TEXAS DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT
Vintage Computer Brokers, dba Vintage Information Technology Services

This VOLUME PRICING CONTRACT is entered into as of January 30, 2002 (Effective Date) between the State of Texas, acting by and through the Department of Information Resources (DIR) with its principal place of business at 300 West 15th Street, Austin, Texas 78701, on behalf of state agencies as defined in §2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, §61.003) and local governments as defined in §791.003, Texas Government Code (Customer), and Vintage Computer Brokers, dba Vintage Information Technology Services (Vendor) with its principal place of business at 1210 W. 5th Street, Austin, TX 78703.

The parties agree as follows:

I. PURPOSE OF THIS CONTRACT

Vendor shall provide information resources technologies **only** as specified in Contract Posting Document DIR-TMP-02-016, attached as Exhibit "A", to Customers in accordance with the terms of this contract. Vendor shall provide information resources technologies only upon the issuance and acceptance by Vendor of valid purchase orders. A Customer may purchase any quantity of product or service available from Vendor at the prices negotiated by the DIR ("DIR Discounted Price"). For large orders, Vendor and Customer may negotiate quantity price discounts above the DIR pricing discounts for a purchase order. From time to time, Vendor may offer other discounts on particular information resources technologies for qualifying Customer (*e.g.*, announced promotion prices, educational discount prices, or similar discount pricing).

Vendor is required to be a Certified Dell Reseller and shall maintain certification for the term of the contract.

II. TERM OF CONRACT

This contract shall begin January 30, 2002 and end January 30, 2004 unless extended, at the option of DIR, for up to two optional one-year renewals, through January 30, 2006.

III. ORDER OF PRECEDENCE

Each purchase order under this contract that is accepted by Vendor will be subject to this contract. Purchase transactions between the parties shall be governed by the terms and conditions of this contract and any exhibits to this contract. In the event of a conflict between a term of this contract (or an exhibit to this contract) or purchase order issued by a Customer, the contract term shall control. No additional term and condition of a purchase order issued by a Customer can weaken a term or condition of this contract.

IV. DEFINITIONS

a) **"Contract Administrator"** refers to the individual appointed by the DIR to administer this contract on behalf of the State of Texas and the authorized Customers.

b) **"Announced Promotion Prices"** are prices offered nationally to specific categories of Customer for defined time periods under defined terms and conditions.

c) **"Educational Discount Price"** means the price offered in a nationally announced promotion, which is limited to educational Customers only.

d) **"Large Order Negotiated Price"** means the price negotiated between Vendor and a particular Customer under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement between Manufacturer, Vendor, and the Customer. Large order negotiated prices shall apply only to those items which meet the applicable additional terms and conditions (*e.g.*, order quantity, time limitation, product configuration) negotiated by the parties.

e) **"Machine"** is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "machine" includes a Vendor machine and any non-Vendor machine (including other equipment) that Vendor may provide to Customer.

f) **"Customer"** means any Texas State agency as defined in §2054.003, Texas Government Code (including institutions of higher education as defined in §61.003, Texas Education Code) and local governments as defined in §791.003, Texas Government Code.

g) **"Manufacturer"** refers to Dell Computer Corporation.

h) **"Information Resources Technology (Technologies)"** is defined in Texas Government Code §2054.003.

i) **"Purchase Order"** means an electronic or paper document issued by a Customer, which directs Vendor to deliver information resources technologies pursuant to this contract.

j) **"Specification"** is a document that provides information specific to an item of information resources technology.

k) **"Straight Shipment"** refers to information resources technologies that are delivered directly to the Customer from Manufacturer. Vendor is only required to accept the purchase order from Customer, place the Customer order with Manufacturer, and invoice the purchase order to the Customer.

l) **"Services"** means any type of work that a Customer may require from Vendor for a purchase, above and beyond a straight shipment from Manufacturer: ie. installation, de-installation, integration services, warehousing product, etc.

V. QUANTITY GUARANTEES

This contract is not exclusive. Customers may obtain information resources technologies from other sources during the contract term. DIR makes no express or implied warranties whatsoever

that any particular number of purchase orders will be issued or that any particular quantity or dollar amount of information resources technologies will be procured. DIR is prevented by law from selling information resources technologies to other than governmental entities as defined in Texas Government Code, §2251.001 and Texas Education Code, §61.003.

VI. PAYMENT PROVISIONS

All payments for information resources technologies purchased under this contract, and any provision of acceptance of such information resources technologies, shall be made to Vendor by the Customer. Invoices shall be submitted by Vendor directly to the Customer. Customer will endeavor to pay within thirty (30) days of receipt of all accurate, timely and complete invoices from Vendor.

VII. PRICING AND PRODUCTS

a) The price to the Customer under this contract shall be based on Vendor's standard contracted pricing with Manufacturer. Manufacturer has the discretion to offer pricing discounts to the Vendor beyond the standard contracted price if Manufacturer opportunity warrants. The price to the Customer under this contract shall be the lowest price offered by Vendor to any Texas governmental entity for the same product or service. Vendor shall immediately pass price reductions received from its suppliers on to the DIR Customers purchasing under the Contract. The Vendor is in violation of the Contract if it is found selling the same product or service at a lower price to an eligible Customer outside of this contract. The violation may result in the Contract being terminated. Exception: Contracts between Vendor and DIR eligible Customers, as of effective date of this contract, shall be exempt from the terms of this contract at the option of the Customer. Vendor shall make the eligible Customer aware of the DIR contract and the ability of the Customer to buy hereunder upon Customer's contract expiring. Vendor may respond directly to Request for Offers (RFO) that are placed on the Texas Marketplace by DIR eligible Customers. Vendor shall first encourage eligible Customers to procure through the DIR contract prior to submitting a response to the Customer's RFO.

b) All Manufacturer Branded Equipment and as referenced in section I, which Vendor is authorized by Manufacturer to resell, shall be made available to the Customer at Vendor's contracted price from Manufacturer plus the following fees:

1) an administrative fee to DIR to defray its costs of negotiating, executing and administering this Contract, currently 1.00 % of each sale made.

2) a 1.85 % maximum markup fee by Vendor on all straight shipments from Manufacturer to Customer for purchases up to $50,000.00. Vendor may reduce markup at their discretion.

3) for purchases over $50,000.00 and for any purchase by Customer that requires Vendor to perform services, the markup fee by Vendor will be negotiable.

c) Vendor agrees to maintain DIR product prices in accordance with the terms of this contract. Vendor may change the price of any product or service at any time, base upon list price changes, but Vendor markup percentages at a maximum shall remain consistent during the agreed period. Payment under this contract shall not foreclose the right of the Customer to recover wrongful payments.

d) DIR may change its administrative fee upward or downward during the term of this contract upon written notice to Vendor. Any change in administrative fee shall be passed on to the Customer.

e) If Vendor is contacted by, or contacts, a Texas State Agency, Institution of Higher Education, or unit of Local Government concerning buying information resources technologies that are made available under this contract, Vendor shall make the potential Customer aware of this contract and the ability of the potential Customer to buy hereunder.

f) Vendor may make product model changes, add new products, product upgrades or services at any time and the pricing for the same shall incorporate comparable Vendor markup levels at a maximum provided herein.

g) The total price to the Customer under this contract shall include any standard Manufacturer shipping and handling fees, or shall be listed separately for the Customer. No additional administrative fees shall be charged to the Customer for standard Manufacturer shipping and handling. If the Customer requests expedited delivery or a shipping method that is not standard to Manufacturer, Customer will be responsible for any additional fees in order to accommodate. Vendor reserves the right to use Vendor's standard shipping account, if the cost of such shipping fee is not more costly than that of Manufacturer. Manufacturer and Vendor reserve the right to adjust their fees based in the event of fuel surcharges as part of cost of doing business with the Customer.

VIII. TERMINATION

The following provisions are applicable in the event this contract is terminated.

a) **Termination for Convenience**

At any time, either party may terminate this contract, in whole or in part, by giving the other party (30) days written notice.

b) **Customer's Rights**

In the event the contract expires or is terminated for any reason, a Customer shall retain its rights under the purchase order issued with respect to all information resources technologies ordered and accepted prior to the effective termination date.

c) **Vendor's Rights**

In the event the contract expires or is terminated for any reason, a Customer shall pay Vendor all amounts due for information resources technologies ordered prior to the effective termination date and ultimately accepted.

IX. ADMINISTRATIVE FEE

The administrative fee shall be included in the charges for the information resources technologies set forth on any order form and/or quote to Customer. This administrative fee shall not be broken out as a separate line item. The Vendor's obligation to pay such amounts shall be suspended to the extent that its payment of collection violates any state or federal laws.

Vendor will pay DIR, on a monthly basis, the fee based on a percentage of the dollar value of Vendor purchases made by Customers pursuant to this contract. Payment is due based on sales, net of returns and credits, to be figured at the time of invoice to Customer. Vendor will provide payment to DIR fifteen (15) business days after the end of each month. For example, if Customer is invoiced on December 10th, payment to DIR for the sale is due January 15th.

X. QUOTATIONS, WARRANTY, AND RETURN POLICIES

Vendor will adhere to their then-currently published polices concerning quotations. Warranties and return policies will adhere to Manufacturer's or Publisher's then-currently published policies. Vendor will be responsible for warranty transfer of ownership for Customers of all information resource technology procured through this contract. Policies for Customer will not be more restrictive nor more costly than those polices for any other like individual, corporation, partnership, governmental entity, or other legal entity for the same product or service.

XI. IMPRACTICALITY OF PERFORMANCE

A party shall be excused from performance under this contract for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. A Customer may terminate a purchase order if it is determined by the Customer that Vendor will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

XII. LEASING PROVISION

The parties to this contract may agree to provisions that allow leasing of information resource technology in addition to purchase sales.

XIII. RECORDS AND AUDIT

a) Vendor shall maintain adequate records to establish compliance with this contract until the later of a period of four (4) years after termination of this contract or until full, final and unappealable resolution of all audit or litigation issues that arise under this contract. Such records shall include documentation of the following: date each Customer placed order with Vendor, identification of the ordering Customer, the product model, quantity ordered, the price quoted to the Customer for such order, the Customer purchase order number, the order date to Manufacturer, ship date, MSRP, shipping address, the invoice sent to the Customer relating to the order, the record of Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this contract, and such other documentation as DIR may request.

b) Vendor shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this contract to DIR, the auditors designated by DIR, including auditors of the State Auditors' Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Vendor without charge. DIR shall provide Vendor ten (10) business days' notice prior to inspecting, auditing and/or copying Vendor's records. Vendor's records, whether paper or electronic, shall be made available during regular office hours. Vendor personnel familiar with

the Vendor's books and records shall be available to DIR staff and designees as needed to explain the books and records to the extent necessary for the audit or inspection to be performed. Vendor shall provide adequate office space to DIR staff during the performance of an audit.

c) If any inspection or audit performed hereunder reveals an aggregate overcharge to Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such audit or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the audit or inspection, shall be reimbursed to DIR within thirty days from receipt of an invoice from DIR reflecting the cost of the audit or inspection.

d) In the event of a discrepancy between the amount determined by the Texas Comptroller of Public Accounts as having been paid to Vendor on behalf of a Customer and the amount Vendor calculates DIR's administrative fee provided for such Customer, the amount reflected by the Comptroller of Public Accounts shall be presumed correct unless Vendor can demonstrate to DIR's satisfaction that Vendor's calculation of DIR's administrative fee is correct.

XIV. USE OF SUBCONTRACTORS

If Vendor uses any subcontractors, Vendor shall obtain advance written authorization from the DIR contract manager. Vendor shall satisfy DIR that all reasonable effort has been made to comply with the DIR HUB Subcontractor Plan.

A Customer may choose to contract for configuration, installation, training, warranty or maintenance services separately through alternate DIR contracts.

XV. AMENDMENTS

The contract shall be amended only by written instrument executed by the parties.

XVI. SCOPE OF CONTRACT

This contract replaces all of the agreements of the parties concerning the subject matter of this contract. No prior contract, verbal or otherwise, of the parties or their agents shall be valid or enforceable. This contract includes the requirements of the request for offer in Exhibit A.

XVII. INVALID TERM AND CONDITION

If any term or condition of this contract shall be held invalid or unenforceable, the remainder of this contract shall not be affected and shall be valid and enforceable.

XVIII. ENFORCEMENT OF CONTRACT

A party's failure to require strict performance of any provision of this contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this contract shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any

other rights. For disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used.

This contract shall be governed by the laws of the State of Texas. Venue for any dispute is in the District Court of Travis County, Texas.

XIX. WEB SITE MAINTENANCE

Vendor agrees to work with the DIR Contract Administrator in keeping updated Vendor information listed on the DIR Web Site. Information from the Vendor is to include Vendor representative contact name, phone number, fax number, email address, QISV number, and address of company for Customer to submit orders. Vendor web site URL must also be included. Information on how the Customer will request quotes, place orders, etc. must be maintained on the Vendor's web site.

XX. EQUAL OPPORTUNITY COMPLIANCE

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under this contract. If Vendor is found to be not in compliance with these requirements during the life of this contract, Vendor agrees to take appropriate steps to correct these deficiencies.

XXI. CHANGE IN VENDOR REPRESENTATIVES

Vendor shall appoint a primary representative to work with the contract administrator to maintain, support, and market this contract. DIR reserves the right to require a change in Vendor's then-current primary representative if the assigned representative is not, in the opinion of the DIR, serving the needs of the State of Texas and the Customers adequately. The DIR Contract Administrator will escalate to Vendor management any unresolved issues, before a change in Vendor's then-current representative is requested by DIR.

XXII. CONFIDENTIALITY

Vendor acknowledges that DIR is a government agency subject to the Texas Public Information Act. Vendor also acknowledges that DIR will not only comply with the Public Information Act, but also with all opinions of the Texas Attorney Generals' office concerning this Act.

Under the terms of this contract, DIR may provide Vendor with information related to DIR Customers. Vendor shall comply with all State of Texas privacy policy guidelines, including, but not limited to, the requirement that Vendor shall not re-sell or otherwise distribute or release to any party in any manner DIR Customer information.

XXIII. SITE PREPARATION

A Customer shall prepare and maintain its site in accordance with written instructions furnished by Vendor prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

XXIV. CONTRACT ADMINISTRATOR

The DIR shall appoint a contract administrator whose duties shall include but not be limited to the following:

A. Facilitate dispute resolution between the Vendor and Customer. Unresolved disputes shall be presented to DIR for resolution.

B. The administrator shall advise the DIR regarding Vendor's performance under the terms and conditions of the contract.

C. Receive and approve monthly contract utilization reports and the administration fee payments.

D. Periodically verify the Product prices conform with Vendor's volume price guarantees.

XXV. SURVIVAL

Warranty and service agreements that were entered into between Vendor and a Customer under the terms and conditions of this contract shall survive the termination of this contract.

XXVI. SUCCESSION

This contract shall be entered into and be binding upon the successors of the parties. DIR must approve assignment of this contract prior to any transfer.

XXVII. NOTIFICATION

Either party may give written notice to the other party in accordance with the terms of this paragraph. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To DIR:
Patrick W. Hogan, Director of Business Operations
Department of Information Resources
P.O. Box 13564
Austin, Texas 78711

To Vintage Computer Brokers, dba Vintage Information Technology Services:
Sheryl Hanes, President
1210 West 5th Street
Austin, Texas 78703

Either party may change its representative or address above by written notice.

XXVIII. ADMINISTRATION REPORTING AND FEES

Vendor agrees to provide monthly contract utilization reports to the contract administrator in accordance with the following schedule. The reports will be due fifteen (15) business days after the end of each month.

a) A monthly report shall state the sales under the contract for the period subtotaled by Customer name. The report shall be accompanied with a check payable to Texas Department of Information Resources for the calculated administrative fee.

b) A detail sales report will be issued monthly that includes no less than each Customer, order date, ship date, product model, quantity, Customer price, extended price, Customer purchase order number, physical shipping address, city, zip code, and other information as required by DIR.

c) Reports as required by DIR that will reflect the amount of work being subcontracted to historically underutilized businesses, as defined by Texas State law.

All reports are to be submitted electronically as defined by DIR.

The failure to file the utilization reports and fees on a timely basis shall constitute grounds for suspension of the contract or termination of the contract for cause. Vendor's liability for any breach of this Section shall not under any circumstances exceed the amount of administrative fees owed to DIR by Vendor.

XXIX. VENDOR CERTIFICATIONS

Vendor certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §31.006 of the Texas Family Code and acknowledges this contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this contract; and (v) during the term of this contract, it will not discriminate unlawfully against any employee or applicant and that, upon request it will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

XXX. DIR LOGO

Vendor may use the DIR logo in the promotion of this contract to Customers with the following stipulations:

a) The logo may not be modified in any way;

b) When displayed, the size of the DIR logo must be equal to or smaller than the Vendor logo;

c) The sole use of the DIR logo will be to communicate the availability of information resources technologies available under this contract to Customers; and

d) Any other use of the DIR logo requires prior written permission from DIR.

XXXI. TECHNOLOGY ACCESS, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE

The Vendor expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Vendor represents and warrants to DIR and each Customer purchasing products under this contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

XXXII. COMMODITY SOFTWARE

Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR unless the agency obtains a waiver from DIR. Therefore, Vendor agrees to coordinate all commodity software sales made coincident to this agreement through existing DIR contracts if available. Vendor represents that it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, any commodity software to other state agencies within the State of Texas unless DIR provides notification that DIR has granted a waiver to that state agency to purchase the commodity software outside of then current commodity software list. This section does not apply to institutions of higher education.

XXXIII. PREFERENCE TO TEXAS PRODUCTS AND SERVICES

Vendor agrees to comply with Sections 2155.444 and 2155.4441, Texas Government Code.

XXXIV. TRAINING AND TRADE SHOW PARTICIPATION

The Vendor may be required to provide product overview training to DIR at no cost. The training will be held within the Austin area at times mutually acceptable to DIR and Vendor.

Vendor understands and agrees that it must participate fully by providing a manned booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Vendor's expense. Vendor agrees to display the DIR logo at all trade shows directed toward entities that qualify as DIR Customers.

XXXV. ABILITY TO CONDUCT BUSINESS IN TEXAS

The Vendor is an entity authorized and validly existing under the laws of its state of organization, is authorized to do business in Texas, and is not in default as to taxes owed to the State of Texas or any of its political subdivisions.

Vendor acknowledges and agrees that, to the extent Vendor owes any debt or delinquent taxes to the State of Texas, in accordance with §403.055(h), Texas Government Code, any payments Vendor is owed under this contract will be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Vendor owes the State of Texas until the debt or delinquent taxes are paid in full.

Vendor is a "Qualified Information Systems Vendor" as defined in §2157.001, Texas Government Code. All information resources technologies offered to Customer under this contract are listed in Vendor's catalogue on file with the General Services Commission.

XXXVI. BINDING CONTRACT

This contract has been duly authorized, executed and delivered by Vendor and constitutes the valid, legal and binding agreement of Vendor, enforceable in accordance with its terms.

XXXVII. SUIT OR PENDING PROCEEDINGS

To the best of the Vendor's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Vendor, which if determined adversely to the Vendor will have a material adverse effect on the ability of the Vendor to fulfill its obligations under the contract.

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XXXVIII. LIMITATION OF LIABILITY

The Vendor shall protect the State of Texas from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Vendor. Vendor agrees to defend against any and all such claims at Vendor's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Vendor, and if DIR's costs associated with such defense are paid by the Vendor.

IN WITNESS WHEREOF, this contract has been executed by the duly authorized representatives of the parties.

VINTAGE COMPUTER BROKERS, Dba, VINTAGE INFORMATION TECHNOLOGY SERVICES

By: Sheryl M Hanes

Name: Sheryl Hanes

Title: President

Date: 1-31-02

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

By: Patrick W. Hogan

Name: Patrick W. Hogan

Title: Director of Business Operations

Legal: JK

Date: 1-28-02