**STATE OF TEXAS**
**DEPARTMENT OF INFORMATION RESOURCES**
**VOLUME PRICING CONTRACT**
**Austin Ribbon and Computer**

This **VOLUME PRICING CONTRACT** for the acquisition of Notebooks manufactured by Panasonic and related peripherals is entered into between the State of Texas, acting by and through the Department of Information Resources with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Austin Ribbon and Computer, with its principal place of business at 6601 Vaught Ranch Road, Suite G-10, Austin, Texas 78730.

**1. Contract Scope and Term**

This Contract sets forth the terms and conditions governing the acquisition of Panasonic Notebooks and related peripherals. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

The term of this Contract shall be two (2) years commencing on the last date of approval by the parties. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

**2. Definitions**

Terms used in this Contract shall have the following meanings:

A. **DIR** - the Department of Information Resources.
B. **Customer** - any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
C. **Reseller** – Austin Ribbon and Computer. The distributor, dealer, or value-added Reseller designated by DIR who is the distribution source for the Products included under this Contract.
D. **Product** – any Panasonic Notebook product and related peripherals included under this Contract. Product may include any pre-loaded software necessary for operation.
E. **Services** – limited to warranty repair and any value-added service that the Reseller may perform as it relates to assisting the Customer in determining the correct specifications and Product models for procurement.
F. **State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
G. **Reseller Contract Administrator** - the individual as appointed by the Reseller to administer this Contract on behalf of the Resellers.
H. **Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
I. **Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
J. **Information Resources Technology (Technologies)** – as defined in Texas Government

Code §2054.003.

K. **Day** Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

L. **State** – refers to the State of Texas.

M. **Go DIRect Coordinator** – refers to the individual appointed by DIR to administer and collect the Contract reporting data on behalf of the State and the authorized Customers.

3. **Entire Agreement and Order of Precedence**

This Contract and Appendix A, Standard Clauses for Texas DIR Contracts, constitute the entire agreement between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract and then finally Appendix A. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract. Customers shall not have the authority to modify the terms of this Contract, except as to receive more favorable terms or pricing for a particular procurement than those set forth herein. In such event, Reseller shall furnish a copy of such better offerings to DIR upon request. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's Purchase Order and this Contract, the Contract term shall control.

4. **Product and Service Offerings**

Products available under this Contract are set forth as any Notebook manufactured by Panasonic and any related peripherals. Services include any value-added service that the Reseller may perform as stated within Section 2, Definitions.

A. **Products**

Reseller will maintain a product list including pricing, product descriptions, and product specifications for all Products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, addition of new products, and removable of obsolete or discontinued products.

B. **Services**

Service shall be limited to warranty repair, support services, and product training.

5. **Contract Administration**

DIR and the Reseller will each provide a Contract administrator to support this Contract. Information regarding the Contract administrators will be posted on the Internet web site designated for this Contract.

A. **State Contract Administrator**

DIR shall provide a Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) advising DIR of Reseller's performance under the terms and conditions of this Contract, and iii) periodic verification of product pricing and monthly reports submitted by the Reseller.

**B. Reseller Contract Administrator**

Reseller shall provide a dedicated Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between the Reseller and a Customer, and iii) advising DIR of Resellers performance under the terms and conditions of this Contract. DIR reserves the right to require a change in Reseller's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State.

**6. Geographic Coverage**

Reseller shall provide service, sales and support resources to serve Customers at multiple geographic purchasing locations throughout the State of Texas.

**7. Pricing**

The price to the Customer under this Contract shall be the lowest price offered through the Reseller to any Texas governmental entity for the same Product under the same terms and conditions. Any violation of this provision may result in this Contract being terminated.

**A. Customer Discount**

Based on a quantity of one (1), the Customer discount from the Reseller for all Products will be five percent (5%) off the Manufacturer's Suggested Retail Price (MSRP). Customer may negotiate more advantageous pricing for their procurement needs with the Reseller.

**B. DIR Administrative fee**

The DIR administrative fee specified in Section 10, Reporting and Administrative Fees, shall be included in the Customer Discount set forth herein. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**C. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees, or shall be listed as a separate line item. Shipments will be F.O.B. Customers destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**D. Tax-Exempt**

Customers are exempt from all federal and state sales tax.

**E. Changes to Prices**

Reseller may change the price of any Product at any time, based upon changes to the Manufacturer's Suggested Retail Price, but discount levels shall remain consistent with the discount levels specified within Paragraph A to this Section. Price decreases shall take effect automatically during this Contract term and Reseller shall pass all price decreases on to the Customer.

Reseller may make product model changes and add new products or product upgrades at any time and the pricing for the same shall incorporate comparable price discount levels as specified within Paragraph A to this Section.

**8. Order Processing and Payments**

All Customer purchase orders will be placed directly with the Reseller. Accurate purchase orders shall be effective and binding upon Reseller when placed in the mail or electronically transmitted prior to the termination of this Contract period.

Invoices shall be submitted by the Reseller directly to the Customer and shall be issued by the Reseller in compliance with Chapter 2251, Texas Government Code. All payments for products purchased under this Contract and any provision of acceptance of such products shall be made to the Reseller by the Customer.

Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the order by the Customer.

Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Reseller. Payment under this contract shall not foreclose the right to recover wrongful payments.

**9. Internet Access to Contract and Pricing Information**

Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet. To that end, upon sixty (60) days from execution of the Contract, Reseller will be required to host the complete Contract Product offerings, including pricing, at Reseller's Internet site. Internet access to this information will be provided including all subsequent changes to the Product offerings and pricing during the term of this Contract at no cost to DIR, the State, and Customers.

**A. Accurate and Timely Contract Information**

Reseller warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which renders it clearly distinguishable from other, non-Contract offerings at Reseller's web site. Reseller shall indemnify DIR, the State, and Customers for damages resulting from errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

**B. Price Data Retention and Compliance Checks**

Periodic Compliance Checks of the information posted for this Contract on Reseller's web site will be conducted by DIR. Upon request by DIR, Reseller shall provide verifiable documentation that pricing listed upon this site is uniform with the Customer Discount as stated within Section 7, Paragraph A.

**C. Web Site Changes**

Reseller hereby consents to a link from the DIR web site to Reseller's web site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Reseller with subsequent notice of link termination or removal. Reseller shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

**D. Use of Access Data Prohibited**

If Reseller stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Reseller for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State and Reseller shall not restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

**E. Responsibility for Content**

Reseller is solely responsible for administration, content, intellectual property rights, and all materials at Reseller's web site. Reseller is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Reseller nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR requires Reseller to list all information on the web site, such as: company name, address, contact information, phone and fax number, email address, State Vendor ID number, and other applicable information as deemed necessary by DIR. Information consistent with the terms of this Contract about payment, shipping, returns, delivery terms and special pricing shall be available. DIR also reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent this Contract.

**F. On-line Price Configurator**

Reseller may be required to make available an on-line configurator at its Contract web site. Directions and assistance in using the configurator and web site in general must be available at entry. This configurator must enable Customers to: (i) view the options available for the type of product or service requested, (ii) search and find products or services offered under this Contract, and (iii) calculate complete acquisition costs. Customers shall have the option of printing their "shopping cart" choices. For those users who are positioned to use it, Reseller shall make available an option for on-line secure ordering.

**10. Reporting and Administrative Fees**

Reseller shall be responsible for reporting all products and services purchased under this Contract. The failure to file the monthly reports, subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the contract for cause. If Reseller submits three (3) consecutive monthly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Reseller's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Reseller.

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Reseller's applicable Contract books.

**A. Detailed Monthly Report**

Reseller shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under this Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect Coordinator. Reports are due on the fifteenth ($15^{th}$) day of the close of the previous month period. The monthly report shall include the Reseller's company name, each Customer name, order date, ship date, description, part numbers, quantity, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Reseller for correction.

**B. Historically Underutilized Business Subcontract Reports**

Reseller shall electronically provide each Customer with their relevant Historically Underutilized Business Subcontracting Report, pursuant to this Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.

Reports shall be due quarterly in compliance with the following schedule, or as requested by each procuring Customer:
September – November: due by December 5th
December – February: due by March 5th
March – May: due June 5th
June – August: due September 5th

**C. DIR Administrative Fee**

An administrative fee shall be paid by Reseller to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Reseller. Any change in the administrative fee shall be incorporated in the price to the Customer.

Reseller will pay DIR, on the fifteenth (15th) day of the close of the previous month period, a two percent (2%) administrative fee based on the dollar value of all sales to Customers pursuant to this Contract. Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling $100,000 shall be $2,000.

**11. Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:
Patrick W. Hogan
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Fax: (512) 475-4759
Email: patrick.hogan@dir.state.tx.us

If sent to the Reseller:
Jana King
Austin Ribbon and Computer
6601 Vaught Ranch Road, Suite G-10
Austin, Texas 78730
Phone: (512) 422-0651
Fax: (512) 452-0691
Email: jana@arc-texas.com

**12. Captions**

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**DIR Contract Number: DIR-VPC-03-015**

**13. Choice of Law**

The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

**IN WITNESS WHEREOF,** the parties hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties.

**Austin Ribbon and Computer**

**Authorized By:** Cherie Seibel for Jon Kim

**Name:** Cherie Seibel

**Title:** Operations Manager

**Date:** 12/18/02

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

**Authorized By:** Patrick W. Hogan

**Name:** Patrick W. Hogan

**Title:** Director of Business Operations

**Date:** 12/19/02

**Legal:** 12/18/02

# APPENDIX A

# STANDARD CLAUSES
# STATE OF TEXAS, DIR CONTRACTS

# TABLE OF CONTENTS

## GENERAL

1. Indemnification Clause
2. Non-Assignment Clause
3. No Quantity Guarantees
4. Confidentiality Clause
5. Reseller Certifications
6. Equal Opportunity Compliance
7. Technology Access Clause
8. Commodity Software
9. Records
10. Ability to Conduct Business in Texas
11. Quotation, Warranty, and Return Policies
12. Invalid Term or Condition
13. Enforcement of Contract and Dispute Resolution
14. Entireties
15. Modification of Contract Terms and/or Amendments
16. DIR Logo
17. Reseller Logo
18. Leasing Provision
19. Site Preparation
20. Training and Trade Show Participation
21. Orientation Meeting
22. Use of Subcontractors
23. Force Majeure
24. Termination for Non-Appropriation
25. Termination for Convenience
26. Termination for Cause
27. Customer Rights Under Termination
28. Reseller Rights Under Termination

**29. Survival**

**30. Handling of Written Compliants**

# Appendix A

## STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract.

1. **INDEMNIFICATION CLAUSE.** Reseller shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Reseller or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract.
The Reseller shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, 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 Reseller. Reseller agrees to defend against any and all such claims at Reseller'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 Reseller. Reseller agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

2. **NON-ASSIGNMENT CLAUSE.** This Contract shall be entered into and be binding upon the successors of the parties. Reseller may not assign this Contract without the prior written consent of DIR. Any attempt to assign this Contract without the written consent of DIR is null and void.

3. **NO QUANTITY GUARANTEES.** This Contract is not exclusive to the named Reseller. 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 through the Contract.

4. **CONFIDENTIALITY CLAUSE.** Reseller acknowledges that DIR is a government agency subject to the Texas Public Information Act. Reseller also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

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

5. **RESELLER CERTIFICATIONS.**
Reseller 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; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Reseller's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Reseller, which if determined adversely to the Reseller will have a material adverse effect on the ability of the Reseller to fulfill its obligations under this Contract.

6. **EQUAL OPPORTUNITY COMPLIANCE.**
Reseller 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 Reseller 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 Reseller under this Contract. If Reseller is found to be not in compliance with these requirements during the term of this Contract, Reseller agrees to take appropriate steps to correct these deficiencies. Upon request, Reseller 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.

7. **TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only)**
Reseller 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 Reseller 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: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the 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.

**8. 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. Reseller shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Reseller represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

**9. RECORDS.** The Reseller shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all audits or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, unit price, extended price, invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Reseller 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 Auditor' 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 Reseller without charge. DIR shall provide Reseller ten (10) business days' notice prior to inspecting, auditing, and/or copying Reseller's records. Reseller's records, whether paper or electronic, shall be made available during regular office hours. Reseller's personnel familiar with the Reseller's books and records shall be available to DIR staff and designees as needed. Reseller shall provide adequate office space to DIR staff during the performance of a compliance check or audit.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to the Reseller through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Reseller can demonstrate to DIR's satisfaction that Reseller's calculation of DIR's administrative fee is correct.

**10. ABILITY TO CONDUCT BUSINESS IN TEXAS.** The Reseller is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Reseller is a "Qualified Information Systems Reseller" as defined in §2157.001, Texas Government Code. All products and services offered to Customers under this Contract are listed in Reseller's catalogue on file with the Texas Building and Procurement Commission.

**11. QUOTATIONS, WARRANTY, AND RETURN POLICIES.** Reseller will adhere to the Manufacturer's and/or Reseller's then-currently published policies concerning quotations, warranties, and return policies related to Products available under this Contract. Warranty and return policies for Customers will not be more restrictive or more costly than those warranty and return policies maintained by the Manufacturer and/or Reseller for other similarly situated Customers for like products or services.

**12. INVALID TERM OR 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.

**13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION.** Reseller and DIR agree to the following (i) 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; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the disputer resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

**14. ENTIRETIES.** The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

**15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS.** The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Reseller. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order and given effect. For individual Purchase Orders, however, the Reseller may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Reseller shall furnish a copy of such better offerings to DIR upon request.

**16. DIR LOGO.** Reseller may use the DIR Go DIRect logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Reseller logo; (iii) the DIR logo is only used to communicate the availability of products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

**17. RESELLER LOGO.** DIR may use the Reseller's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Reseller's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Reseller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Reseller.

**18. LEASING PROVISION.** The parties to this Contract may agree to provisions that allow leasing of Information Resources Technologies in addition to purchase sales.

**19. SITE PREPARATION.** Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Reseller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

**20. TRAINING AND TRADE SHOW PARTICIPATION.** Reseller may be required to provide product overview training to DIR at no cost. The training will be held within the Austin, Texas area at times mutually acceptable to DIR and Reseller.

Reseller understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Reseller's expense. Reseller must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Reseller's booth.

**21. ORIENTATION MEETING.** Upon 60 days from execution of the Contract, DIR may require the Reseller to attend an orientation meting to discuss the Contract content and procedures. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Reseller. DIR shall bear no cost in the time and travel of the Reseller for attendance at the meeting.

**22. USE OF SUBCONTRACTORS.** Reseller may subcontract installation, training, warranty, or maintenance services. However, Reseller shall remain solely responsible for the performance of its obligations under this Contract. If Reseller uses any subcontractors, Reseller shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

**23. FORCE MAJEURE.** DIR, Customer, or Reseller may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Reseller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**24. TERMINATION FOR NON-APPROPRIATION.** Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Reseller will be provided ten (10) days written notice of intent to terminate.

**25. TERMINATION FOR CONVENIENCE.** Either party may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. A Customer may terminate a Purchase Order if it is

determined by the Customer that Reseller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**26. TERMINATION FOR CAUSE.** Either DIR or Reseller may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

**27. CUSTOMER RIGHTS UNDER TERMINATION.** In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order issued with respect to all products or services ordered and accepted prior to the effective termination date.

**28. RESELLER RIGHTS UNDER TERMINATION.** In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

**29. SURVIVAL.** All warranty and/or service agreements that were entered into between Reseller and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.

**30. HANDLING OF WRITTEN COMPLAINTS.** In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Matt Kelly
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 936-6550, voice
(512) 475-4759, fax
Email: matt.kelly@dir.state.tx.us

**AMENDMENT NUMBER 1 to**
**CONTRACT DIR-VPC-03-015 between**
**THE STATE OF TEXAS,**
**acting by and through the DEPARTMENT OF INFORMATION RESOURCES**
**and AUSTIN RIBBON AND COMPUTER**

This amendment is hereby affixed to and shall become a part of Contract Number DIR-VPC-03-015, effective December 19, 2002, ("Contract") between Austin Ribbon and Computer ("Reseller") and the State of Texas, acting by and through the Department of Information Resources ("DIR"). This Amendment Number 1, as incorporated into the Contract, is subject to all terms, conditions, restrictions and limitations contained in the Contract not in conflict with this Amendment including the limitation of liability provision.

The Contract is hereby modified as follows:

1. Section **1, Contract Scope and Term,** is hereby restated as follows:
   This Contract sets forth the terms and conditions governing the acquisitions of Products and Services, as defined in Section 2 Definitions, as specified in DIR Contract Posting Document DIR-TMP-02-036, attached as Exhibit "A" and DIR Contract Posting Document DIR-TMP-03-033, attached as Exhibit "B". Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

   The term of this Contract shall be two (2) years commencing on the last date of approval by the parties. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

2. Section **2, Definitions**, the following are hereby restated as follows:
   **D. Product(s)** – shall be limited to any notebooks or tablet personal computers manufactured by Panasonic and their related peripherals and services; and any tablet personal computers and related accessories manufactured by Motion Computing, Inc.

   **E. Services** - any value-added service that the Reseller may perform as related to Products available under this Contract. For example: warranty, support services, installation, and Product training.

   **N. MSRP** - shall mean Manufacturer's Suggested Retail Price.

3. Section **4, Product and Service Offerings,** is hereby restated as follows:
   Products and Services available under this Contract shall adhere to the descriptions set forth in Section 2, Definitions. Reseller shall maintain a Product and Service list including, but not limited to: pricing, Product descriptions, and Product specifications. The Product list may be updated at anytime during the term of the Contract to incorporate model changes, Product upgrades, addition of new Products, and removal of obsolete or discontinued Products.

4. Section **7, Pricing, first Paragraph,** is hereby restated as follows:
   If Reseller offers and makes sales of Products and Services at a higher rate of discount, based on a quantity of one, from that specified in this Contract, to an eligible DIR Customer, other entity or consortia authorized by Texas law to sell Products and Services available under this Contract to eligible DIR Customers, then the available discount levels in this Contract shall automatically be adjusted to that higher discount rate.

5. Section **7, Pricing (A),** is hereby restated as follows:

**A. Customer Discount**

1) For all Panasonic Products, related peripherals, and services, Reseller shall offer at a minimum the following Customer Discounts off MSRP.
   a) Panasonic Notebooks: 10% - 15%
   b) Precision Accessories: 10% - 15%
   c) Gamber Johnson accessories: 5% - 25%
   d) Ledco accessories: 10% - 25%
   e) Installation of Accessories: (based on time and material) Hourly pricing ranges from $75.00 to $150.00 per hour based on individual needs. Hourly rates do not include expenses.

   Customer may negotiate more advantageous pricing for their procurement with the Reseller.

2) For all Motion Computing, Inc. Products, Reseller shall offer at a minimum a Customer Discount of 10% off MSRP. Customer may negotiate more advantageous pricing for their procurement with the Reseller.

6. Section **10, Reporting and Administrative Fees (C),** is hereby restated as follows:

**C. DIR Administrative Fee**

Administrative fees shall be paid by Reseller to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fees as specified below. DIR reserves the right to change these fees upwards or downwards during the term of this Contract, upon written notice to Reseller. Any change in the administrative fees shall be incorporated into the price to the Customer. Reseller shall pay DIR on the fifteenth ($15^{th}$) day of the close of the previous month period the administrative fees based on the dollar value of all sales to Customers pursuant to this Contract. Payment shall be calculated for all sales, net of returns and credits.

1) For all Panasonic related sales, the DIR administrative fee shall be two percent (2%).
2) For all Motion Computing, Inc. related sales, the DIR administrative fee shall be one percent (1%).

7. Appendix **A, Section 7, Technology Access Clause,** is hereby restated as follows:

Reseller 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 Reseller 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: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the 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 that 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.

8. Appendix **A, Section 9, Records,** the following is hereby added as follows:

Reseller understands that acceptance of funds under this Contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection

with those funds. Reseller further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Reseller will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Reseller and the requirement to cooperate is included in any subcontract it awards pertaining to this Contract.

9. Appendix **A, Section 10, Ability to Conduct Business in Texas,** is hereby restated as follows:
The Reseller is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Reseller is a "Catalog Information Systems Reseller" as defined in §2157.001, Texas Government Code. All products and services offered to Customers under this Contract are listed in Reseller's catalog on file with the Texas Building and Procurement Commission.

10. Appendix **A, Section 20, Trade Show Participation,** is hereby restated as follows:
Reseller understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR Business Operations Division each calendar year at the Reseller's expense. Reseller must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Reseller's booth.

11. Appendix **A, Section 30, Handling of Written Complaints,** is hereby restated as follows:
In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office
Department of Information Resources
Attn: Public Information Officer
300 W. 15th Street, Suite 1300
Austin, TX 78701
(512) 475-4700, voice
(512) 475-4759, fax

All other terms and conditions of the Contract not specifically modified herein shall remain in full force and effect. The parties' execute this Amendment Number 1 to be effective as of the last date of approval.

**Austin Ribbon and Computer**

**Authorized By:** John Grimes

**Name:** JOHN GRIMES

**Title:** VP SALES & MARKETING

**Date:** 11-20-03

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

**Authorized By:** Patrick W. Hogan

**Name:** **Patrick W. Hogan**

**Title:** **Director of Business Operations**

**Date:** 11/17/03

**Legal:** 11/17/03