work as Deliverables.

The City may reject Deliverables that do not conform to the criteria specified in the relevant Statement of Work for any Services provided under this Agreement. Unless otherwise specified in an SOW, if the City determines that Contractor has failed to comply with the foregoing standards, it has five (5) business days from the date of delivery by Contractor to City of Deliverables to notify Contractor of such non-conformance, otherwise Deliverables are deemed accepted. If Contractor does not correct the failure, if it is possible to do so, within thirty (30) days or other mutually agreed period after receipt of notice from the City specifying the non-conformance, then the City, by written notice, may treat the failure as a default of this Agreement under Section 8.1.

Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose for the benefit of the City and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement unless otherwise agreed to in writing, and partial or incomplete Deliverables in no way relieve Contractor of its obligations under this Agreement. For clarification, Deliverables do not include Equipment or Software.

2.6A City's Policies and Procedures

Contractor covenants that it, the Contractor personnel, Subcontractors of Contractor and their respective employees, and all other agents and representatives of Contractor, shall at all times comply with and abide by all policies and procedures of City (as such may exist or be revised or established by City from time to time and as provided to Contractor in writing) that reasonably pertain to Contractor in connection with Contractor's performance of SOW Services hereunder, including all such policies that pertain to conduct on City's premises, use or possession of contraband, or the access to, or security and confidentiality of, City's information technology, data, or resources, or related systems, networks, equipment, property, or facilities. No such policies shall override the express provisions of this Agreement relating to ownership of Contractor's proprietary information. Written copies of such policies and procedures shall be provided to Contractor by City upon request. Prior to performing SOW Services hereunder, each

of the Contractor personnel who will have access to City's data, software, or Confidential Information shall execute City's standard form confidentiality agreements. Contractor shall issue to each Contractor personnel appropriate access mechanisms (e.g., access IDs, passwords, and access cards), which mechanism shall be used only by the specific individuals to whom issued. Contractor shall provide each Contractor personnel with only the level of access that is appropriate and required to perform the tasks and functions for which such person is responsible. Contractor shall, from time to time, and promptly upon City's request, provide City with an undated list of those Contractor personnel who have the highest level of access to City's systems, software and data. Contractor shall maintain and ensure the confidentiality and security of City's information systems, networks, software and data in accordance with the terms of this Agreement, and shall, in any event, treat all such materials with a level of security at least equivalent to that then being maintained by: (i) City with respect to such materials; and (ii) Contractor with respect to its own similar systems and data. Contractor shall cooperate with City in ensuring Contractor's compliance with the policies and procedures described in this Section 2.6A, and any violations or disregard of such policies or procedures shall, in addition to all other available rights and remedies of City, be cause for denial of access or use by the applicable Contractor personnel to City's information systems, networks, equipment, property and facilities.

2.7 Personnel

(a) Adequate Staffing

Contractor must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. Contractor must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time by notice in writing from Contractor to the City and with prior written consent of the City, which Consent shall not be unreasonably withheld. If the City fails to object to the revision within fourteen (14) days after receiving the notice, then the revision will be considered accepted by the City.

(b) Key Personnel

Contractor must not reassign or replace Key Personnel without the written consent of the City, which consent shall not be unreasonably withheld and shall be timely given. "**Key Personnel**" means those job titles and the persons assigned to those positions in accordance with the provisions of this Section 2.4(b). The Department may at any time in writing notify Contractor that the City will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Such notice shall specify a good faith and legal justification for such removal. Upon receipt of that notice Contractor must (1) where the basis involves breaches of security requirements, confidentiality or material failure by that Key Personnel to comply with the standards of conduct required under the Agreement, immediately suspend the key person or

persons from performing Services under this Agreement, or (2) in all other cases, Dell shall first have thirty (30) days from receipt of such request to resolve the issues upon which the request is based. Once removed, Consultant must replace such removed Key Personnel in accordance with the terms of this Agreement. Key Personnel, if any, are identified in Exhibit 7. Dell shall have no obligation to remove personnel upon notification by the City pursuant to this Section 2.4(b) if Dell believes, in its reasonable discretion, that such removal will subject Dell to legal liability, subject to Dell's obligations to comply with the law and the terms of this Agreement.

(c) Salaries and Wages

Contractor and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement and under applicable law and regulations.

2.8 Minority and Women's Business Enterprises Commitment

In the performance of this Agreement, including the sale of equipment and the provision of the other Services described herein, Contractor must abide by the minority and women's business enterprise commitment requirements of the Municipal Code of Chicago ("**Municipal Code**"), ' ' 2-92-420 *et seq.* (1990), except to the extent waived by the Chief Procurement Officer and the Special Conditions Regarding MBE/WBE Commitment set forth in Exhibit 3. Contractor's completed Schedules C-1 and D-1 in Exhibit 3, evidencing its compliance with this requirement, are a part of this Agreement, upon acceptance by the Chief Procurement Officer. Contractor must utilize minority and women's business enterprises at the greater of the amounts listed in those Schedules C-1 and D-1 or the percentages listed in them as applied to all payments received from the City.

2.9 Insurance

Contractor must provide and maintain at Contractor's own expense, during the term of this Agreement and any time period following expiration if Contractor is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified in Exhibit 5 of this Agreement, insuring all operations related to this Agreement.

2.10 Indemnification

(a) Contractor must defend, indemnify, and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees from and against any and all Losses (defined in Section (b) below) attributable to third party claims, related to:

(i) injury or death of any person, or damage to tangible property;

(ii) any infringement or violation of any intellectual property right (including any patent, trademark or copyright) to the extent arising from Dell-branded products, Dell Software, Dell Services, or Deliverables prepared or produced by Dell and delivered pursuant to this Agreement;

(iii) Contractor's failure to perform or cause to be performed Contractor's promises and obligations as and when required under this Agreement, including Contractor's failure to perform its obligations to any Subcontractor.

iv) injuries to or death of any employee of Contractor or any Subcontractor under any workers compensation statute.

(b) "**Losses**" means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements) as a result of claims, demands, actions, suits, or proceedings, any or all of which in any way arise out of or relate to Contractor's breach of this Agreement or to Contractor's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, Contractors, or Subcontractors.

(c) Contractor must defend all third party claims and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, provided that such participation shall not interfere with Dell's defense or resolution of the indemnified claims without relieving Contractor of any of its obligations under this Agreement. Contractor's duty to indemnify and defend under this Section 2.10 is contingent upon (1) Contractor receiving prompt written notice of the third-party claim or action for which Contractor must indemnify City, (2) Contractor having the right to solely control the defense and resolution of such claim or action, provided that any settlement as affecting the City must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any payment or admission of fault or other action on the part of the City, and (3) City's cooperation with Contractor in defending and resolving such claim or action.

(d) To the extent permissible by law, Contractor waives any limits to the amount of its obligations to defend, indemnify, hold harmless, or contribute to any sums due under any Losses, including any claim by any employee of Contractor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

(d) The indemnities in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement or as the result of or during Contractor's performance of Services beyond the term. Contractor acknowledges that the requirements set forth in this section to defend, indemnify, and hold harmless the City are apart

from and not limited by the Contractor's duties under this Agreement, including the insurance requirements in Exhibit 5 of this Agreement.

(e) Notwithstanding anything to the contrary in this Section 2.10, Contractor shall have no obligation under this Section 2.10(a)(ii) for any intellectual property infringement claim resulting or arising from (1) modifications of the Equipment, Software, Services or Deliverables that were not performed by or on behalf of Contractor; (2) the combination, operation, or use of the Dell Equipment, Software, Services or Deliverables in connection with a third-party product, software or service (the combination of which causes the claimed infringement); or (3) Contractor's compliance with City's written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by the City; or (4) City's failure to incorporate free Software updates or upgrades that would have avoided the alleged infringement.

(f) If Dell receives prompt notice of an intellectual property claim that, in Dell's reasonable opinion, is likely to result in Dell's inability to continue providing or performing the Solution, then Dell shall at its option, (1) obtain a right for Customer to continue using such Products, Deliverables or Software or allow Dell to continue performing the Services; (2) modify such Products, Software, Services or Deliverables to make them non-infringing; (3) replace such Products, Software, Services, or Deliverables with a non-infringing substitute; or (4) refund any fees paid for the allegedly infringing Services or provide a refund for the allegedly infringing Product, Deliverables, or Software to City the depreciated value of the alleged infringing Deliverable calculated over a five-year period. This Section 2.10 is the exclusive statement of Dell's liability for indemnifying City for intellectual property claims and nothing in this Agreement or elsewhere will obligate Dell to provide any greater indemnity to City.

2.11 Ownership of Documents

Except as provided below in this Section 2.11, all Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Contractor under this Agreement are property of the City, including, as further described in Section 2.12 below, all copyrights inherent in them or their preparation. During performance of its SOW Services, Contractor will be responsible for any loss or damage to the Deliverables, data, findings or information while in Contractor's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of Contractor. If not restorable, Contractor must bear the cost of replacement and of any loss suffered by the City on account of the destruction, as provided in Section 2.10, unless due to the City's failure to provide the backup for such data in accordance with Section 2.5.2(c).

Notwithstanding anything to the contrary in this Section 2.11, the City has no ownership rights in Deliverables that are intellectual property prepared or procured by Contractor, or on Contractor's behalf, prior to the Effective Date of this Agreement, or if prepared after, were prepared or procured by Contractor, or on Contractor's behalf, other than in connection with this Agreement ("Vendor Materials"). Contractor agrees to grant to City an irrevocable, perpetual,

non-exclusive, non-transferable, royalty-free license to use Vendor Materials for the City's use and quiet enjoyment of the Deliverables, Equipment and Software as contemplated under this Agreement.

2.12 Intellectual Property Ownership

Contractor and the City intend that, to the extent permitted by law, the Deliverables to be produced by Contractor at the City's instance and expense under this Agreement are conclusively deemed "**works made for hire**" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. ' 101 *et seq.*, and that the City will be the sole intellectual property owner of such Deliverables and of all aspects, elements and components of them in which Intellectual Property Rights can subsist, and of all rights to apply for such registration or prosecute any claim of infringement, except for and subject to those owned by Contractor and provided by license to City as described below. "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.

Contractor agrees to grant to City a perpetual, non-exclusive, non-transferable, royalty-free license to use Contractor's Background IP (defined below), Utilities, and Residual IP solely for City to use the Deliverables, subject to the following:

- (i) Contractor has received full payment for the Deliverables and applicable Services,
- (ii) 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"),
- (iii) Contractor 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 Contractor in the course of performing the Services or creating the Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or data of City (collectively, the "Residual IP"), even if embedded in the Deliverable, and
- (iv) City use of software, online services, or software-enabled services in connection with the Services is pursuant to the terms of the Contractor's Services Acceptable Use Policy, which is available for review at www.dell.com/aup.

2.13 Records and Audits

(a) **Records**

(i) Contractor must deliver, cause to be delivered, or make available to the City all documents, including all Deliverables, prepared for the City under the terms of this Agreement, promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement. If Contractor fails to make such delivery upon demand or as may be otherwise mutually agreed, then Contractor may be required to pay to the City any damages the City may sustain by reason of Contractor's failure.

(ii) Contractor must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement. Contractor must not dispose of such documents following the expiration of this period without notification of and written approval from the City in accordance with Article 10.

(b) **Audits**

(i) Upon request, Contractor and any of Contractor's Subcontractors must furnish the Department with all information that may be requested pertaining to the performance and price of the Services. Contractor must maintain records showing actual time devoted, and charges incurred in the event they are passed on to City. "Records" shall mean books, records, documents, and account procedures and practices of the Contractor in support of invoiced amounts and relevant to the parties' financial obligations under this Agreement. Contractor must keep Records in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the City and any other interested governmental agency, for one review per year at reasonable times during Contractor's normal operating hours during the performance of its Services.

(ii) To the extent that Contractor conducts any business operations separate and apart from the Services required under this Agreement using, for example, personnel, equipment, supplies or facilities also used in connection with this Agreement, then Contractor must maintain and make similarly available (as set forth above) to the City detailed records supporting Contractor's allocation to this Agreement of the costs and expenses attributable to any such shared usages.

(iii) Contractor must maintain its Records and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

(iv) No provision in this Agreement granting the City a right of access to Records is intended to impair, limit or affect any right of access to such Records which the City would have had by law in the absence of such provisions, if any.

(iv) The City may in its sole discretion audit the records of Contractor or its Subcontractors, or both, at any time during the term of this Agreement or within three (3) years after the Agreement ends, in connection with the goods, work, or Services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of any such audit, it is determined that Contractor or any of its Subcontractors has overcharged the City in the audited period, the City will notify Contractor. Upon verification of same, Contractor must then promptly reimburse the City for any amounts the City has paid Contractor due to the overcharges and also some or all of the cost of the audit, as follows: If the audit has revealed overcharges to the City representing ten (10%) percent or more of the total value, based on the Agreement prices, of the goods, work, or Services provided in the audited period, then Contractor must reimburse the City for the full, reasonable cost of the audit, or other amount as may be reasonable under the circumstances and mutually agreed.

Failure of Contractor to reimburse the City in accordance with subsection A or B above is an event of default under Section 8.1 of this Agreement, and Contractor will be liable for all of the City's reasonable costs of collection, including any court costs and reasonable attorneys' fees.

2.14 Confidentiality

(a) All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Contractor under this Agreement are property of the City and are confidential, except as specifically authorized in this Agreement or as may be required by law. Contractor must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all documents and other information provided to Contractor by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Contractor must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement. If applicable, Contractor agrees to abide by the terms of the City Data Security Policy, attached as Exhibit 10.

(b) Contractor must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Chief Information Officer.

(c) If Contractor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents which may be in Contractor's possession by reason of this Agreement, Contractor must immediately give notice to the Chief Information Officer and the Corporation Counsel for the City with the understanding that the City will have the opportunity to contest such process by any means available to it before the records, data or documents are submitted to a court or other third party. Contractor, however, is not obligated to withhold the delivery beyond the time ordered by a court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

(d) HIPAA, HITECH and AIDS Confidentiality Act. To the extent not defined here the capitalized terms below and in Exhibit 6 will have the same meaning as set forth in the Health Insurance Portability and Accountability Act, the Health Information Technology for Economic and Clinical Health Act, which is part of the American Recovery and Reinvestment Act of 2009, and implementing regulations at 45 C.F.R. Parts 160-164 (collectively "HIPAA". Contractor and all its Subcontractors must comply with HIPAA. Contractor must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16) and the rules and regulations of the Illinois Department of Public Health promulgated under it. If Contractor fails to comply with the applicable provisions under HIPAA or the Illinois AIDS Confidentiality Act, such failure will constitute an event of default under this Agreement for which no opportunity for cure will be provided.

Additionally, if Contractor is a Business Associate in the performance of Services, it must comply with all requirements of the Act applicable to Business Associates and set forth in Exhibit 6, Dell Business Associate Agreement.

2.15 Assignments and Subcontracts

(a) Contractor must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement: (i) unless otherwise provided for elsewhere in this Agreement; or (ii) without the express written consent of the Chief Procurement Officer and the Department, which shall not be unreasonably withheld and shall be timely given. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer as it may relate to the City and is of no effect as to the Services or this Agreement. No approvals given by the Chief Procurement Officer, including approvals for the use of any Subcontractors, operate to relieve Contractor of any of its obligations or liabilities under this Agreement.

(b) All Subcontractors are subject to the prior approval of the Chief Procurement Officer. Approval for the use of any Subcontractor in performance of the Services is conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to perform the Services in accordance with the terms and conditions of this Agreement to the satisfaction of the Department, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Contractor personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Contractor of any of its obligations or liabilities under this Agreement.

(c) Contractor, upon entering into any agreement with a Subcontractor, must furnish upon request of the Chief Procurement Officer or the Department a copy of its agreement. Contractor must ensure that all subcontracts contain provisions that require the Services be performed in strict accordance with the requirements of this Agreement, provide that the Subcontractors are subject to all the terms of this Agreement and are subject to the approval of the Department and

the Chief Procurement Officer, not to be unreasonably withheld. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Services.

(d) Contractor may not transfer or assign any funds or claims due or to become due under this Agreement, except to one of its own corporate affiliates, without the prior written approval of the Chief Procurement Officer. The attempted transfer or assignment of any funds, either in whole or in part, or any interest in them, which are due or to become due to Contractor under this Agreement, without such prior written approval, has no effect upon the City.

(e) Under Section 2-92-245 of the Municipal Code, the Chief Procurement Officer may make direct payments to Subcontractors for Services performed under this Agreement as may be permitted under the law. The City will notify Contractor prior to or at the time such direct payment to a Subcontractor is made. Any such payment has the same effect as if the City had paid Contractor that amount directly. Such payment by the City to Contractor's Subcontractor under no circumstances operates to relieve Contractor of any of its obligations or liabilities under this Agreement. This section is solely for the benefit of the City and does not grant any third party beneficiary rights.

(f) The City reserves the right to assign or otherwise transfer all or any part of its interests under this Agreement to any successor.

ARTICLE 3. DURATION OF AGREEMENT

3.1 Term of Performance

This Agreement takes effect as of the Effective Date and continues, except as provided under Sections 4.4 or Article 8, for a period of three (3) years as that date may be extended under Section 3.3.

3.2 Timeliness of Performance

(a) Contractor must provide the Services and Deliverables within the time limits required under any request for services pursuant to the provisions of Section 2.1 and Exhibit 1.

(b) Neither Contractor nor Contractor's agents, employees or Subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by Contractor by reason of delays or hindrances in the performance of the Services, whether or not caused by the City.

3.3 Agreement Extension Option

The Chief Procurement Officer may at any time before this Agreement expires elect to extend

this Agreement for up to two additional two-year periods, under the same terms and conditions as this original Agreement, by notice in writing to Contractor.

ARTICLE 4. COMPENSATION

4.1 Basis of Payment

A. Price List

Attached as Appendix A of Exhibit 1 is the Price List for Equipment and SOW Services. Pricing is reflected as (i) a fixed dollar (\$) amount, including for standard configuration/core Equipment ("Standard(s)"), for added Non-Dell Catalog Peripherals, for certain services and shipping, and (ii) otherwise, as a particular discount off list (%) percentage for Dell Catalog items.

1. Fixed Price Schedule.

(a) Standards. If during the term of this Agreement, City places an order for any Standards on the list, or for a later version of that piece of a Standard Equipment contained in the list (provided that such Later Version has the minimum functionality of the piece of Equipment on the list) (a later version meeting these criteria may be known as a "Later Version"), Contractor must supply the Standards for a price which is no more than the prices for Standards in the Fixed Price Schedule. The prices in the Fixed Price Schedule shall remain fixed during the term of the Agreement.

(b) Non-Dell Catalog Peripherals. The City may ask Contractor for prices for Non-Dell Catalog Peripherals from Dell, and Dell shall sell such Equipment to the City at rates or prices to be mutually agreed by the City, pursuant to the procedure described in Section 2.3.3. Subsequently, such Dell Non-Dell Catalog Peripherals and associated pricing shall be included in the Fixed Price Schedule.

(c) SOW Services. City will compensate Contractor based upon the rates set forth in the Price List, along with any travel and expense reimbursements consistent with the City Travel Guidelines (Appendix C of Exhibit 1), as applicable.

(d) Additions to Fixed Price Schedule. City and Contractor may agree to add Dell Equipment or Peripherals items to the Fixed Price Schedule upon agreement as to pricing for such items. Such agreement may be evidenced in writing between the Chief Information Officer and the Contractor, with the periodic approval (but no less than annually) by the Chief Procurement Officer of additions made to the Fixed Price Schedule during the prior period. Prices for these items will remain fixed for the remainder of the Agreement term.

2. Discount off List. For Dell Catalog Products, Contractor must supply such Products for no

more than the percentage discount/mark-up set forth in Exhibit 1 off the Dell Catalog price. Prices for Dell Catalog items applicable to the City may increase no more frequently than once per a six-month period, and only upon notice, in writing, to the Chief Procurement Officer.

3. Lowest Available Pricing. With respect to any Equipment included in both the Dell Catalog and the Price List, Dell must invoice the City at the lesser of the Dell Catalog price or the Price List price, regardless of whether the Equipment was ordered through the Price List or the Dell Catalog.

4. Price Match. With respect to any non-Dell Peripheral, if City demonstrates more favorable pricing offered elsewhere, Contractor agrees to extend that same pricing to City's order for that item from Contractor under this Agreement.

B. Facility. The City, in an Order or Request, may specify various Services to be performed at the CSC for the items covered in the Order or Request. Such eligible Services are listed in Exhibit 1, and the prices for such Services are contained in Exhibit 1. If the Contractor receives such an Order or Request, it must perform the Services described at the prices contained in Exhibit 1.

4.2 Method of Payment

Contractor must submit monthly invoices to the City for labor and other direct costs as billed, as outlined in the Schedule of Compensation in Exhibit 1. The invoices must be in such detail as the City requests so long as Contractor is capable of providing same. The City will process payment within forty-five (45) days after date of invoices and all supporting documentation necessary for the City to verify the Services provided under this Agreement.

4.3 Funding

The source of funds for payments under this Agreement is Fund number 014.0100.0062005.0446.220446. Payments under this Agreement must not exceed \$33,100,000.00 without a written amendment in accordance with Section 9.3. Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council of the City.

4.4 Non-Appropriation

If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, then the City will notify Contractor in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification will be made to Contractor except that no payments will be made or due to Contractor under this Agreement beyond those amounts appropriated and budgeted by the City.

to fund payments under this Agreement.

4.5 Taxes

Federal Excise Tax does not apply to materials purchased by the City of Chicago by virtue of Exemption Certificate No. 36-6005820 and State of Illinois Sales Tax does not apply by virtue of Exemption Certificate No. E9998-1874-07. Illinois Retailers Occupation Tax, Use Tax, and Municipal Retailers Occupation Tax do not apply to materials or services purchased by the City of Chicago by virtue of Statute. The price or prices quoted herein shall include all other Federal and/or State, direct and/or indirect taxes which apply. The prices quoted herein shall comply with all Federal laws and regulations.

4.6 Subcontractor Payments

The Contractor will be responsible for reporting payments to all Subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City to the Contractor for services performed, on the first day of each month and every month thereafter, e-mail and/or fax audit notifications will be sent out to the Contractor with instructions to report payments that have been made in the prior month to each Subcontractor. The reporting of payments to all Subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.

Once the Contractor has reported payments made to each MBE and WBE, including zero dollar amount payments, the MBE and WBE will receive an e-mail and/or fax notification requesting them to log onto the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and Subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at <https://chicago.mwdbe.com>.

ARTICLE 5. DISPUTES

Except as otherwise provided in this Agreement, Contractor must and the City may bring any dispute arising under this Agreement which is not resolved by the parties to the Chief Procurement Officer for decision based upon the written submissions of the parties. (A copy of the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago" is available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room, Chicago, Illinois 60602.) The Chief Procurement Officer will issue a written decision and send it to the Contractor by mail. The decision of the Chief Procurement Officer is final and binding. The sole and exclusive remedy to challenge the decision of the Chief Procurement Officer is judicial review by means of a common law writ of certiorari.

ARTICLE 6. COMPLIANCE WITH ALL LAWS

6.1 Compliance with All Laws Generally

(a) Contractor must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, including those set forth in this Article 6, and Contractor must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Contractor must require all Subcontractors to do so, also. Further, Contractor must execute an Economic Disclosure Statement and Affidavit ("**EDS**") in the form attached to this Agreement as Exhibit 4. Notwithstanding acceptance by the City of the EDS, Contractor's failure in the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Contractor must promptly update its EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate. Contractor agrees that Contractor's failure to maintain current throughout the term and any extensions of the term, the disclosures and information pertaining to ineligibility to do business with the City under Chapter 1-23 of the Municipal Code, as such is required under Sec. 2-154-020, shall constitute an event of default.

(b) Notwithstanding anything in this Agreement to the contrary, references to a statute or law are considered to be a reference to (i) the statute or law as it may be amended from time to time; (ii) all regulations and rules pertaining to or promulgated pursuant to the statute or law; and (iii) all future statutes, laws, regulations, rules and executive orders pertaining to the same or similar subject matter.

(c) City further acknowledges that the Solutions provided under this Agreement, which may include technology, authentication and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."); may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which City or its systems are located; and may also be subject to the customs and export laws and regulations of the country in which the Solution is rendered or received. Each party agrees to abide by those laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. City also may be subject to import or re-export restrictions in the event City transfers the Products, Software or Deliverables from the country of delivery and City responsible for complying with applicable restrictions. If any software provided by City and used as part of the Solution contains encryption, then City agrees to provide Dell with all of the information needed for Dell to obtain export licenses from the U.S. Government or any other applicable national government and to provide Dell with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, City is solely responsible for obtaining any necessary permissions relating to software that it exports. Dell also may require export certifications from City for City-provided software. Dell's acceptance of any order for a Solution is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government. Dell is not liable for delays or failure to deliver Solutions resulting from City's failure to obtain such license or to provide such

certification.

Dell is not responsible for determining whether any Non-Dell Equipment to be used in the Solution, satisfies the local regulatory requirements of the country to which such Solution is to be delivered or performed, and Dell shall not be obligated to provide any Solution where the resulting Solution is prohibited by law or does not satisfy the local regulatory requirements.

6.2 Nondiscrimination

(a) Contractor

Contractor must comply with applicable federal, state, and local laws and related regulations prohibiting discrimination against individuals and groups. If this Agreement is federally funded in whole or in part, following the Effective Date, additional provisions related to nondiscrimination may apply, upon agreement of the parties pursuant to Section 9.3.

(i) Federal Requirements

Contractor must not, directly or indirectly, engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual's employment, because of the individual's race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying Contractor's employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, handicap/disability or national origin.

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e *et seq.* (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. ' ' 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. ' ' 621-34; Rehabilitation Act of 1973, 29 U.S.C. ' ' 793-794 (1981); Americans with Disabilities Act, 42 U.S.C. ' 12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* (1990); and all other applicable federal statutes, regulations and other laws.

(ii) State Requirements

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code ' 750 Appendix A. Furthermore, Contractor must comply with the Public Works Employment Discrimination Act,

775 ILCS 10/0.01 *et seq.* (1990), as amended, and all other applicable state statutes, regulations and other laws.

(iii) **City Requirements**

Contractor must comply with, and the procedures Contractor utilizes and the Services Contractor provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 *et seq.* of the Municipal Code of Chicago (1990), as amended, and all other applicable City ordinances and rules.

(b) **Subcontractors**

Contractor must incorporate all of this Section 6.2 by reference in all agreements entered into with Subcontractors of any tier. Further, Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the federal, state, and local agencies charged with enforcing such laws and regulations, including the Chicago Commission on Human Relations.

6.3 Inspector General

It is the duty of any bidder, proposer or Contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor, Subcontractor or such applicant to cooperate with the Legislative Inspector General or the Inspector General in any investigation or hearing, if applicable, undertaken pursuant to Chapters 2-55 or 2-56, respectively, of the Municipal Code. Contractor understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

6.4 MacBride Ordinance

The City of Chicago through the passage of the MacBride Principles Ordinance seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.

In accordance with Section 2-92-580 of the Municipal Code of the City of Chicago, if Contractor conducts any business operations in Northern Ireland, the Contractor must make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

The provisions of this Section 6.4 do not apply to contracts for which the City receives funds administered by the United States Department of Transportation, except to the extent Congress has directed that the Department of Transportation not withhold funds from states and localities

that choose to implement selective purchasing policies based on agreement to comply with the MacBride Principles for Northern Ireland, or to the extent that such funds are not otherwise withheld by the Department of Transportation.

6.5 Business Relationships with Elected Officials

Pursuant to MCC Sect. 2-156-030(b), it is illegal for any elected official, or any person acting at the direction of such official, to contact either orally or in writing any other City official or employee with respect to any matter involving any person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months. In addition, no elected official may participate in any discussion in any City Council committee hearing or in any City Council meeting or vote on any matter involving the person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months.

Violation of MCC Sect. 2-156-030 by any elected official with respect to this contract will be grounds for termination of this contract. The term financial interest is defined as set forth in MCC Chapter 2-156.

6.6 Chicago "Living Wage" Ordinance

(a) Section 2-92-610 of the Municipal Code provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers ("**Covered Employees**"). Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

- (i) If Contractor has 25 or more full-time employees, and
- (ii) If at any time during the performance of this Agreement, Contractor and/or any Subcontractor or any other entity that provides any portion of the Services (collectively "**Performing Parties**") uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then
- (iii) Contractor must pay its Covered Employees, and must ensure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the "**Base Wage**") for all Services performed under this Agreement.

(b) Contractor's obligation to pay, and to ensure payment of, the Base Wage will begin at any time during the term of this Agreement when the conditions set forth in (a)(i) and (a)(ii) above are met, and will continue until the end of the term of this Agreement.

(c) As of July 1, 2013, the Base Wage is \$11.78 per hour, and each July 1 thereafter, the Base Wage will be adjusted using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. The currently applicable Base Wage is available from the Department of Procurement Services. At all times during the term of this Agreement, Contractor and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Contractor and all other Performing Parties must pay the prevailing wage rates.

(d) Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. Contractor agrees to provide the City with documentation acceptable to the Chief Procurement Officer demonstrating that all Covered Employees, whether employed by Contractor or by a Subcontractor, have been paid the Base Wage, upon the City's request for such documentation. The City may independently audit Contractor and/or Subcontractors to verify compliance with this section. Failure to comply with the requirements of this section will be an event of default under this Agreement, and further, failure to comply may result in ineligibility for any award of a City contract or subcontract for up to 3 years.

(e) Not-for-Profit Corporations: If Contractor is a corporation having federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is recognized under Illinois not-for-profit law, then the provisions of subsections (a) through (d) above do not apply.

6.7 Environmental Warranties and Representations

In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge and belief, its subcontractors have not violated and are not in violation of the following sections of the Code (collectively, the Waste Sections):

7-28-390 Dumping on public way;
7-28-440 Dumping on real estate without permit;
11-4-1410 Disposal in waters prohibited;
11-4-1420 Ballast tank, bilge tank or other discharge;
11-4-1450 Gas manufacturing residue;
11-4-1500 Treatment and disposal of solid or liquid waste;
11-4-1530 Compliance with rules and regulations required;
11-4-1550 Operational requirements; and

11-4-1560 Screening requirements.

During the period while this Agreement is executory, Contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity.

This section does not limit Contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement.

Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect Contractor's eligibility for future contract awards.

6.8 Prohibition on Certain Contributions

No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

Contractor represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Contractor or the date the Contractor approached the City, as applicable, regarding the formulation of this Contract, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Contractor shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Contract, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Contract, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Contractor violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Contract resulting from this specification, the CPO may reject Contractor's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Contractor and the City that is (i) formed under the authority of MCC Ch. 2-92; (ii) for the purchase, sale or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council.

"Contribution" means a "political contribution" as defined in MCC Ch. 2-156, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in MCC Ch. 2-156, as amended.

6.9 Firms Owned or Operated by Individuals with Disabilities

The City encourages Contractors to use Subcontractors that are firms owned or operated by individuals with disabilities, as defined by Section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.

6.10 Ineligibility to do Business with City.

Failure by the Contractor or any Controlling Person (defined in Section 1-23-010 of the Municipal Code) thereof to maintain eligibility to do business with the City in violation of Section 1-23-030 of the Municipal Code shall render this Contract voidable or subject to termination, at the option of the Chief Procurement Officer. Contractor agrees that Contractor's failure to maintain eligibility (or failure by Controlling Persons to maintain eligibility) to do

business with the City in violation of Section 1-23-030 of the Municipal Code shall constitute an event of default.

6.11 Deemed Inclusion

Provisions required by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement.

6.12 False Statements

(a) 1-21-010 False Statements. Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly falsifies any statement of material fact made in connection with an application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the city sustains because of the person's violation of this section. A person who violates this section shall also be liable for the city's litigation and collection costs and attorney's fees. The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code.

(b) 1-21-020 Aiding and abetting. Any person who aids, abets, incites, compels or coerces the doing of any act prohibited by this chapter shall be liable to the city for the same penalties for the violation.

(c) 1-21-030 Enforcement. In addition to any other means authorized by law, the corporation counsel may enforce this chapter by instituting an action with the department of Administrative Hearings.

6.13 Duty to Report

It is the duty of the Contractor to report to the City Inspector General, directly and without undue delay, any and all information concerning conduct which it knows or should reasonably know to involve corrupt or other unlawful activity by its employees or the employees of any of its subcontractors, in connection with the performance of city work, or by any person dealing with the city which concerns the person's dealings with the city. Knowing failure to make such a report will be an event of default under this Contract.

ARTICLE 7. SPECIAL CONDITIONS

7.1 Warranties and Representations

In connection with signing and carrying out this Agreement, Contractor, to the best of its knowledge and belief:

- (a) warrants that Contractor is appropriately licensed under Illinois law to perform the Services required under this Agreement and will perform no Services for which a professional license is required by law and for which Contractor is not appropriately licensed;
- (b) warrants it is financially solvent; it and each of its employees, agents and Subcontractors of any tier are competent to perform the Services required under this Agreement; and Contractor is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement;
- (c) warrants that it will not knowingly use the services of any ineligible contractor or Subcontractor for any purpose in the performance of its Services under this Agreement;
- (d) warrants that Contractor and its Subcontractors are not in default at the time this Agreement is signed, and have not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the date of this Agreement, been found to be in default on any contract awarded by the City;
- (e) represents that it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the Services required; from its own analysis it has satisfied itself as to the nature of all things needed for the performance of this Agreement; this Agreement is feasible of performance in accordance with all of its provisions and requirements, and Contractor warrants it can and will perform, or cause to be performed, the Services in strict accordance with the provisions and requirements of this Agreement;
- (f) represents that Contractor and, to the best of its knowledge, its Subcontractors are not in violation of the provisions of ' 2-92-320 of the Municipal Code , and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1;
- (g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 8.2 and 8.3 of this Agreement; and
- (h) warrants and represents that neither Contractor nor an Affiliate of Contractor (as defined below) appears on the Specially Designated Nationals List, the Denied Persons List, the unverified List, the Entity List, or the Debarred List as maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or by the Bureau of Industry and Security of the U.S. Department of Commerce (or their successors), or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order

or judgment. "Affiliate of Contractor" means a person or entity that directly (or indirectly through one or more intermediaries) controls, is controlled by or is under common control with Contractor. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner whatsoever that results in control in fact by that other person or entity (either acting individually or acting jointly or in concert with others) whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

7.2 Ethics

(a) In addition to the foregoing warranties and representations, Contractor warrants:

(i) no officer, agent or employee of the City is employed by Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code .

(ii) no payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to Contractor or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order.

(b) Contractor must comply with Chapter 2-156 of the Municipal Code. Contractor acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156, including any contract entered into with any person who has retained or employed a non-registered lobbyist in violation of Section 2-156-305 of the Municipal Code, is voidable as to the City.

7.3 Joint and Several Liability

If Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then under this Agreement, each and without limitation every obligation or undertaking in this Agreement to be fulfilled or performed by Contractor is the joint and several obligation or undertaking of each such individual or other legal entity.

7.4 Limitation of Liability

(a) EXCEPT FOR (i) AN UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION, (ii) INFRINGEMENT/MISAPPROPRIATION OF INTELLECTUAL PROPERTY, (iii) INDEMNIFICATION OBLIGATIONS UNDER SECTION 2.10, (iv) DAMAGE TO OR DESTRUCTION OF CITY PROPERTY, AND (v) INJURY TO OR DEATH OF ANY PERSON, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ,OR FOR ANY (a) LOSS OF REVENUE, INCOME, PROFIT, SAVINGS OR BUSINESS OPPORTUNITY; (b) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR

NETWORK, OR THE RECOVERY OF SUCH; (c) BUSINESS INTERRUPTION OR DOWNTIME; (d) LOSS OF GOODWILL OR REPUTATION; (e) PRODUCTS, SOFTWARE OR DELIVERABLES NOT BEING AVAILABLE FOR USE; OR (f) THE PROCUREMENT OF SUBSTITUTE SOLUTIONS; ARISING OUT OF OR IN CONNECTION WITH THE SOLUTIONS PROVIDED HEREUNDER.

EXCEPT FOR CLAIMS FOR PERSONAL BODILY INJURY, INCLUDING DEATH, OR DAMAGE TO OR DESTRUCTION OF PROPERTY, THE UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION, INFRINGEMENT/MISAPPROPRIATION OF INTELLECTUAL PROPERTY, VIOLATIONS OF WARRANTY PROVISIONS HEREIN, INDEMNIFICATION OBLIGATIONS UNDER SECTION 2.10, AND THE CITY'S BREACH OF ITS PAYMENT OBLIGATIONS (CONSISTENT WITH CITY'S FUNDING OBLIGATIONS SET FORTH IN SECTION 4.3, NEITHER PARTY'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY SERVICE, PRODUCT OR SOFTWARE PROVIDED HEREUNDER) IN ANY CONTRACT YEAR SHALL EXCEED THE GREATER OF ONE MILLION (\$1,000,000.00) DOLLARS, OR ONE AND ONE-HALF (1.5X) TIMES THE TOTAL AMOUNT PAID BY THE CITY DURING THE PRIOR CONTRACT YEAR OF THIS AGREEMENT FOR THE SPECIFIC SERVICE, PRODUCT OR SOFTWARE GIVING RISE TO SUCH CLAIM(S).

THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE, TO THE EXTENT PERMITTED BY APPLICABLE LAW. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR DELL PROVIDING PRODUCTS, SOFTWARE, OR SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

7.5 Business Documents

At the request of the City, Contractor must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

7.6 Conflicts of Interest

(a) No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or

delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

(b) Contractor represents that it, and to the best of its knowledge, its Subcontractors if any (Contractor and Subcontractors will be collectively referred to in this Section 7.5 as "**Consulting Parties**"), presently have no direct or indirect interest and will not acquire any direct or indirect interest in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Consulting Parties shall use reasonable efforts to ensure that they do not perform any Services for the City on applications or other documents submitted to the City by any of Contractor or any subcontractor's past or present clients during the term of this Agreement that would cause a conflict of interest. If Contractor or any subcontractor becomes aware of a conflict, they must immediately stop work on the assignment causing the conflict and notify the City.

(d) Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

(e) Further, Consulting Parties must not assign any person having any conflicting interest to perform any Services under this Agreement or have access to any confidential information, as described in Section 2.11 of this Agreement. If the City, by the Commissioner in his reasonable judgment, determines that any of Consulting Parties' services for others conflict with the Services that Consulting Parties are to render for the City under this Agreement, Consulting Parties must terminate such other services immediately upon request of the City.

(f) Furthermore, if any federal funds are to be used to compensate or reimburse Contractor under this Agreement, Contractor represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C. ' 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, Contractor must execute a Certification Regarding Lobbying, which is part of the EDS and incorporated by reference as if fully set forth here.

7.7 Non-Liability of Public Officials

Contractor and any assignee or Subcontractor of Contractor must not charge any official, employee or agent of the City personally with any liability or expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

7.8 EDS / Certification Regarding Suspension and Debarment

Contractor certifies, as further evidenced in the EDS attached as Exhibit 4, by its acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor further agrees by executing this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts and subcontracts. If Contractor or any lower tier participant is unable to certify to this statement, it must attach an explanation to the Agreement.

ARTICLE 8. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION

8.1 Events of Default Defined

The following constitute events of default:

- (a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Contractor to the City.
- (b) Contractor's material failure to perform any of its obligations under this Agreement including the following:
 - (i) Failure to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the timely performance of the Services in accordance with the terms of the Agreement;
 - (ii) Failure to have and maintain all professional licenses required by law to perform the Services;
 - (iii) Failure to perform the Services within the mutually agreed timeframe set forth in the Agreement or relevant Statement of Work;
 - (iv) Failure to perform the Services in a professional manner in accordance with generally accepted industry standards or inability to perform the Services as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;

- (v) Failure to promptly re-perform, as required, within a commercially reasonable timeframe and at no cost to the City, Services that are rejected as nonconforming;
 - (vi) Discontinuance of the Services for reasons within Contractor's reasonable control;
 - (vii) Failure to comply with Section 6.1 in the performance of the Agreement;
 - (viii) Failure promptly to update EDS(s) furnished in connection with this Agreement when the information or responses contained in it or them is no longer complete or accurate;
 - (ix) Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination; and
 - (x) Any other acts specifically stated in this Agreement as constituting an act of default.
- (c) Any change in ownership or control of Contractor without the prior written approval of the Chief Procurement Officer (when such prior approval is permissible by law), which approval the Chief Procurement Officer will not unreasonably withhold, provided that a change in ownership of shares of the Contractor in an amount less than 7.5% shall not be deemed a change in ownership or control.
- (d) Contractor's default under any other agreement it may presently have or may enter into with the City for the duration of this Agreement. Contractor acknowledges that in the event of a default under this Agreement the City may also declare a default under any such other agreements.
- (e) Contractor's violation of City ordinance(s) unrelated to performance under the Agreement such that, in the opinion of the Chief Procurement Officer, it indicates a willful or reckless disregard for City laws and regulations.

8.2 Remedies

- (a) Notices. The occurrence of any event of default permits the City, at the City's sole option, to declare Contractor in default. The Chief Procurement Officer shall give Contractor an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days unless extended by the Chief Procurement Officer. Whether to declare Contractor in default is within the sole discretion of the Chief Procurement Officer and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Agreement. Provided, however, that the Chief Procurement Officer shall not be obligated to give the Contractor an opportunity to cure a default in instances where the default is not susceptible to cure.

The Chief Procurement Officer will give Contractor written notice of the default, either in the form of a cure notice ("**Cure Notice**"), or, if no opportunity to cure will be granted, a default notice ("**Default Notice**"). If the Chief Procurement Officer gives a Default Notice because Contractor has failed to cure the default within 30 days, she will also indicate any present intent she may have to terminate this Agreement, which she may do either as to all or any portion of the Services, and the decision to terminate is final and effective upon giving the notice. If the Chief Procurement Officer decides not to terminate, this decision will not preclude her from later deciding to terminate the Agreement in a later notice, which will be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Chief Procurement Officer may give a Default Notice if Contractor fails to effect a cure within the cure period given in a Cure Notice. When a Default Notice with intent to terminate is given as provided in this Section 8.2 and Article 10, such notice shall specify whether the termination is for a portion or all of the Services, and Contractor must discontinue the Services specified in such notice, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City.

(b) Exercise of Remedies. After giving a Default Notice, the City may invoke any or all of the following remedies:

- (i) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;
- (ii) The right of specific performance, an injunction or any other appropriate equitable remedy;
- (iii) The right to money damages;
- (iv) The right to withhold all or any part of Contractor's compensation under this Agreement;
- (v) The right to deem Contractor non-responsible in future contracts to be awarded by the City;
- (vi) The right to declare default on any other contract or agreement Contractor may have with the City.

(c) City's Reservation of Rights. If the Chief Procurement Officer considers it to be in the City's best interests, he may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Contractor to continue to provide the Services despite one or more events of default, Contractor is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

(d) **Non-Exclusivity of Remedies.** The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers expedient.

8.3 Termination For Convenience

(a) In addition to termination under Sections 8.1 and 8.2 of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the City to Contractor. In the event the City terminates for convenience, the City will give notice to Contractor in accordance with the provisions of Article 10. The effective date of termination will be the date the notice is received by Contractor or the date stated in the notice, whichever is later. If the City elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City effective 10 days after the date the notice is considered received as provided under Article 10 of this Agreement (if no date is given) or upon the effective date stated in the notice.

(b) After a notice of termination under this Section from the City is received, Contractor must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun. If additional time is required to wind down any activities begun prior to the effective date of termination, then the Contractor shall notify the City in writing before the effective date of termination. The City in its sole discretion may extend the effective date of termination to allow for the work to be completed and paid for. No costs incurred after the effective date of the termination are allowed. Payment for any Services performed in accordance with the mutually agreed acceptance criteria or the specifications provided for Equipment or Software before the effective date of the termination is on the same basis as set forth in Article 4, but if any compensation is described or provided for on the basis of a period longer than 10 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The City and Contractor must attempt to agree on the amount of compensation to be paid to Contractor, but if not agreed on, the dispute must be settled in accordance with Article 5 of this Agreement. The payment so made to Contractor is in full settlement for all Services performed in accordance with the mutually agreed acceptance criteria and within the timeframe, and Equipment or Software that conforms to the relevant specifications, under this Agreement.

(c) Contractor must include in its contracts with Subcontractors an early termination provision in form and substance equivalent to this early termination provision to prevent claims against the City arising from termination of subcontracts after the early termination. Contractor will not be entitled to make any early termination claims against the City resulting from any Subcontractor's claims against Contractor or the City.

(d) If the City's election to terminate this Agreement for default under Sections 8.1 and 8.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 8.3.

8.3A Termination for City Non-Payment

Contractor shall be permitted to terminate for City's failure to meet its undisputed payment obligations after ninety (90) days written notice has been given by Contractor, in accordance with the requirements of Article 10, to the City notifying the City of such failure to pay.

8.4 Suspension

The City may at any time request that Contractor suspend its Services, or any part of them, by giving 15 days prior written notice to Contractor or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Contractor must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Chief Procurement Officer and such equitable extension of time as may be mutually agreed upon by the Chief Procurement Officer and Contractor when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Contractor as a result of recommencing the Services must be treated in accordance with the compensation provisions under Article 4 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any one year of this Agreement. If the total number of days of suspension exceeds 45 days, Contractor by written notice to the City may treat the suspension as an early termination of this Agreement under Section 8.3.

8.5 Right to Offset

As provided under Section 2-92-380 of the Municipal Code, the City may set off from Contractor's compensation under this Agreement an amount equal to the amount of the fines and penalties for each *outstanding parking violation complaint* and the amount of any *debt* owed by Contractor to the City as those italicized terms are defined in the Municipal Code.

ARTICLE 9. GENERAL CONDITIONS

9.1 Entire Agreement

(a) General

This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other terms, conditions, warranties, inducements,

considerations, promises or interpretations are implied or impressed upon this Agreement that are not addressed in this Agreement.

(b) No Collateral Agreements

Contractor acknowledges that, except only for those representations, statements or promises contained in this Agreement and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced Contractor to enter into this Agreement or has been relied upon by Contractor, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Services to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

(c) No Omissions

Contractor acknowledges that Contractor was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Contractor did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Contractor relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

9.2 Counterparts

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

9.3 Amendments

Except as provided in Section 3.3 of this Agreement, no changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Contractor and by the Mayor, Comptroller, and Chief Procurement Officer of

the City or their respective successors and assigns. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 9.3.

Whenever under this Agreement Contractor is required to obtain the City's prior written approval, the effect of any approval that may be granted pursuant to Contractor's request is prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event is approval permitted to apply retroactively to a date before the approval was requested.

9.4 Governing Law and Jurisdiction

This Agreement is governed as to performance and interpretation in accordance with the laws of the State of Illinois.

Contractor irrevocably submits itself to the original jurisdiction of those courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Service of process on Contractor may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Contractor, or by personal delivery on any officer, director, or managing or general agent of Contractor. If any action is brought by Contractor against the City concerning this Agreement, the action must be brought only in those courts located within the County of Cook, State of Illinois.

9.5 Severability

If any provision of this Agreement is held or considered to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

9.6 Assigns

All of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, successors and assigns.

9.7 Cooperation

Contractor must at all times cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Contractor must make every effort to ensure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

9.8 Waiver

Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance.

Whenever under this Agreement the City by a proper authority waives Contractor's performance in any respect or waives a requirement or condition to either the City's or Contractor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Contractor in writing.

9.9 Independent Contractor

(a) This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between Contractor and the City. The rights and the obligations of the parties are only those set forth in this Agreement. Contractor must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of the City.

(b) This Agreement is between the City and an independent contractor and, if Contractor is an individual, nothing provided for under this Agreement constitutes or implies an employer-employee relationship such that:

(i) The City will not be liable under or by reason of this Agreement for the payment of any employment compensation award or damages in connection with the Contractor performing the Services required under this Agreement.

(ii) Contractor is not entitled to membership in any City Pension Fund, Group Medical Insurance Program, Group Dental Program, Group Vision Care, Group Life Insurance Program, Deferred Income Program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City.

(iii) The City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to Contractor.

(c)(i) The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the June 24, 2011 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in Shakman v. Democratic Organization of Cook County, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(ii) Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Contractor, either as an employee or as a subcontractor, and from directing Contractor to hire an individual as an employee or as a subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Agreement are employees or subcontractors of Contractor, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Contractor.

(iii) Contractor will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(iv) In the event of any communication to Contractor by a City employee or City official in violation of Section (ii) above, or advocating a violation of Section (iii) above, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Agreement. Contractor will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to the contract.

9.10 Participation by Other Local Government Agencies

Other local government agencies may be eligible to participate in this agreement pursuant to the terms and conditions of this Contract if such agencies are authorized, by law or their governing bodies, to execute such purchases, and if such authorization is allowed by the City's Chief

Procurement Officer, and if such purchases have no net adverse effect on the City, and result in no diminished services from the Contractor to the City's user departments pursuant to such purchases. Examples of such Local Government Agencies are: Board of Education, Chicago Park District, City Colleges of Chicago, Chicago Transit Authority, Chicago Housing Authority, Chicago Board of Elections, Metropolitan Pier and Exposition Authority (McCormick Place, Navy Pier), Cook County and the Municipal Courts. Said purchases shall be made upon the issuance of a purchase order directly from the Local Government Agency. The City will not be responsible for payment of any amounts owed by any other Local Government Agencies, and will have no liability for the acts or omissions of any other Local Government Agency.

9.11 Force Majeure

Neither party shall be liable to the other for any failure to perform any of its obligations under this Agreement during any period in which performance is delayed by circumstances beyond its reasonable control, such as fire, flood, war, embargo, strike, riot, or the intervention of any governmental authority (a "Force Majeure"). In such event, however, the delayed party must promptly provide the other party with written notice of the Force Majeure. The delayed party's time for performance will be excused for the duration of the Force Majeure, but if the Force Majeure event lasts longer than thirty (30) days, then the other party may immediately terminate, in whole or in part, this Agreement by giving written notice to the delayed party.

ARTICLE 10. NOTICES

Notices provided for in this Agreement, unless provided for otherwise in this Agreement, must be given in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the City:

Department of Innovation and Technology
Suite 2700, Daley Plaza
50 W. Washington St.
Chicago, Illinois 60602
Attention: Chief Information Officer

and

Department of Procurement Services
Room 806, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Chief Procurement Officer

With Copies to:

Department of Law
Room 600, City Hall

121 North LaSalle Street
Chicago, Illinois 60602
Attention: Corporation Counsel

If to Contractor:
Dell Marketing L.P.
One Dell Way, RR8-07
Round Rock, TX 78682
Attention: Contracts Manager, Post Sales

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 10. Notices delivered by mail are considered received three days after mailing in accordance with this Article 10. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

ARTICLE 11. AUTHORITY

Execution of this Agreement by Contractor is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of Contractor have been made with complete and full authority to commit Contractor to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

[Signature Pages, Exhibits and Schedules follow.]

SIGNATURE PAGE(S)

Contract No.: 29656

Specification No.: 105081

Vendor Name: Dell Marketing LP

Total Amount (Value): \$33,100,000.00

Fund Chargeable: 014.0100.0062005.0446.220446

Dell Marketing L.P.

(Contractor)

By: J. Scott Lorus

Its: Contractor Consultant

Attest: Stephanie Miller

State of Texas

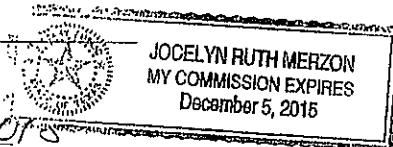
County of Travis

This instrument was acknowledged before me on this 28th day of May, 2014 by
J. Scott Lorus as President (or other authorized officer) and
Stephanie Miller as Secretary of Dell Marketing LP (Corporation Name).
authorized signatory

(Seal)

Joelyn Ruth Merzon
Notary Public Signature

Commission Expires: 12.5.2015



CITY OF CHICAGO

Rahm Emanuel 527

Mayor

Date

Erin Keane

6.26.14

Comptroller

Date JUN 26 2014

[Signature]
Chief Procurement Officer

[Signature]
Date

CERTIFICATE OF SIGNATURE AUTHORITY

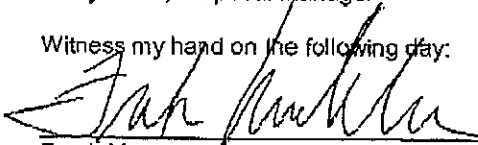
This is to certify that the below named individuals of Dell Marketing, L.P. are authorized to execute agreements, proposal documents, certificates and representations on behalf of and in the name of Dell Marketing, L.P. or any other Dell entity in accordance with Dell's Customer Engagement Management (CEM) Signature Policy for Contracts, Proposals & Services Statement of Work (SOW). This certification shall become effective upon execution and continue until rescinded in whole or in part. If the employment status, title or roles and responsibilities of any of the below named individuals changes then their authority will be revised according to their then current employment status, title or roles and responsibilities. This certification may be rescinded in whole or in part, at any time without prior notice. Interested parties may request an updated certificate by written request to the following address:

Dell Marketing, L.P.
Customer Engagement Management
Contracts, Proposals & Services SOW
Certificate of Authority Request
One Dell Way, Mailstop 8708
Round Rock, Texas 78682

John Lavorato, Director - CEM
Terry Kahler, VP Global Relationship Business Operations
James M. Coffin, VP & GM - Healthcare & Life Sciences
Mark Horan, VP & GM - Select Public Accounts
John Mullen, VP & GM - ESL Major Public Accounts
Joe Ayers, AVP - Federal
Max Peterson, AVP - Federal
Barbara Tormaschy, VP - Finance
Stephen Charette, Director - Finance
Libby Essinger, Sr. Manager - Contracts
Glen McGuire, Sr. Manager - Proposals
Jane McKenzie, Sr. Manager - Contracts
Rich Walsh, Sr. Manager - Contracts - Services SOW
Kim James, Compliance - CEM
Josh Bashara, Manager - Proposals
Pamala Aschenbrenner, Contract Manager - Services SOW
Lori Bailey, Contract Manager
Dennis Brand, Proposal Manager
Lesley Braun, Contract Manager
John Billings, Proposal Manager
Kevin Bromley, Contracts Manager
Eric Bufkin, Proposal Manager
Solange Calo, Proposal Manager
Aimee Cantrell, Proposal Manager
Daniela Chambless, Proposal Manager
Michelle Chaney, Proposal Manager
Len Collett, Contract Manager
Scott Cruver, Proposal Manager
Dennis Daley, Sr. Contract Strategist
Mitchell Duncan, Proposal Manager
Geoff Easterling, Contract Manager - Services SOW
Greg Fletcher, Proposal Manager
Meghan Flisakowski, Proposal Manager
Rebecca Fontane, Proposal Advisor
Ani Fox, Proposal Manager
Jody Hahn, Proposal Manager

Jill Henderson, Contract Manager
Brian Johnson, Proposal Manager
Beth Jordan, Proposal Manager
Kate Kauffman, Contract Manager - Services SOW
Liz Killmer, Contract Manager
Terry Kilpatrick, Proposal Manager
Ashleigh Lane, Contract Manager
David Lane, Contract Manager - Services SOW
Scott Loras, Contract Manager
Melanie Mack, Proposal Manager
Christina McColly, Contract Manager
Lauren McCosham, Contract Manager
Staci McDonald, Proposal Manager
Felicia Middleton, Proposal Manager
Stephanie Miller, Contract Manager
Heather Mitchell, Proposal Manager
Clare Mooney, Proposal Manager
Susan Morgan, Contract Manager
Chris Murphy, Contract Manager - Services SOW
Kelly O'Shieles, Contract Manager
Stan Parish, Proposal Manager
Kate Parks, Contract Manager
Phyllis Pate, Contract Manager
Keon Robertson, Contract Manager - Services SOW
Tiffany Roper, Proposal Manager
Robert Saufferer, Contract Manager
Brian Sokoff, Proposal Manager
Susan Spalding, Contracts Advisor
Nicholas Stokes, Proposal Manager
Ted Thomas, Proposal Manager
Christian von Wupperfeld, Contract Manager
Teresa Walden, Contract Manager
Karen Welty, Proposal Manager
David White, Contract Manager
Rebecca Whittaker, Proposal Manager

Witness my hand on the following day:



Frank Muehleman
Vice President & General Manager, Public Business Group

3/11/2010
Date