

**AGREEMENT  
BETWEEN  
THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS  
AND  
KST DATA INC.  
FOR  
EQUIPMENT PROVISIONING SERVICES FOR HYPERCONVERGED SOLUTION**

This agreement (“Contract”) for Equipment Provisioning Services is entered into by and between the Texas Comptroller of Public Accounts (“CPA”), an agency of the State of Texas, and KST Data Inc. (“Contractor”), located at 1121 S. Carroll Avenue, Suite 125, Southlake, TX 76092.

**I. Recitals**

**Whereas**, on April 11, 2019, CPA issued Price Request No. 304-19-0368TT to solicit pricing from qualified vendors to obtain Equipment Provisioning Services for Hyperconverged Solution Equipment (“CPA PR);

**Whereas**, on April 23, 2019, CPA issued Official Responses to Questions from Potential Respondents;

**Whereas**, on April 30, 2019 Contractor submitted an Offer in response to the PR;

**Whereas**, on May 29, 2019 Contractor submitted a Best and Final Offer (“Contractor’s BAFO”);

**Whereas**, Contractor was selected as the Successful Respondent under the PR; and

**Whereas**, the parties desire to memorialize the negotiated terms and conditions of the agreement and to specify the order of priority of the contract documents.

**Now, therefore**, in consideration of the foregoing, the parties hereby agree as follows:

**II. Purpose**

Contractor shall provide Equipment Provisioning Services (“Services”) to CPA for the Equipment as described in this Contract. Services shall include, but not be limited to: equipment acquisition, deployment, maintenance and break/fix, replacement, inventory, reporting, unwinding, and contract management.

All of the below Attachments are attached to and incorporated as part of this Contract for all purposes:

- Attachment A: Hyperconverged Solution Equipment Specifications (“Equipment Specifications”)
- Attachment B: Price Sheet
- Attachment C: KST Scope of Work (“KST SOW”);
- Attachment D: Nutanix End User License Agreement signed by CPA contemporaneously herewith (“Nutanix EULA”);
- Attachment E: Nutanix Limited Warranty (“Nutanix Warranty”);
- Attachment F: Stipulated Loss Schedule
- Attachment G: Confidential Treatment of Information Acknowledgement
- Attachment H: Nondisclosure Agreement
- Attachment I: Contractor’s DIR Contract No. DIR-TSO-3692
- Attachment J: Contractor’s Offer dated April 30, 2019 as amended by Contractor’s BAFO (“Contractor’s Offer”);
- Attachment K: CPA Price Request No. 304-19-0368TT (“CPA PR”)

In the case of conflict, ambiguity or contradiction between this Contract and any of the attached Attachments, the documents will take precedence in accordance with the following order of priority:

1. This Contract, excluding its Attachments
2. Attachment B: Price Sheet
3. Attachment A: Equipment Specifications
4. Attachment C: KST SOW
5. Attachment E: Nutanix Warranty
6. Attachment D: Nutanix EULA
7. Attachment G: Confidential Treatment of Information Acknowledgement
8. Attachment H: Nondisclosure Agreement
9. Attachment K: CPA PR
10. Attachment J: Contractor's Offer
11. Attachment I: Contractor's DIR Contract No. DIR-TSO-3692
12. Attachment F: Stipulated Loss Schedule

### **III. Term**

The Term of this Contract will be from the date of signing by the last Party to sign and continue through the Total Period of Performance for the Equipment, unless earlier terminated in accordance with this Contract. The term "Total Period of Performance" refers to the Initial Period of Performance and the Extended Period of Performance, if applicable, associated with the Equipment. The Initial Period of Performance for the Equipment will be the 60 month period that begins on the date CPA accepts the Equipment.

Termination of this Contract, or of any purchase order ("PO") resulting from this Contract, for any reason shall not release Contractor from any liability or obligation set forth in the PO that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, invoice and fees verification.

### **IV. General Description and Requirements for Services**

**A. EQUIPMENT.** The Equipment to be provided are the Nutanix Hyperconverged Solutions which must, at a minimum meet all of the specifications set forth in Attachment A, Equipment Specifications ("Equipment" or "Nutanix Solution"). All Equipment provided by Contractor under this Contract shall be new from the manufacturer and not be refurbished, unless CPA specifically identifies the need for refurbished Equipment in a written request to Contractor.

1. Contractor shall furnish Equipment operating system licenses, and software licenses identified in Attachment A Equipment Specifications, and associated software maintenance.
2. Contractor shall furnish maintenance and replacement for Equipment provisioned under the terms of this Contract.
3. Substitute Hardware, Software, Services or Warranties. In the event CPA terminates or cancels this Contract for Contractor's nonperformance or for cause, CPA may procure, in a manner as it deems appropriate, substitute requested items similar to those that were terminated or cancelled and Contractor shall be liable to CPA for any excess or additional costs incurred by CPA in acquiring these requested items plus court costs and attorneys' fees. CPA's recovery of costs under this section is in addition to any other remedies available to CPA under the PO or under applicable law. Contractor's liability under this Contract is limited as set forth in Section XII. Limitation of Liability.
4. Optional Features, Products, or Services. Contractor has submitted pricing for the Optional Features, Products or Services offered in Table 3 of Attachment B (Price Sheet). If CPA directs Contractor to provide any Optional Features, Products or Services, the parties shall execute a signed amendment to this Contract and CPA must issue a valid Purchase Order (PO) for those Optional Features, Products or Services.

**B. CPA LOCATION.** Contractor shall provide the Services to CPA's primary location: LBJ State Office Building, 111 E. 17<sup>th</sup> Street, Austin, Texas.

C. CPA'S HOURS OF OPERATION. CPA's standard hours of operation are 8:00 a.m. – 5:00 p.m. CT, Monday through Friday. CPA anticipates that the Services to be provided by Contractor may be conducted during any and/or all of the following: CPA standard hours of operation, after-hours, weekends, and holidays.

D. SCHEDULED CONFERENCES. During the course of this Contract, either Contractor or CPA may request a conference for the purpose of contract review, discussion of performance or other issues related to Services being provided to CPA. These conferences shall be coordinated by CPA and scheduled at times to be determined by CPA depending on planned agenda items. There are no additional charges for these conferences.

E. MATERIALS AND LABOR. Contractor shall furnish all supplies and/or Equipment to successfully perform the requirements as specified under this Contract. Contractor shall use proper materials in accordance with the manufacturer's maintenance directions and instructions. Contractor shall provide all necessary labor. CPA shall not be required to furnish any Equipment or tools to Contractor in order to perform this Contract, except as specifically provided for in this Contract.

F. CONTRACT ADMINISTRATION. Following acceptance by both parties of this Contract, Contractor shall contact CPA's Project Manager regarding matters of contract interpretation or problems regarding the terms, conditions or scope of the contract.

### G. EQUIPMENT PROVISIONING SERVICES

1. Acquisition. Contractor shall provide Equipment that meets or exceeds the minimum specifications set forth in Attachment A, Equipment Specifications. Contractor shall be responsible for ensuring that CPA has authorized access to ordered Equipment during the Period of Performance or Extended Period of Performance for the Equipment.

The prices provided in Attachment B, Price Sheet include all Equipment purchase or lease costs, standard OEM software required for purchase or lease, delivery charges and project management costs. All maintenance/ break/ fix Services provided by Contractor include all costs for Equipment hardware break/fix and troubleshooting hardware issues.

Contractor shall be solely responsible to CPA for all performances of Contractor's subcontractors, suppliers, business partners, and similar entities. Payments under this Contract shall be payable solely to Contractor. CPA shall not enter into any contract with Contractor's subcontractors, suppliers, business partners, financing companies, or similar entities. Contractor shall be solely responsible for all payments to its subcontractors, suppliers, business, partners, financing companies, or similar entities. The parties acknowledge that Contractor intends to subcontract some of the services required to be performed under this Contract to its subcontractor, CIMA Solutions Group, 43 Rainey Street, Austin, TX 78701 ("CIMA"). Contractor expressly understands and acknowledges that in entering into such subcontract(s), CPA is in no manner liable to any subcontractor(s) of Contractor. Contractor shall be jointly and severally liable for the performance of all of its obligations under this Contract, and shall not be relieved of the non-performance of any subcontractor. Contractor shall not change or substitute subcontractor(s) without the prior written consent of CPA

2. Delivery. Contractor shall be solely responsible to CPA for the following related to the delivery of all Equipment:
  - Including all standard common carrier shipping charges within the Monthly Price in Attachment B, Price Sheet. CPA shall notify Contractor, in advance of any Equipment price request, contract order amendment or PO issuance, if expedited shipping or inside delivery is required;
  - Adhering to commercial shipping requirements, quantities and locations specified in this Contract;
  - Emailing shipping status reports for each order to the CPA Contract Manager listing at a minimum CPA's PO number, Equipment description, CPA location, quantity, and estimated delivery date and other fields as mutually agreed upon;
  - Including a packing slip either on the outside or within the box for each order that at a minimum lists CPA's PO number, complete serial numbers (if applicable), quantities included in the shipment. In addition, each box of the shipment shall have a label attached identifying the detailed contents of each box; and
  - Contractor shall not be responsible for OEM order processing delays, OEM manufacturing delays, OEM production errors, common carrier shipping delays, common carrier weather delays, or damages in transit while in possession of the common carrier, unavailability of CPA personnel to receive equipment on the first delivery attempt or any other reasons which are not within the control of Contractor. Delayed deliveries which are not in the control of

Contractor shall be exempt from any service level performance ratings or service level credit payments. Contractor will promptly notify the CPA Contract Manager of any delays.

In the event delivery of Equipment is not received in a timely manner, and the delayed deliver is in the control of Contractor, CPA may require Contractor to pay \$300.00 per business day of delay until each piece of Equipment is received but shall exclude delays caused by Force Majeure as defined in Section XIV, Part V of this Contract. This reimbursement may be in the form of service credits against invoices for Services to CPA. The total reimbursement shall not exceed \$600.00 per fiscal year for all service credit types. The service credits are not an exclusive remedy, but are in addition to any other rights and remedies provided by law, in equity, or under this Contract.

Upon CPA's written notification that Equipment is not operable upon delivery (e.g., dead on arrival), Contractor shall replace upon OEM's confirmation that it cannot be repaired or repair such non-operable Equipment. Within 5 business days, Contractor will provide CPA Contract Manager with an expected delivery date of the replacement based on then current OEM production schedules. If the replacement date is delayed by the OEM, Contractor shall provide a written explanation for the delay and a revised expected delivery date. CPA shall promptly release the DOA Equipment to Contractor for pickup once the OEM has confirmed the equipment cannot be repaired onsite.

Contractor shall provide serial numbers of all Equipment deliveries, when available from the OEM, before arrival via the Advanced Fulfillment Notice (AFN) process, which provides advanced notice of equipment delivery details. Contractor shall provide serial numbers on packing lists. Contractor shall provide a full serial number listing of all active and retired units, upon request of the CPA Contract Manager, as a separate spreadsheet for inventory or invoice support as mutually agreed upon between the CPA Contract Manager and the Contractor Program Manager.

3. Installation, Implementation and Configuration Services. Contractor shall provide the installation, implementation and configuration services described in Attachment C ("KST SOW) of this Contract. Contractor represents and warrants it's subcontractor, CIMA, is an authorized Nutanix provider and that CIMA holds all manufacturer-required certifications for the installation and implementation of the Nutanix Solutions as described in Attachment C of this Contract. The firm-fixed cost of installation and implementation services is specified in Table 2 of Attachment B (Price Sheet) of this Contract.
4. Licensed Software. Attachment D (Nutanix EULA) of this Contract shall govern CPA's use of Licensed Software in the Equipment. The Licensed Software provided under this Contract is firmware or Nutanix software embedded in the Equipment. For the avoidance of doubt, CPA is not procuring any application software that can be licensed or used separately from the Hardware under this Contract.

**H. EXTENSION OF EQUIPMENT PERIOD OF PERFORMANCE.** Prior to the expiration of the initial Period of Performance for Equipment, CPA may in its sole discretion, choose to extend the Period of Performance for the Equipment in 12 month increments. The extended period of time shall be referred to as the Extended Period of Performance.

Contractor shall provide Services for the Equipment during the Extended Period of Performance as follows:

- a) Provide Equipment and Full Service Maintenance Services, at the same service levels as the Services provided during the initial Period of Performance, for the Monthly Price for Extended Period of Performance prices listed in Attachment B – Price Sheet Price .
- b) CPA Contract Manager shall notify Contractor's Data Program Manager 60 days in advance of any requests for extension in writing. Contractor's Data Program Manager shall confirm the extension in writing to the CPA Contract Manager.

**I. SECURE ERASURE OF HARD DISK CAPABILITY.** To the extent applicable, all Equipment provided to CPA by Contractor that is equipped with hard disk drives shall have the capability to securely erase CPA data written to the hard drive prior to final disposition of the Equipment, either at the end of the Equipment's useful life or at the end of the related service agreement for such Equipment, in accordance with 1 Texas Administrative Code §202. The Equipment includes both volatile and non-volatile components. Volatile components lose their data immediately upon removal of power from the component. The Equipment covered by this Contract contain both Hard Disc Drives (HDDs) and Solid State Drives (SSDs) that retain CPA data after the system is powered off. Data should be removed by CPA from these drives using CPA approved methods before they are removed

from a secured environment. The Nutanix Statement of Volatility (SOV) is a detailed listing of system components and whether or not the component is volatile. This can be found at <https://www.nutanix.com/content/nutanix/en/legal/privacy-statement/data-privacy-policy.html>. CPA may add Nutanix Non-Returnable Disk Drive (NRDK) Optional Service to any configuration in Appendix A Hyperconverged Solution Configurations for the pricing identified in the Optional Features, Products or Services offered in Table 3 of Attachment B (Price Sheet). A description of the NRDK optional service can be found in Exhibit 2 to EULA Nutanix Worldwide Support Program Guide. It is CPA's responsibility to remove CPA data from Equipment before return to Contractor during or at the end of the Period of Performance or Extended Period of Performance. Contractor bears no responsibility for the protection, safeguarding, or return of any data left on the Equipment returned to Contractor. Contractor uses various vendors to repair or replace Customer's defective returned Equipment. These vendors use industry standard data privacy/protection policies to provide an additional layer of protection for data that may not have been removed from the defective part. All Equipment that is returned to Contractor become Contractor's property. Contractor will not be responsible for CPA's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Contractor for repair, whether under warranty or not. For any Equipment deemed damaged beyond repair, Contractor will not provide the certificate of destruction.

## **V. Acceptance Testing; Lost Stolen or Damaged Equipment**

A. **ACCEPTANCE TESTING.** CPA shall conduct acceptance testing for all Equipment acquired from Contractor. Acceptance testing shall commence immediately after install of the Equipment, or within seven (7) calendar days of delivery of the Equipment if no install is necessary.

1. Contractor understands and agrees that prior to payment under any PO resulting from this Contract, CPA shall evaluate the provided products and/or Services under the following criteria and any additional acceptance criteria agreed to prior to award and included in the PO. CPA shall be responsible for any conflicts or problems that arise from the CPA installation of software which is not supported by the OEM.

In order to meet the Minimum Performance Standard, the Equipment shall:

- a) Conform with the OEM functional and technical specifications, as found in Attachment A, Equipment Specifications;
  - b) Run necessary CPA programs with CPA data, if the CPA programs comply with the OEM specifications
  - c) Conform materially to the OEM specification and be free of malware at the time of delivery.
  - d) As applicable, Contractor's OEM software support shall conform with the OEM specifications.
2. Acceptance testing shall last until the Equipment meets the Minimum Performance Standard for a total of fourteen (14) consecutive calendar days.
  3. Contractor does not warrant that:
    - a) The operation of CPA-installed software products shall be uninterrupted or error-free or that the software products shall operate in hardware and software combinations other than as authorized by the OEM; and
    - b) CPA programs shall run without interruption or error-free.
    - c) Equipment will operate, without requiring modification(s) or without causing degradation or malfunctions to other CPA operational system(s) and network(s).
  4. Contractor is not responsible for any interoperability or compatibility issues that may arise when:
    - a) Products, software, or options not supported by the OEM are used;
    - b) Configurations not supported by the OEM are used;
    - c) Parts intended for one system are installed in another system of different make or model.
    - d) CPA End User changes are made to the OEM configured setup and settings.
  5. If the Equipment fails to meet the Minimum Performance Standard during the initial acceptance testing:

- a) CPA shall notify KST Data in writing within seventy-two (72) hours of the conclusion of the first testing period with a written rejection notice identifying the deficiencies with reasonable detail of what does not perform based on the OEM's published specifications.
- b) Upon receipt of CPA's written notice of rejection, KST Data shall have a minimum of five (5) business days, or such other time as CPA and KST Data may agree is reasonable after confirmation from the OEM of the deficiency, to correct such deficiencies.
- c) KST Data will provide written notification to CPA that KST Data has corrected such deficiencies. CPA shall have three (3) business days to evaluate the correction of the OEM deficiencies and provide KST Data written Acceptance of the Equipment.

The official Acceptance Date for Equipment is defined as the first day of the month of the successful completion of Acceptance Testing, which is when a Scanner meets the Minimum Performance Standard. The Acceptance Date for Equipment shall be the date designated by CPA on the Certificates of Acceptance (COA) for Equipment which shall be issued by CPA no later than 3 calendar days after the Acceptance Date. The date on the COA shall be the first day on which Contractor shall be authorized to invoice CPA for such Equipment and the first day on which CPA shall be authorized to compensate Contractor for such amounts. CPA shall not authorize any payments or provide any COAs prior to CPA's receipt and acceptance of Services.

CPA's shall assume responsibility for damage or loss for Equipment as described in Section V, Part B, Lost, Stolen or Damaged Equipment, of this Contract during the acceptance period, Initial Period of Performance and Extended Period of Performance. Care, custody and control of the units shall reside with CPA from day and time of delivery until return of the Equipment.

**B. LOST, STOLEN OR DAMAGED EQUIPMENT.** In the event of loss, theft or damage beyond repair of Contractor's Equipment while in possession of CPA, CPA shall reimburse Contractor in the amount specified in Attachment F, Stipulated Loss Schedule. If CPA requests Replacement Equipment, Contractor shall promptly provide Replacement Equipment that is the same or equivalent to the specifications of the lost or damaged Equipment. If it is determined that the Contractor is responsible for the loss or damage of any Equipment then CPA shall not be held liable and Contractor shall provide CPA the Replacement Equipment at no charge to CPA.

The following shall also apply to lost, stolen or damaged Equipment:

1. CPA shall not be responsible for damages due to normal wear and tear. Contractor shall not invoice CPA and CPA shall not pay for this Equipment;
2. In the event Equipment is damaged beyond normal wear and tear while in possession of CPA during the initial or extended Period of Performance, CPA shall reimburse Contractor in the amount specified below:
  - Cost of the repair, OEM parts and labor, plus eight percent (8%).

**C. LEGAL HOLD.** In the event there is a Legal Hold placed on Contractor-provisioned Equipment while in possession of CPA, CPA, in its sole discretion, has the option of reimbursing Contractor in the amount specified in Attachment F, Stipulated Loss Schedule of this Contract, rather than continue applicable monthly payments. As used in this Contract, the term "Legal Hold" refers to the process used by CPA to preserve information relevant to current or anticipated litigation, audit, government investigation, or other such matter.

## **VI. Full Service Maintenance Services, Warranty and Post Installation Support**

### **A. FULL SERVICE MAINTENANCE SERVICES.**

1. Contractor has identified the Nutanix Mission Critical Subscription and Support Program as set forth in the Nutanix Worldwide Support Guide, (attached as Exhibit 2 to Attachment D, Nutanix EULA) to meet CPA's Full Service Maintenance Services described in Section I, Part D.7 of Attachment K (CPA's PR) of this Contract for all hardware and software components of the Nutanix Solution. During the term of this Contract, Contractor shall provide Nutanix's Mission Critical Subscription and Support Program 24 hours a day, 7 days a week (including all holidays), with a 4 hour maximum response time.

2. Attachment D (Nutanix EULA) shall govern maintenance and support for the Hardware and Licensed Software.

3. OEM Warranty. All hardware and software components of the Nutanix Solution shall be covered under the OEM warranty.

Attachment E (Nutanix Warranty) to this Contract governs the OEM warranty for the Nutanix Solution. Contractor shall complete all warranty registration procedures and maintain all warranties offered by the OEM for the Nutanix Solution. Contractor shall enforce the provisions of the OEM's warranty to ensure that all Hardware is properly maintained for the duration of the Contract term. Upon request by CPA, Contractor shall provide CPA written proof of OEM warranty entitlement for the Hardware.

4. Contractor represents and warrants that:

- only certified OEM technicians will be deployed to provide Full Service Maintenance Services on the Nutanix Solution;
- only certified technicians will perform all related Full Service Maintenance Services in accordance with CPA's policies and procedures;
- all technicians will be available onsite at CPA's Data Center located in the LBJ State Office Building, 111 East 17th Street, Austin, Texas, 78774 in the event of a Scheduled Preventative Maintenance or Remedial Maintenance activity; and
- maintenance service technicians will have real-time electronic access to the OEM's remote technical assistance information network, all of the OEM's microcode updates, and direct access to the OEM's engineering group.

5. Pricing for Full Service Maintenance Services is included in the pricing for each Configuration specified in Table 1 of Attachment B (Price Sheet) of this Contract.

## B. HELPDESK.

Contractor, or its subcontractor, will provide and maintain a toll free telephone number support line ("Call Center") for CPA repair and technical assistance requests. Contractor will provide CPA the process for reporting issues to maintenance providers, in the event the call center is not operational when the CPA issue occurs. Contractor, or its subcontractor, will staff the call center hotline facility with an adequate number of qualified technical personnel sufficient to meet requested service levels. Call center personnel will relay the repair request to the Contractor's authorized technician, within sufficient amount of time to ensure that the appropriate service levels are met.

C. OTHER TECHNICAL SUPPORT. Upon CPA's request, at mutually agreed times and dates, Contractor together with support from the OEM's, shall provide personnel to provide technical on-site support Services at CPA headquarters located in Austin, Texas. Contractor's personnel shall perform, at a minimum, the following tasks on-site at CPA's location at the rates listed in Table 3 of Attachment B Price sheet: assisting with complex problem identification, resolving complex issues which cannot be resolved by assistance of help desk, installation of emergency hardware/software fixes, troubleshooting physical relocation of Equipment, continuing Equipment modifications or upgrades, and swaps/replacement of Equipment. Contractor shall perform these Services for Equipment that has been acquired through Contractor under this Contract. If CPA directs Contractor to provide any Other Technical Support, the parties shall execute a signed amendment to this Contract and CPA must issue a valid Purchase Order (PO) for those Optional Features, Products or Services.

## VII. Knowledge Transfer and Training Services.

Contractor shall provide on-site, instructor-led classroom training for up to sixteen (16) CPA individuals in two (2) sessions on use and administration of the Nutanix Solution (i.e. "train the trainers") in accordance with Section I, Part D.6 of Attachment K (CPA's PR) of this Contract.

The knowledge transfer activities provided by Contractor shall include:

- a. A minimum of forty (40) hours of on-site training;
- b. User Training and Configuration Training for up to twenty (20) CPA IT users through the Nutanix Online Portal;
- c. Application and System Administration Training for up to twenty (20) CPA IT users;
- d. Utilization of comprehensive test cases and situations;
- e. Follow-up WebEx sessions hosted by Contractor, as applicable and upon CPA's written request; and

- f. Utilization of training materials that includes, but is not limited to, Nutanix Solution application functional documents, application workflow documents, and support processes.

The firm-fixed price for Knowledge Transfer and Training Services is specified in Table 2 of Attachment B (Price Sheet) of this Contract.

## **VII. Replacement of Defective Equipment**

Specific enterprise class Equipment designated by a specific serial number, or a component thereof, which has been delivered by Contractor pursuant to this Contract, shall be deemed to have “Systemic Issues” when it has:

- required hardware service repair four (4) times within a three (3) month rolling period during the initial period of coverage;
- such service repair has been documented by CPA with the service repair requests submitted to either Contractor or the OEM for the same hardware failure; and
- the OEM warrantor has determined to remedy defects or malfunctions.

Contractor shall replace Equipment with Systemic Issues at no charge to CPA with an identically configured replacement (whole unit or a component part thereof) or the OEM natural successor (“Replacement Equipment”). The Replacement Equipment, as identified by serial number or a component part thereof, will have the same Initial Period of Performance end date and price as the Equipment it replaces.

CPA shall promptly notify Contractor’s PM of the need for Replacement Equipment and the disposition of the defective Equipment. Contractor shall make commercially reasonable efforts to provide an expected delivery date of the Replacement Equipment within five (5) business days of CPA’s written request. Contractor shall provide Contractor’s Project Manager with a written explanation if Contractor determines that more than five (5) business days is required to provide an estimated delivery date of the Replacement Equipment. If Contractor determines that more than ten (10) business days is required to provide an estimated delivery date of the defective Equipment, Contractor’s Project Manager shall prepare a written explanation for the delay and specify the expected delivery date. If the replacement date is delayed by the OEM, Contractor’s Project Manager shall prepare a written explanation for the delay and provide a revised expected delivery date. If replacement of the Equipment exceeds four months, Contractor shall not charge the monthly service rate for the defective Equipment until replacement equipment is delivered. Once Contractor delivers the Replacement Equipment to CPA’s designated location, CPA will release the defective Equipment within ten (10) business days following the delivery date.

Contractor will be responsible for updating its database with the Replacement Equipment serial number and ensuring that the Replacement Equipment has the same warranty level as the original Equipment. If the Replacement Equipment is handled via a manufacturer’s Returned Merchandise Authorization (RMA) process, Contractor shall be responsible for requesting RMA documents and handling instructions. CPA shall be responsible for following the manufacturer’s RMA process and notifying Contractor via email of the Equipment’s shipping tracking number. Upon request by Contractor, CPA shall provide Contractor copies of the RMA documentation.

## **VIII. Contractor’s Personnel and Project Management.**

A. GENERAL. Contractor is responsible for providing all personnel resources necessary to perform the Services described in this Contract, unless specifically stated as the responsibility of CPA. Throughout the term of this Contract, Contractor shall:

- Provide qualified personnel to perform all Services required in this Contract;
- Provide CPA written notice of any plan to add, remove and replace key personnel; and
- Obtain CPA approval of the Contractor’s Project Manager (PM).

CPA may request that Contractor remove any particular individual who is providing Services if CPA reasonably believes that such individual is not providing the Services as described in this Contract. If, after CPA has provided notice to Contractor, Contractor has been unable to resolve performance issues relative to such individual to CPA’s satisfaction, Contractor shall provide CPA with resumes of qualified replacement key personnel as soon as commercially reasonable and remove and replace such individual pursuant to Section VIII, Part F of this Contract



**B. PERSONNEL TERMS AND CONDITIONS.** The following terms and conditions apply to all Contractor and sub-contractor personnel:

1. CPA reserves the right to accept or refuse any subcontractor proposed by Contractor.
2. All employees of Contractor shall be no less than 17 years of age.
3. Contractor shall be liable and responsible for the actions of any of its subcontractors used in the performance of this Contract.
4. Contractor shall have an English-speaking employee on the job during support coverage hours.
5. Contractor employees shall be sober while on duty. The use of any kind of intoxicants while on duty by Contractor's employees shall constitute grounds for permanent removal of the offending employee from the project.
6. All Contractor and sub-contractor personnel shall be clearly identified as Contractor's employees by wearing nametags or other forms of identification as agreed to by Contractor and CPA when visiting a CPA site.
7. All Contractor employees and sub-contractors shall comply with CPA and the State of Texas applicable safety and health requirements during the project.
8. Contractor personnel shall be responsible for leaving all work areas at CPA as clean and orderly as they were found. The cost of any clean-up work that has to be performed by CPA as a result of the Contractor's work shall be reimbursed to CPA.
9. All work shall be accomplished during normal business hours of 8:00 a.m. to 5:00 p.m., appropriate Central Time, Monday through Friday unless after-hours work is pre-approved by CPA Contract Manager with adequate notification.
10. Contractor is responsible for maintaining a safe work area and securing all tools or other belongings at the end of the workday. CPA shall not be liable to replace any missing tools or other belongings that belong to Contractor, except if the secured storage space provided by CPA is compromised outside the normal CPA work hours in Section IV, Part C of this Contract. If reasonably necessary to perform Services under this Contract, CPA shall provide Contractor with adequate secured storage space for Contractor owned Equipment used to support this effort.
11. Contractor and subcontractor personnel shall conduct themselves in a professional manner and be in appropriate business attire when on CPA's premises. In addition, Contractor and subcontractor personnel shall comply with all guidelines established by CPA for independent contractors required to provide Services on CPA's premises. These guidelines may address issues which include, but are not limited to, the following: building security, IT security, records, safety, professional conduct, use of State owned property, non-disclosure of confidential information, and drug and alcohol free workplace rules.

**C. CONTRACTOR'S PROJECT MANAGER.** Contractor shall designate an individual as Contractor's PM who shall be CPA's primary point of contact and shall be responsible for providing Services to CPA under this Contract. Contractor's PM responsibilities include but are not limited to the following:

1. Provide Project Management Services under this Contract during normal business hours, 8:00 a.m. to 5:00 p.m. CST Monday through Friday, except CPA holidays, unless otherwise agreed to by both CPA and Contractor;
2. Coordinate and manage the activities of Contractor personnel;
3. Receive POs, prepare and submit invoices upon CPA's receipt and acceptance of Services;
4. Coordinate delivery of Equipment to CPA locations;
5. Provide CPA status of Equipment delivery; and
6. Receive CPA Contract Manager's communications regarding delivery and certificate of acceptance ("COA") status.

**D. PROJECT MANAGEMENT ACTIVITIES.** Upon the written request of the CPA Contract Manager to the designated Contractor PM, the parties shall conduct a kick-off meeting within thirty (30) calendar days of the effective date of this Contract to discuss, at a minimum, roles and responsibilities of the parties and overall administration of the Services provided under this

Contract. Duly authorized representatives of CPA and Contractor shall attend the kick-off meeting.

CPA and Contractor, during the term of this Contract, may schedule joint periodic meetings (e.g., weekly) at a mutually agreed upon date, time and location to exchange information, discuss contractual concerns, discuss technical needs and/or concerns and discuss the Services provided by Contractor in general.

### **IX. Unwind, End of Performance.**

At the end of the Period of Performance or Extended Period of Performance for Equipment, CPA may choose to have CPA staff or another service provider de-install and pack the Equipment for shipment by the Contractor. CPA shall have a fourteen (14) calendar days grace period from the Period of Performance end date to prepare equipment for Contractor pick up, without additional costs, if timely advance written notification was received by Contractor from CPA. Timely advance notification is defined as CPA will notify Contractor a minimum of five (5) business days in advance of the Period of Performance end date of the date the equipment will be available for pickup.

If unwind services are performed by CPA or another service provider, then Contractor shall be responsible for the following:

- 1) Picking up equipment at a CPA warehouse or CPA office location within 30 calendar days, or a time mutually agreed, of CPA's written requested pickup date.
- 2) Arranging shipment of equipment to a location designated by Contractor in the continental USA.
- 3) Paying all return shipping costs and freight insurance from the CPA warehouse or CPA office location to the Contractor designated return location in the continental United States.
- 4) Evaluating equipment condition for damages within 30 days of equipment arriving at the Contractor designated return location. Notifying CPA of any damages after inspection within 45 days of arrival at the Contractor designated return location. Invoicing CPA for damages, within 60 days of arrival at the Contractor designated return location.
- 5) Contractor is responsible for final disposition of all returned Equipment.

If unwind services are performed by CPA or another service provider, then CPA shall be responsible for the following:

- 1) Timely advance written notification to Contractor, a minimum of five (5) business days in advance of the Period of Performance end date, of the date the equipment will be available for pickup. All equipment must be available for pickup within fourteen (14) calendar days of the Period of Performance end date to avoid additional monthly charges.
- 2) Removal of all CPA data from the equipment (as applicable)
- 3) Supplying Contractor with a written, signed and dated "data destruction" confirmation of the data removal.
- 4) Return Packing Material, including but not limited to boxes, tape, bubble wrap, etc.
- 5) Preparing Equipment for shipment per OEM recommended shipping preparation instructions.
- 6) Prompt payment of an accurate Contractor invoice for any equipment damages identified by Contractor above and beyond normal wear and tear.

CPA may retain any hard disk drives that CPA is unable to successfully remove CPA data from the hard disk drive at the end of period of performance. If CPA retains any hard drive at the end of the Period of Performance it will be subject to additional charges at that time based on the number and type of drive retained. The price will be calculated as follows for each drive retained by CPA:

-Cost of the drive, OEM parts (including freight) and labor to replace with a new drive, plus eight percent (8%).

### **X. Payments**

CPA shall make monthly payments in arrears. Payment shall be made in accordance with the Texas Prompt Payment Act, Chapter 2251, Texas Government Code. All charges for the Equipment are set forth in Attachment B, Price Sheet.

Contractor shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by CPA which are not expressly authorized by this Contract after discovery and confirmation by either party of the error. Payments under this Contract shall be payable solely to Contractor. CPA shall make no payments to any subcontractor involved in the project. CPA may prepay contracted amounts without penalty. All costs associated with the Services provided under this Contract are set forth in Attachment B.

## **XI. Termination**

**A. REASONS FOR TERMINATION.** This contract may be canceled as a result of the one of the following:

1. **Termination by Change in Law:** If federal or state laws or other requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Supplement, and if the Parties cannot agree to a Change Order that would enable substantial continuation of the Services, the Parties shall be discharged from any further obligations under this Contract. Contractor's rights at termination are set forth in Section XI Part B.1 RIGHTS AT TERMINATION OR EXPIRATION OF CONTRACT.
2. **Mutual Termination:** This Contract may be terminated at any time by mutual consent.
3. **Termination for Convenience by CPA:** CPA reserves the right to terminate part of or the entire Contract for CPA's convenience, upon ninety (90) days' notice to Contractor.
4. **Non-Performance and Termination for Cause.** If Contractor fails to provide Services according to the provisions of this Contract, CPA may provide written notice of said default to the Contractor. If Contractor fails to cure the default within sixty (60) days of receipt of written notice from CPA, CPA may terminate all or any part of this Contract. Notwithstanding the foregoing, CPA shall not have the right to terminate all or any parts of this Contract for cause where interoperability or compatibility issues arise when: a) products, software or options not supported by the OEM are used by CPA; b) configurations not supported by the OEM are used by CPA; or c) parts intended for use in one system are installed by CPA in another system of different make or model. Termination is not necessarily an exclusive remedy but will be in addition to any other rights and remedies provided by law or under this Contract. In the event that CPA terminates this Contract in full or in part for cause, CPA shall only be liable for completed Services performed and accepted by CPA through the effective date of such termination. CPA shall not be liable for any severance costs incurred as a result of such termination or the unamortized hardware, software, and lease cost

**B. RIGHTS AT TERMINATION OR EXPIRATION OF CONTRACT.**

1. In the event that this Contract expires or is terminated for any reason other than termination by non-appropriation or CPA's termination for cause, CPA shall only be liable for completed Services performed and accepted by CPA through the effective date of such termination and reasonable severance costs incurred as a result of such termination and the unamortized hardware, software, and lease cost. Notwithstanding the foregoing, in no event shall the costs resulting from such termination exceed the total contract cost as set forth in Attachment B, Price Sheet, of this Contract.
2. In the event this Contract is terminated for any reason, or upon its expiration, CPA shall retain ownership of all associated documentation created to support CPA in whatever form that they exist.
3. CPA reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to CPA under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Contractor's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to CPA under the Contract or under applicable law. CPA reserves the right to pursue any and all applicable rights and remedies if the Contract is terminated for any reason and CPA expressly waives no such rights or remedies. Contractor's liability under this Contract is limited as set forth in Section XII. Limitation of Liability.

**C. NON-APPROPRIATION OF FUNDS.** This Contract is subject to termination or cancellation, without penalty to CPA, either in whole or in part, subject to the availability of state funds. CPA is a state agency whose authority and appropriations are subject to actions of the Texas legislature. If CPA becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render CPA's or Contractor's delivery or performance under the agreement impossible or unnecessary, the agreement will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this section, CPA will not be liable to Contractor for any damages, which are caused or associated with such termination, or cancellation and CPA will not be required to give prior notice. Termination of this agreement under this section shall not affect CPA's right to use Equipment previously-paid for through the Initial or Extended Period of Performance, as applicable, nor any maintenance or support paid prior to such termination. In the event of contract termination under this section,

CPA's sole and maximum obligation shall be to pay Contractor for previously requested Services which are (1) authorized by a CPA-issued PO and (2) completed by Contractor and accepted by CPA prior to the effective date of termination.

## **XII. Limitation of Liability**

To the extent permitted by the constitution and laws of the state of Texas, for any claim or cause of action arising under or related to this Contract, Contractor's total liability under this Contract shall be limited to a maximum of the total amount of funds that Contractor was paid under this Contract during the preceding twelve (12) month period. Notwithstanding the foregoing, this limitation of contractor's liability shall not apply to violations of confidentiality, claims of patent, trademark, or copyright infringement, personal injury or damage to property due to Contractor's negligence.

## **XIII. Insurance and Bonds**

Contractor represents and warrants that, within five (5) business days of receipt of the PO, it shall provide CPA with proof of coverage and represents and warrants that it shall maintain the following coverages throughout the term of the contract:

- Blanket Employee Dishonesty Bond or Employee Dishonesty Coverage under a liability insurance policy with a minimum \$25,000 for each individual who shall provide Services under the contract. A rider or endorsement shall name the Texas Comptroller of Public Accounts as loss payee or additional named insured under the respective bond or policy;
- Standard Workers Compensation Insurance covering all individuals who shall provide Services under the contract;
- Commercial General Liability Insurance: \$1,000,000 minimum each occurrence limit; \$2,000,000 minimum aggregate limit; and
- Professional Liability Insurance: \$1,000,000 minimum each occurrence limit; \$2,000,000 minimum aggregate limit.

Contractor represents and warrants that all coverages are with companies licensed in Texas, with "A" rating from A.M. Best Co., and authorized to provide the required coverages. Contractor also represents and warrants that all of the above policies and bonds contain endorsements prohibiting cancellation exception upon at least thirty (30) days prior written notice to CPA. Contractor shall, within the time provided above, furnish proof to CPA of such coverage in the form of a Certificate of Insurance from Contractor's insurance carrier or carriers indicating the above coverages. The Certificate shall be addressed to CPA as the Certificate holder. Contractor shall provide proof of required insurance coverage via email referencing the RFO number submitted to the following address: [contract.administration@cpa.texas.gov](mailto:contract.administration@cpa.texas.gov).

## **XIV. General Terms and Conditions**

A. **PUBLIC INFORMATION.** Contractor acknowledges that State contracts are subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code. Contractor waives confidentiality of Contractor -issued e-mail addresses. Contractor understands that CPA is bound by the provisions of the Texas Public Information Act (formerly the Texas Open Records Act) and Attorney General Opinions issued under that statute. Contractor is required to make any information created or exchanged with the state pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Within three (3) calendar days of receipt, Contractor shall refer to CPA any third party requests, received directly by Contractor for information to which Contractor has access as a result of or in the course of performance under this Contract.

B. **CONFIDENTIAL INFORMATION; NONDISCLOSURE AGREEMENTS.** Contractor and Contractor's employees, including sub-contractor employees, shall not disclose to anyone, directly or indirectly, any information designated by CPA as confidential or to information accessed as a result of this Contract without the prior written consent of CPA. Contractor agrees that all employees, including sub-contractor employees, who visit any CPA site, shall sign a Nondisclosure Agreement, if required. Any employee who refuses to sign the Nondisclosure Agreement will not be approved to work on the project. The Nondisclosure Agreements will continue to be in force after the completion of the project and five (5) years after termination of this Contract.

C. **INDEMNIFICATION. CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CPA, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS,**

**ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT OR ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND CPA AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR'S LIABILITY UNDER THIS CONTRACT IS LIMITED AS SET FORTH IN SECTION XII. LIMITATION OF LIABILITY.**

**D. PATENT, TRADEMARK, COPYRIGHT INFRINGEMENT.** Contractor shall defend and indemnify CPA and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringement arising from CPA's or Contractor's use of or acquisition of any requested Services or other items provided to CPA by Contractor or otherwise to which CPA has access as a result of Contractor's performance under this Contract, provided that CPA will notify Contractor of the claim within a reasonable time of CPA's receiving notice of any such claim. If Contractor is notified of any claim subject to this Section XIV, Part D, Contractor shall notify CPA of that claim within five (5) business days of such notice. Contractor will make no settlement of any such claim without CPA's prior written approval. Contractor will reimburse CPA and the State of Texas for any claims, damages, costs, expenses or other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim. Contractor shall pay all reasonable costs of CPA's counsel. If CPA determines that a conflict exists between its interests and those of Contractor or if CPA is required by applicable law to select separate counsel, CPA will be permitted to select separate counsel and Contractor will pay all reasonable costs of CPA's counsel. Contractor represents and warrants that it has determined what licenses, patents and permits are required under this Contract and has acquired all applicable licenses, patents, and permits.

**E. USE OF STATE PROPERTY.** Contractor is prohibited from using CPA's Equipment, CPA's Location, or any other resources of CPA or the State of Texas for any purpose other than performing Services under this Contract. For this purpose, Equipment includes, but is not limited to, copy machines, fax machines, information technology resources, and telephones using State of Texas long distance services. CPA information technology resources include any CPA-issued hardware (e.g., laptops, portable personal printers, cell phones, BlackBerry devices, external hard drives, Universal Serial Bus (USB) data storage devices and data disks); any CPA-issued software or media (e.g., CD, DVD, diskette or tape); and the CPA Virtual Private Network (VPN) client. Contractor shall not remove CPA Equipment from the United States. In addition, Contractor may not use any computing device to access CPA's network or e-mail while outside of the United States. During the time that CPA Equipment is in possession of Contractor, Contractor shall be responsible for reasonable repair or replacement charges for damage beyond normal wear and tear. Any charges incurred because of Contractor's use of CPA Equipment for any purpose other than performing Services under this Contract shall be fully reimbursed by Contractor to CPA immediately upon demand by CPA. In the event Contractor fails to comply with this section, CPA shall inform the Contractor Project Manager of the breach and provide a description thereof. If Contractor fails to remedy the breach of this section within thirty (30) calendar days from the date of the notice, then CPA, in addition to other remedies at law or in equity, may terminate this contract.

**F. CPA'S TAX EXEMPTION; INDEPENDENT CONTRACTOR; PAYMENT OF TAXES BY CONTRACTOR.** Purchases made by CPA for State use are exempt from the State Sales Tax and Federal Excise Tax. Contractor's prices and rates listed in Attachment B, Price Sheet are exclusive of Sales Taxes. CPA will furnish Tax Exemption Certificates upon request. Contractor will serve as an independent contractor under this Contract. Contractor must be able to demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2s to Contractor's employees. Contractor will be solely responsible for payment of all taxes, including, but not limited to, state, federal, foreign, or local taxes, income taxes, withholding taxes, social security taxes, pension contributions, and any other form of payroll or any other taxes, for Contractor and Contractor's employees. CPA will have no responsibility for payment of any such taxes or amounts related to such taxes. At Contractor's sole cost and expense, Contractor shall secure and maintain all insurance premiums that are required by this Contract or which are necessary to protect the interests of the State of Texas and CPA or that Contractor may need or desire for Contractor or Contractor's employees. Contractor shall indemnify CPA and pay to CPA all costs, penalties, losses, and other amounts resulting from Contractor's omission or breach of this section.

**G. SECURITY INCIDENT NOTIFICATION.** Security Incident Notification. Contractor shall have policies and procedures for the effective management of Security Incidents which shall be made available to CPA upon written request. Within twenty-four (24) hours of Contractor's discovery or reasonable belief that there has been an event which results in the accidental or deliberate

unauthorized access, loss, disclosure, modification, disruption, or destruction of confidential CPA information (“Security Incident”), Contractor shall provide notice to CPA by calling (800) 531-5441 EXT 34357. Until the investigation is complete, Contractor shall submit on a daily basis, or as otherwise agreed by CPA, a written report via encrypted email to [iso.security.compliance.team@cpa.texas.gov](mailto:iso.security.compliance.team@cpa.texas.gov) which includes, at a minimum, the following:

- Date and time incident occurred,
- Date and time incident detected,
- Date and time incident contained,
- Address where incident occurred,
- Name of person(s) that discovered incident,
- Description of how Contractor discovered incident,
- Type of CPA information involved,
- Description of the nature of the incident,
- Description of the steps Contractor has taken or will take to investigate incident,
- Description of the steps Contractor has taken or will take to mitigate any negative impacts of incident,
- Information technology involved (e.g., laptop, server, mainframe),
- Description of steps taken to preserve computer evidence and maintain chain of custody, and
- Description of corrective action Contractor has taken or will take to prevent future incidents.

Contractor shall confer with CPA’s Chief Information Security Officer regarding the proper course of the investigation and risk mitigation. CPA reserves the right to conduct an independent investigation of any Security Incident, and should CPA choose to do so, Contractor shall cooperate fully by making resources, personnel, and systems access available to CPA and CPA’s authorized representative(s). Subject to review and approval of CPA’s Chief Information Security Officer, Contractor, at its own cost, shall provide notice that satisfies the requirements of applicable law to individuals whose personal, confidential, or privileged data were compromised or likely compromised as a result of the Security Incident. If CPA, in its sole discretion, elects to send its own separate notice, then all costs associated with preparing and providing notice shall be borne by CPA.

#### H. CPA DATA SAFEGUARD STANDARDS.

a) Defined Terms. The term “CPA Data” refers to CPA’s information as well as other entity information in the possession of CPA that is processed, stored, or transmitted by a computer. CPA Data includes all data that is generated by Contractor in performance of a contract with CPA. The term “CPA Information System” refers to those devices, software, networks and related infrastructure that CPA owns, operates or has obtained for use to conduct CPA business. Devices include, but are not limited to, CPA-owned or managed storage, processing, and communications devices, as well as personally owned devices.

b) Access to CPA Data. Contractor represents and warrants that it will implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the confidentiality, integrity, and availability of CPA Data. Contractor will not collect, access, use, disclose, or retain CPA Data other than as necessary to perform the services specified in a contract resulting from this solicitation or as otherwise authorized in writing by CPA. Contractor will restrict access to CPA Data to only those personnel who must have the information on a “need to know” basis. Contractor will not use CPA Data, or any information derived from CPA Data, for its own benefit or the benefit of any other person or entity. Contractor will not share CPA Data with its parent company or other affiliate without CPA’s express written consent.

c) Remote Access to CPA Information Systems. In accordance with CPA’s security protocols, CPA shall not permit remote access by Contractor to a CPA Information System prior to Contractor’s acceptance of the CPA Remote Access Terms and Conditions and CPA’s approval of Contractor’s Remote Access Request form. Contractor may contact the CPA Contract Manager for the applicable forms. Contractor shall only access CPA Information Systems using CPA-approved remote access technologies, processes, and procedures. Contractor’s point of access to a CPA Information System shall be within the continental United States.

d) Location of CPA Data. Contractor shall ensure that CPA Data (i.e., primary and backup) remains, at all times, within the continental United States. Contractor shall receive, process, transmit, and store all CPA Data within the continental United States. Contractor’s point of access to CPA Data shall be within the continental United States.

e) Encryption Standards.

Contractor shall encrypt CPA Data in transit and at rest. Data in transit means data is moving via email, in applications, or through

browsers and other web connections. Data at rest (including data backups) means data is stored in databases, the cloud, removable media, or mobile devices.

Contractor shall utilize encryption standards that are FIPS 140-2 compliant or, upon the written approval of CPA's Chief Information Security Officer, shall meet the intent of the standards as described in FIPS 140-2.

The minimum cryptographic algorithm used by Contractor must be Advanced Encryption Standard (AES) 128 or higher (256 AES is preferred).

Contractor shall encrypt CPA Data transmitted over a public or private network. CPA approved data encryption transmission protocols include the following: (1) SFTP (FTP over SSH), (2) FTPS (FTP over SSL), (3) HTTPS (HTTP over SSL), and (4) virtual private network.

f) Information Security Plan and Auditable Information Security Framework. Contractor will develop, implement, and maintain a comprehensive written Information Security Plan that contains administrative, technical, and physical safeguards designed to: (i) ensure the confidentiality, integrity and availability of CPA Data; (ii) protect against unauthorized access to or use of CPA Data; and (iii) comply with all applicable legal and regulatory requirements for data protection. Contractor shall secure its own and its third party service providers' systems (e.g., IT service provider, Cloud Service Provider) in a manner consistent with an auditable information security framework e.g., NIST, ISO 27001. CPA reserves the right to immediately terminate any access to a CPA Information System.

g) Independent Information Security Assessment. If Contractor has access to a CPA Information System or receives, processes, transmits, or stores CPA Data, then upon CPA request, Contractor shall provide a summary report of the most recent information security assessment conducted by an independent third party, e.g., SSAE-16 SOC 2 Type II, ISO 27002. CPA, in its sole discretion, may conduct a security assessment of any information system holding CPA Data or connected to a CPA Information System. CPA's security assessment may consist of a review of the following: (i) independent third party assessment(s) contracted by Contractor e.g., SSAE-16 SOC 2 Type II, ISO 27002, and (ii) Contractor's Information Security Plan.

h) [RESERVED]

i) [RESERVED]

j) Third Party Service Providers. It is Contractor's sole responsibility to ensure that its access and the access Contractor grants to its service providers to CPA Data or CPA Information Systems does not result in unauthorized access to CPA Data or CPA Information Systems.

k) [RESERVED]

l) [RESERVED]

m) [RESERVED]

n) [RESERVED]

I. CRIMINAL CONVICTION CERTIFICATION. Contractor shall take appropriate steps and perform due diligence to become informed as to each assigned employee's felony criminal convictions, if any, and shall inform CPA's Contract Administrator in writing within three (3) business days of Contractor's knowledge of any such felony criminal convictions for any assigned employee. At each of the three (3) intervals below, Contractor shall take appropriate steps to review and perform due diligence of every assigned employee's criminal history:

- i. within the five (5) business days immediately following notice of a tentative contract award;
- ii. within the seven (7) business days prior to the proposed effective date of any renewal or extension of this Contract; and
- iii. within the seven (7) business days prior to Contractor requesting approval for assignment of a new employee (such as a substitute employee).

Contractor's due diligence shall include, at a minimum, (1) Contractor's compliance with Contractor's published employee policies and procedures for background and criminal checks of Contractor's employees and (2) Contractor's comprehensive search of the public information portion of an online criminal conviction database, such as the TxDPS criminal conviction database located at: <https://records.txdps.state.tx.us/dpswebsite/>. If such TxDPS criminal conviction database is not appropriate for a particular assigned employee, Contractor shall submit a detailed explanation that an equivalent or more extensive search was conducted and that the alternate search is appropriate for the assigned employee(s) within, as appropriate, (a) five (5) business days of receipt of notice of tentative contract award, (b) seven (7) business days prior to proposed effective date of any renewal or extension of this Contract, or (c) seven (7) business days prior to Contractor's request for assignment of a new employee.

For purposes of this clause, "assigned employees" includes, without limitation, all employees or other personnel provided by Contractor who will or may (1) be assigned as lead or key personnel under this Contract; (2) interact on-site at CPA's premises with any CPA personnel, assets, records or resources in connection with this Contract; or (3) otherwise access or interact with any assets, records or resources of CPA in connection with this Contract excluding OEM provided personnel. OEM provided personnel will follow the OEM procedures for background checks of employees or subcontractors.

Upon request by CPA's Criminal Investigation Division, Contractor will provide to CPA's Criminal Investigation Division, no later than five (5) business days after receiving such request, the written results of Contractor's performance of these minimum steps for all assigned employees. If CPA becomes aware that Contractor provided false information, or if Contractor fails to promptly advise CPA of a felony criminal conviction occurring after the certification becomes effective, Contractor shall be in breach of this Contract and CPA shall have the option to terminate this Contract without further obligation to Contractor and may pursue all other remedies and rights available to CPA under this Contract, at law, or in equity.

**J. LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS.** Contractor shall have no authority to act for or on behalf of CPA or the State of Texas except as expressly provided for in any PO; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expenses, or liability of any kind on behalf of CPA or the State of Texas.

**K. ASSIGNMENT.** CPA or Contractor may assign its interest in or duties or rights under this Contract without prior written approval to: i) a successor in interest (for CPA, another state agency as designated by the Texas Legislature), or ii) a subsidiary, parent company, or affiliate. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party.

**L. NO WAIVER.** No provision of this Contract or any PO resulting from this Contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in this Contract or any PO resulting from this Contract or otherwise available to CPA by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. By issuing a PO, by its conduct prior to or subsequent to issuing a PO or by executing this Contract, CPA does not waive any privileges, rights, defenses, remedies, or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA. The modification of any privileges, rights, defenses, remedies, or immunities available to CPA must be in writing, must reference this section, and must be signed by CPA to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to CPA will not constitute a waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Contract or any PO resulting from this Contract or under applicable law.

**M. SUPPORT DOCUMENTS; INSPECTION OF RECORDS.** Contractor shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These supporting fiscal documents will be maintained and retained by Contractor for a period of seven (7) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Contractor pertaining to this Contract or any PO resulting from this Contract for purposes of inspecting, monitoring, auditing, or evaluating by CPA or the State of Texas. Contractor acknowledges and agrees that, in addition to and without limitation on the other audit provisions of this Contract or any PO resulting from this Contract, pursuant to Section 2262.154, Texas Government Code, the state auditor may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the state directly under any PO resulting from this Contract or indirectly through a subcontract under any PO resulting from this Contract relating to the funds actually received under this Contract. The acceptance of funds by Contractor or any other entity or person directly under any PO resulting from this Contract or indirectly through a subcontract under any PO resulting from this Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Contractor or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit of the funds actually received under this Contract. This Contract or any PO resulting from this Contract may be amended unilaterally by CPA to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154, Texas Government Code. Contractor shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.



N. **SEVERABILITY**. If any provision of this Contract or any PO resulting from this Contract shall, for any reason, be held to violate any applicable law, and so much of this Contract or any PO resulting from this Contract is held to be unenforceable, then the invalidity of such a specific provision will not be held to invalidate any other provisions, which other provisions will remain in full force and effect unless removal of said invalid provisions destroys the legitimate purpose of this Contract or any PO resulting from this Contract, in which event the Contract or PO shall be canceled.

O. **APPLICABLE LAW AND CONFORMING AMENDMENTS**. Contractor must comply with all laws, regulations, requirements and guidelines applicable to a vendor providing Services and products described in this Contract to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as amended throughout the term of this Contract. CPA reserves the right, in its sole discretion, to unilaterally amend this Contract or any PO resulting from this Contract and throughout the term of this Contract to incorporate any modifications necessary for CPA's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements and guidelines.

P. **MOST FAVORED CUSTOMER**. Contractor represents and warrants that all prices, charges, benefits, warranties, and terms granted to CPA pursuant to this Contract or any PO resulting from this Contract are comparable to, or more favorable to, CPA than the prices, charges, benefits, warranties, and terms that Contractor has heretofore offered to any person or entity for the products and/or Services covered under any other agreement. If at any time during the term of this Contract or any PO resulting from this Contract, Contractor shall contract with any other person or entity for prices, charges, benefits, warranties and terms more favorable to such person or entity, Contractor must notify CPA of such more favorable terms and CPA, in its sole discretion, may require that such more favorable prices, charges, benefits, warranties or other terms be available to CPA under this Contract and any PO resulting from this Contract, and be retroactive to the date of such PO.

Q. **ROLLING ESTOPPEL**. If Contractor is aware a problem exists and fails to report the problem to CPA, Contractor continues to be responsible for meeting the goals and timelines established in this Contract and any PO resulting from this Contract. Under these circumstances, CPA will not be liable for any detrimental consequences, except as provided herein.

R. **OUTSOURCING**. Contractor acknowledges and understands that CPA may, in its sole discretion, enter into an outsourcing agreement with another provider which shall perform certain Services for CPA. If CPA enters into a written agreement for outsourcing, Contractor shall, as consistent with the terms of this Contract, grant the outsourcing vendor the right to use and access the Services and/or equipment (e.g., software, hardware) on the same terms and conditions that Contractor has granted CPA the right to use and access such Services and/or equipment provided the outsourcing vendor also agrees that it (i) shall only use the Services and/or equipment for the benefit of CPA, and (ii) shall enter into confidentiality agreement with CPA, which contains confidentiality terms that are substantially no less restrictive than the confidentiality terms contained in this Contract. Contractor further shall either fully cooperate with all transition activities regarding outsourcing; or Contractor agrees that CPA shall have the right to immediately terminate or assign to the outsourcing vendor, this Contract or any PO resulting from this Contract without any liability for any amounts to Contractor.

Notwithstanding the above, in no event may CPA transfer the Services and/or equipment to another provider without the prior written consent of Contractor. If the Services and/or equipment will be used at a site other than CPA's, Contractor, CPA and the third party must enter into a written third party use agreement prior to such use or access by such third party.

S. **TEXAS LAW; VENUE**. This Contract and any PO resulting from this Contract will be governed by and construed under and in accordance with the laws of the State of Texas. Any and all obligations or payments under this Contract and any PO resulting from this Contract are due and payable in Travis County, Texas, and venue is proper in only in Travis County.

T. **NOTICES**. Any written notices required under this Contract or any PO issued as a result of this Contract shall be by either hand delivery to Contractor's office or to CPA's Austin office, LBJ State Office Building, 111 E. 17<sup>th</sup> Street, Austin, Texas, attention Manager of Support Services Division, or by U.S. Mail, certified, return receipt requested. Notice will be effective on receipt by the affected party. CPA and Contractor agree that either party may change the designated notice address in this Section by written notification to the other party.

U. **PERSONAL INJURY, PROPERTY DAMAGE**. Contractor shall be liable for any bodily injury or personal injury to any individual caused by Contractor or Contractor's employees or Contractor's defective products that are not the result of the OEM's

product design or manufacturing. In the event of loss, destruction or damage to any CPA or State of Texas property by Contractor or Contractor's employees, Contractor shall indemnify CPA and the State of Texas and pay to CPA and the State of Texas the full cost of repair, reconstruction or replacement of the lost, destroyed or damaged property, at CPA's election. Contractor will reimburse CPA and the State of Texas for such property damage within ten (10) calendar days after Contractor's receipt of CPA's notice of amount due.

**V. FORCE MAJEURE.** Except as otherwise provided, neither Contractor nor CPA shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract or any PO resulting from this Contract which is caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, supply chain disruptions which are outside of Contractor's control, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within five (5) business days of the existence of such force majeure, or otherwise waive this right as a defense.

**W. DEBTS OR DELINQUENCIES TO THE STATE.** To the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under or related to this Contract may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Contractor owes any such debt or delinquency. Contractor shall comply with rules adopted by the Comptroller of Public Accounts under Sections 403.055, 403.0551, 2252.903 of the Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

**X. DISPUTE RESOLUTION.** Chapter 2260 of the Texas Government Code prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. Contractor and CPA shall comply with the rules the CPA has adopted under Chapter 2260 of the Texas Government Code, codified at 34 Texas Administrative Code §§1.360-1.387, and may adopt revisions to these rules throughout the term of the contract, including any extensions. The Contractor and CPA shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by CPA and the Contractor to attempt to resolve any claim for breach of contract made by the Contractor under any contract resulting from this RFO:

(A) The Contractor's claim for breach of the contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Contractor shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of CPA and the Contractor otherwise entitled to notice under the contract. Compliance by the Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

(B) The contested case process provided in Chapter 2260 is the Contractor's sole and exclusive process for seeking a remedy for an alleged breach of contract by CPA if the parties are unable to resolve their disputes under subparagraph (A) of this Section.

(C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code. Neither the execution of a contract by CPA nor any other conduct of any representative of CPA relating to a contract resulting from this RFO shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under the contract, the following shall apply:

Should a dispute arise out of the contract, CPA and the Contractor shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by CPA and the Contractor within fifteen (15) days after written notice by one of them demanding mediation under this Section. The Costs of such mediation shall be allocated as set forth in 34 Texas Administrative Code, Section 1.380. Notwithstanding the foregoing, Contractor acknowledges and agrees that CPA's obligation to pay the costs of mediation is subject to the availability of state funds. By mutual agreement, CPA and the Contractor may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that CPA and the Contractor shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. CPA's participation in or the results of any mediation or another non-binding dispute

resolution process under this Section or the provisions of this Section shall not be construed as a waiver by CPA of (1) any rights, privileges, defenses, remedies or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA; (2) CPA's termination rights; or (3) other termination provisions or expiration dates of the contract.

Notwithstanding any other provision of the contract to the contrary, the Successful Respondent shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes, however, Successful Respondent may suspend performance during the pendency of such claim or dispute if Successful Respondent has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

Y. MEDIA RELEASES. Contractor is not authorized to make or participate in any media releases pertaining to this Contract which they relate without CPA's prior written consent, and then only in accordance with explicit written instructions from CPA.

Z. IRS DATA. Reference Exhibit 7 (Contract Language for General Services) IRS Publication No. 1075, posted 12-22-2016 – In performance of the Services under this Contract, Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

- (1) All work will be performed under the supervision of Contractor or Contractor's responsible employees.
- (2) Contractor and Contractor's employees with access to or who use FTI (Federal Tax Information) must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone other than an officer or employee of Contractor is prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- (5) No work involving returns and return information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (6) Contractor will maintain a list of employees authorized access. Such list will be provided to CPA and, upon request, to the IRS reviewing office.
- (7) CPA will have the right to void the contract if Contractor fails to provide the safeguards described above.

Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as five years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized future disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC Sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000.00 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000.00 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. The penalties are prescribed by IRCs 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1. Additionally, it is incumbent upon Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is

made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. Granting Contractor access to FTI must be preceded by certifying that each individual understands CPA's security policy and procedures for safeguarding IRS information. Contractor must maintain its authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in CPA's files for review. As part of the certification and at least annually afterwards, Contractor must be advised of the provisions of IRC Sections 7431, 7213, and 7213A (see Exhibit 4, *Sanctions for Unauthorized Disclosure* and Exhibit 5, *Civil Damages for unauthorized Disclosure*, of Publication 1075). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10 of Publication 1075) For both the initial certification and the annual certification, Contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

The IRS and CPA, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of Contractor to inspect facilities and operations performing any work with FTI under the contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where Successful Respondent is found to be noncompliant with contract safeguards.

#### AA. CONTRACTOR CERTIFICATIONS.

1. Contractor represents and warrants that the provisions in this Contract apply to Contractor and all of Contractor's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide Services under, who have a financial interest in, or otherwise are interested in the agreement between CPA and Contractor.
2. Contractor represents and warrants that it has read and understood and shall comply with CPA's Anti-Fraud Policy, located on CPA's website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of this Contract.
3. Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Notwithstanding the foregoing, Contractor has included a detailed attachment in its Offer with a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under this Contract, relate to the solicited or similar goods or Services, or otherwise be relevant to CPA's consideration of Contractor's Offer. In addition, Contractor represents and warrants that it shall notify CPA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update CPA shall constitute breach of contract and may result in immediate termination of this Contract. Contractor represents and warrants that it has sufficient right, title, and interest in the Equipment provided under this Contract to provide the Services required by this Contract.
4. Contractor represents and warrants that it has not given, offered to give, nor intends 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.
5. Contractor represents and warrants that it has no actual or potential conflicts of interest with CPA in entering into this Contract, and that Contractor entering into such this Contract will not reasonably create an appearance of impropriety.
6. The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Contract, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Contract, neither I nor any representative of the Contractor have violated any federal antitrust law; and (3) neither I nor any representative of the Contractor have directly or indirectly communicated any of the contents of this Contract to a competitor of the Contractor or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Contractor.
7. Contractor represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

8. Under Section 231.006, Texas Family Code, regarding child support, Contractor certifies that the individual or business named in the offer is not ineligible to receive the specified payment and acknowledges that this Contract and any PO resulting from this Contract may be terminated and payment may be withheld if this certification is inaccurate.
9. Contractor represents and warrants that the individual signing this Contract is authorized to sign this document on behalf of and to bind Contractor under this Contractor.
10. Contractor represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exist between Contractor and an employee of any CPA component, and Contractor has not been an employee of any CPA component within the immediate twelve (12) months prior to Contractor's execution of this document.
11. Contractor represents and warrants that this Agreement is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency. Contractor represents and warrants that it has not received compensation for participation in the preparation of the specifications for this Contract.
12. Contractor represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
13. Contractor represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA).
14. Contractor represents and warrants that payments to Contractor and Contractor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.
15. Contractor represents and warrants that, in accordance with Section 2155.4441, Texas Government Code, it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
16. Contractor represents and warrants that to the best of its knowledge at the time of this offering entity and its principals are eligible to participate in this transaction and is not subject to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
17. Contractor represents and warrants that it will comply with the requirements the Immigration and Nationality Act (8 U.S.C. § 1101 et seq.) an all subsequent immigration laws and amendments.
18. Contractor represents and warrants that its performance under this Contract shall be conducted conscientiously in a professional and workmanlike manner and to the full limit of Contractors talents and capabilities with due diligence and in full compliance with the highest professional standards of practice in the industry applicable to the Services performed.
19. Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in Section XVII, Part AA(1) of this Contract within the five (5) calendar years immediately preceding the submission of Contractor's Offer in response to PR No. 304-19-0368TT that would or could impair Contractor's performance under this Contract, relate to the solicited or similar goods or Services, or otherwise be relevant to CPA's consideration of Contractor's Offer. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Offer a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Contractor's performance under this Contract, relate to the solicited or similar goods or Services, or otherwise be relevant to CPA's consideration of Contractor's Offer. In addition, Contractor represents and warrants that it shall notify CPA in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update CPA shall constitute breach of contract and may result in immediate termination of this Contract. Contractor represents and warrants that it has sufficient right, title, and interest in the Equipment provided under this Contract to provide the Services required by this Contract.
20. In accordance with Section 361.965, Texas Health and Safety Code, Contractor represents and warrants that it is in compliance with the Manufacturer Responsibility and Consumer Convenience Computer Equipment Collection and Recovery Act.
21. Under Section 2155.006(b), Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of

Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Contractor certifies that the individual or business entity named in this Contract is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

22. Contractor represents and warrants that any electronic and information resources products developed, procured, maintained, or used by CPA directly or used by the Contractor under this Contract or any PO resulting from this Contract which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product complies with the specifications set forth in the Contract and comply with the applicable State of Texas Accessibility requirements for Electronic and Information Resources specified in the Department of Information Resources' rules at 1 Texas Administrative Code Chapter 213 to the extent enumerated in the OEM's specifications.
23. Pursuant to Section 2270.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Contract.
24. Respondent represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**AB. INFORMATION SECURITY REQUIREMENTS** - Contractor shall comply with all applicable state and federal laws and regulations regarding confidentiality, privacy, and security pertaining to confidential CPA information. If communications with Contractor necessitate the release of confidential CPA information, each individual who will require access to or may be exposed to that information must sign the CPA Confidential Treatment of Information Acknowledgement (CTIA) form. See Attachment G for the CTIA.

#### XV. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Contract on behalf of the respective parties named below. This Contract may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

**Texas Comptroller of Public Accounts**

**KST Data Inc.**

By: 

By: 

Lisa Craven  
Deputy Comptroller

Mark Edson  
Vice President

Date: 7-11-19

Date: 7-11-19

**APPROVED BY DIR**

\_\_\_\_\_

\_\_\_\_\_  
Date

**ATTACHMENT A**  
**EQUIPMENT SPECIFICATIONS**

<b>CPA Hyperconverged Configuration #1 Nutanix Hardware Solution NX-8155-G6, 1 Node (All Flash)</b>		
<b>Nutanix Manufacturer Part#</b>	<b>Description</b>	<b>Quantity</b>
422-NX-8155-G6-45	NX-8155-G6, 1 Node (All Flash) Nutanix Hardware Platform	1
422-C-CPU-6128	Intel Skylake Processor 3.4GHz 6-Core (Skylake 6128 CPU)	2
422-C-MEM-32R4-26A	32GB DDR4 2666MHz Memory Module	16
422-C-HDD-NONE	No HDD	1
422-C-SSD-1920G-SED-3.5	1920GB 3.5" SSD SED	12
422-C-NIC-10GBT2-A	10GbE Dual Base-T Network Adapter (Intel X550-AT2)	2
422-S-MCW-8155-G6-AF-5YR	<b>62 Months</b> Mission Critical Workload Support for NX-8155-G6 (All Flash) starts on date of shipment by the OEM. KST Data has included 2 additional months to reduce or eliminate the potential support gap created by the Acceptance period.	1
422-L-ULT-8155-G6	LIC, ULT for NX-8155-G6; Valid for LOD	1

<b>CPA Hyperconverged Configuration #2 Nutanix Hardware Solution NX-8155-G6, 1 Node (All Flash)</b>		
<b>Nutanix Manufacturer Part#</b>	<b>Description</b>	<b>Quantity</b>
422-NX-8155-G6-25	NX-8155-G6, 1 Node (All Flash) Nutanix Hardware Platform	1
422-C-CPU-4114	Intel Skylake Processor 2.2GHz 10-Core (Skylake 4114 CPU)	2
422-C-MEM-32R4-26A	32GB DDR4 2666MHz Memory Module	16
422-C-HDD-NONE	No HDD	1
422-C-SSD-1920G-SED-3.5	1920GB 3.5" SSD SED	8
422-C-NIC-10GBT2-A	10GbE-T, 2-port, Network Adapter (Intel X550-AT2)	2
422-S-MCW-8155-G6-AF-5YR	<b>62 Months</b> Mission Critical Workload Support for NX-8155-G6 (All Flash) ) starts on date of shipment by the OEM. KST Data has included 2 additional months to reduce or eliminate the potential support gap created by the Acceptance period.	1
422-L-ULT-8155-G6	LIC, ULT for NX-8155-G6; Valid for LOD	1

**CPA Hyperconverged Configuration #3 Nutanix  
Hardware Solution  
NX-8155-G6, 1 Node (All Flash)**

<b>Nutanix Manufacturer Part#</b>	<b>Description</b>	<b>Quantity</b>
422-NX-8155-G6-25	NX-8155-G6, 1 Node (All Flash) Nutanix Hardware Platform	1
422-C-CPU-4114	Intel Skylake Processor 2.2GHz 10-Core (Skylake 4114 CPU)	2
422-C-MEM-32R4-26A	32GB DDR4 2666MHz Memory Module	16
422-C-HDD-NONE	No HDD	1
422-C-SSD-1920G-SED-3.5	1920GB 3.5" SSD SED	12
422-C-NIC-10GBT2-A	10GbE Dual Base-T Network Adapter (Intel X550-AT2)	2
422-S-MCW-8155-G6-AF-5YR	<b>62 Months</b> Mission Critical Workload Support for NX-8155-G6 (All Flash) starts on date of shipment by the OEM. KST Data has included 2 additional months to reduce or eliminate the potential support gap created by the Acceptance period.	1
422-L-ULT-8155-G6	LIC, ULT for NX-8155-G6; Valid for LOD	1

**CPA Hyperconverged Configuration #4  
Nutanix Hardware Solution  
NX-8155-G6, 1 Node (All Flash)**

<b>Nutanix Manufacturer Part#</b>	<b>Description</b>	<b>Quantity</b>
422-NX-8155-G6-35	NX-8155-G6, 1 Node (All Flash) Nutanix Hardware Platform	1
422-C-CPU-5120	Intel Skylake Processor 2.2GHz 14-Core (Skylake 5120 CPU)	2
422-C-MEM-32R4-26A	32GB DDR4 2666MHz Memory Module	16
422-C-HDD-NONE	No HDD	1
422-C-SSD-1920G-SED-3.5	1920GB 3.5" SSD SED	12
422-C-NIC-10GBT2-A	10GbE-T, 2-port, Network Adapter (Intel X550-AT2)	2
422-S-MCW-8155-G6-AF-5YR	<b>62 Months</b> Mission Critical Workload Support for NX-8155-G6 (All Flash) ) starts on date of shipment by the OEM. KST Data has included 2 additional months to reduce or eliminate the potential support gap created by the Acceptance period.	1
422-L-ULT-8155-G6	LIC, ULT for NX-8155-G6; Valid for LOD	1



CPA Hyperconverged Configuration #5 Nutanix Hardware Solution NX-8155-G6, 1 Node (All Flash)		
Nutanix Manufacturer Part#	Description	Quantity
422-NX-8155-G6-38	NX-8155-G6, 1 Node (All Flash) Nutanix Hardware Platform	1
422-C-CPU-5120	Intel Skylake Processor 2.2GHz 14-Core (Skylake 5120 CPU)	2
422-C-MEM-64R4-26A	64GB DDR4 2666MHz Memory Module	16
422-C-HDD-NONE	No HDD	1
422-C-SSD-1920G-SED-3.5	1920GB 3.5" SSD SED	8
422-C-NIC-10GBT2-A	10GbE Dual Base-T Network Adapter (Intel X550-AT2)	2
422-S-MCW-8155-G6-AF-5YR	<b>62 Months</b> Mission Critical Workload Support for NX-8155-G6 (All Flash) ) starts on date of shipment by the OEM. KST Data has included 2 additional months to reduce or eliminate the potential support gap created by the Acceptance period.	1
422-L-ULT-8155-G6	LIC, ULT for NX-8155-G6; Valid for LOD	1

CPA Hyperconverged Configuration #6 Nutanix Hardware Solution NX-8155-G6, 1 Node (All Flash)		
Nutanix Manufacturer Part#	Description	Quantity
422-NX-8155-G6-38	NX-8155-G6, 1 Node (All Flash) Nutanix Hardware Platform	1
422-C-CPU-5120	Intel Skylake Processor 2.2GHz 6-Core (Skylake 5120 CPU)	2
422-C-MEM-64R4-26A	64GB DDR4 2666MHz Memory Module	16
422-C-HDD-NONE	No HDD	1
422-C-SSD-1920G-SED-3.5	1920GB 3.5" SSD SED	12
422-C-NIC-10GBT2-A	10GbE Dual Base-T Network Adapter (Intel X550-AT2)	2
422-S-MCW-8155-G6-AF-5YR	<b>62 Months</b> Mission Critical Workload Support for NX-8155-G6 (All Flash) ) starts on date of shipment by the OEM. KST Data has included 2 additional months to reduce or eliminate the potential support gap created by the Acceptance period.	1
422-L-ULT-8155-G6	LIC, ULT for NX-8155-G6; Valid for LOD	1

**CPA Hyperconverged Configuration #7  
Nutanix Hardware Solution  
NX-8155-G6, 1 Node (All Flash)**

<b>Nutanix Manufacturer Part#</b>	<b>Description</b>	<b>Quantity</b>
422-NX-8155-G6-63	NX-8155-G6, 1 Node (All Flash) Nutanix Hardware Platform	1
422-C-CPU-6148	Intel Skylake Processor 2.4GHz 20-Core (Skylake 6148 CPU)	2
422-C-MEM-32R4-26A	32GB DDR4 2666MHz Memory Module	8
422-C-HDD-NONE	No HDD	1
422-C-SSD-1920G-SED-3.5	1920GB 3.5" SSD SED	4
422-C-NIC-10GBT2-A	10GbE Dual Base-T Network Adapter (Intel X550-AT2)	2
422-S-MCW-8155-G6-AF-5YR	<b>62 Months</b> Mission Critical Workload Support for NX-8155-G6 (All Flash) ) starts on date of shipment by the OEM. KST Data has included 2 additional months to reduce or eliminate the potential support gap created by the Acceptance period.	1
422-L-ULT-8155-G6	LIC, ULT for NX-8155-G6; Valid for LOD	1

**CPA Hyperconverged Configuration #8  
Nutanix Hardware Solution  
NX-8155-G6, 1 Node (All Flash)**

<b>Nutanix Manufacturer Part#</b>	<b>Description</b>	<b>Quantity</b>
422-NX-8155-G6-68	NX-8155-G6, 1 Node (All Flash) Nutanix Hardware Platform	1
422-C-CPU-6148	Intel Skylake Processor 2.4GHz 20-Core (Skylake 6148 CPU)	2
422-C-MEM-64R4-26A	64GB DDR4 2666MHz Memory Module	16
422-C-HDD-NONE	No HDD	1
422-C-SSD-1920G-SED-3.5	1920GB 3.5" SSD SED	12
422-C-NIC-10GBT2-A	10GbE Dual Base-T Network Adapter (Intel X550-AT2)	2
422-S-MCW-8155-G6-AF-5YR	<b>62 Months</b> Mission Critical Workload Support for NX-8155-G6 (All Flash) ) starts on date of shipment by the OEM. KST Data has included 2 additional months to reduce or eliminate the potential support gap created by the Acceptance period.	1
422-L-ULT-8155-G6	LIC, ULT for NX-8155-G6; Valid for LOD	1

**CPA Hyperconverged Configuration #9  
Nutanix Hardware Solution  
NX-8150-G5, 1 Node**

Nutanix Manufacturer Part#	Description	Quantity
NX-8150-G5-3D3Z1	NX-8150-G5, 1 Node Nutanix Hardware Platform	1
C-CPU-2699v4	Intel Xeon Processor 2.2GHz 22-Core (Broadwell E5-2699 v4 55M Cache)	2
C-MEM-64LR4-26A	64GB DDR4 2666MHz Memory Module	16
C-HDD-NONE	No HDD	1
C-SSD-1920GB-SED-2.5	1920GB 2.5" SSD SED	24
C-NIC-10GBT-2	10GbE Dual Base-T Network Adapter	2
S-MCW-8150-G5-5YR	<b>62 Months</b> Mission Critical System Support for NX-8150-G5 starts on date of shipment by the OEM. KST Data has included 2 additional months to reduce or eliminate the potential support gap created by the Acceptance period.	1
L-ULT-8155-G6	LIC, ULT for NX-8150-G5; Valid for LOD	1

**ATTACHMENT B- PRICE SHEET**

Table 1 ** Equipment Provisioning Services including Full Service Maintenance in Pricing 60 Month Initial Period of Performance Refer to Attachment A (Hyperconverged Solutions Configurations)							
Line #	Description	Qty.	Monthly Price (Each)	Monthly Price Extended	Subtotal Price 60 Month Initial Period of Performance	Discount Rate % for OEM Successor Model*	Monthly Price for Extended Period of Performance (Mos 61-84)
1	CPA Hyperconverged Configuration #1 with Full Service Maintenance Nutanix Hardware Platform NX-8155-G6, 1 Node (All Flash)	1	\$3,135.00	\$3,135.00	\$188,100.00	25%	\$2,368.99
2	CPA Hyperconverged Configuration #2 with Full Service Maintenance Nutanix Hardware Platform NX-8155-G6, 1 Node (All Flash)	1	\$2,287.00	\$2,287.00	\$137,220.00	25%	\$1,727.61
3	CPA Hyperconverged Configuration #3 with Full Service Maintenance Nutanix Hardware Platform NX-8155-G6, 1 Node (All Flash)	1	\$2,937.00	\$2,937.00	\$176,220.00	25%	\$2,218.70
4	CPA Hyperconverged Configuration #4 with Full Service Maintenance Nutanix Hardware Platform NX-8155-G6, 1 Node (All Flash)	1	\$3,108.00	\$3,108.00	\$186,480.00	25%	\$2,348.33
5	CPA Hyperconverged Configuration #5 with Full Service Maintenance Nutanix Hardware Platform NX-8155-G6, 1 Node (All Flash)	1	\$3,728.00	\$3,728.00	\$223,680.00	25%	\$2,816.61
6	CPA Hyperconverged Configuration #6 with Full Service Maintenance Nutanix Hardware Platform NX-8155-G6, 1 Node (All Flash)	1	\$4,378.00	\$4,378.00	\$262,680.00	25%	\$3,307.94

Table 1, continued

Line #	Description	Qty	Monthly Price (Each)	Monthly Price Extended	Subtotal Price 60 Month Initial Period of Performance	Discount Rate % for OEM Successor Model*	Monthly Price for Extended Period of Performance (Mos 61-84)
7	CPA Hyperconverged Configuration #7 with Full Service Maintenance Nutanix Hardware Platform NX-8155-G6, 1 Node (All Flash)	1	\$1,905.00	\$1,905.00	\$114,300.00	25%	\$1,438.80
8	CPA Hyperconverged Configuration #8 with Full Service Maintenance Nutanix Hardware Platform NX-8155-G6, 1 Node (All Flash)	1	\$4,681.00	\$4,681.00	\$280,860.00	25%	\$3,536.84
9	CPA Hyperconverged Configuration #9 with Full Service Maintenance Nutanix Hardware Platform NX-8150-G5, 1 Node	1	\$5,863.00	\$5,863.00	\$351,780.00	25%	\$4,429.88

**Table 2  
Additional Services**

Line#	Description	Qty.	Unit of Measure	One time Service Price
1	Installation, Implementation and Configuration Services ( <i>Refer to Section I, Part D.5 of the PR</i> )	1	Per Node	\$8,188.00
2	Unwind Services, End of Performance ( <i>Refer to Section I, Part D.9 of the PR</i> )	1	Per Node	\$2,730.00
3	Knowledge Transfer and Training Services ( <i>Refer to Section I, Part D.10 of the PR</i> )			\$48,037.00
<b>Total for Price for Table 2</b>				\$58,955.00

**Table 3  
Optional Services  
(Refer to Section I, Part E)**

Line#	Description	Qty.	Unit of Measure	Total Price
1	Custom Ticket Reporting for the Period of Performance (Monthly or Quarterly)	1	Monthly Fee min 60 Month	\$7,830.00
2	Nutanix Non-Returnable Disk Drive (NRDK) Optional Service for 1920 GB SSD Replacement	1	Per Drive	\$1,936.00
3	Other Technical Support	1	Per Hour / 8 hours minimum	\$328.00
4	Prism Pro Edition with 62 months Maintenance	1	Per Node	\$6838.00

**ATTACHMENT C**  
**KST SCOPE OF WORK**

- **Customer Name: Texas Comptroller of Public Accounts**
- **Customer's Work Location: 111 E. 17<sup>th</sup> Street, Austin, TX 78774**

**1. Introduction**

This Scope of Work ("SOW") is between KST Data, Inc. ("KST") and Texas Comptroller of Public Accounts ("CPA" or "Customer"). This SOW is an attachment to the Contract for a Hyperconverged Solution between KST and Customer ("Contract") and shall be governed by the terms of the Contract.

KST shall provide the installation and implementation services described in this SOW ("Project Services", "PS" or "Project") for the Nutanix Solution.

**2. Definitions and Abbreviations.** All capitalized words not otherwise defined in this SOW shall have the meanings set forth in the Contract. When used within this SOW, the following abbreviations shall be defined as follows:

- **AOS-** means Acropolis Operating System (typically refers to the operating system like software foundational to Nutanix platform).
- **AHV-** means Acropolis Hyper Visor (e.g. used to refer to the built-in hypervisor from Nutanix).
- **OOB-** means Out-Of-Band (e.g. used in reference to management network or interface which is different from the data).
- **VMW-** means VMware (e.g. used to refer to the hypervisor/virtualization technology pioneered by VMware).
- **SCVMM-** means System Center Virtual Machine Manager (used to refer to Microsoft's virtual machine support center for Windows-based systems).
- **VCSA-** means VMware vCenter server appliance, or vCSA (for managing VMware Virtualized Infrastructure).
- **VMs-** means Virtual Machines.

**3. Services**

**3.1 8 Node Nutanix Cluster Installation & Implementation**

KST shall provide the Nutanix Cluster implementation on-site at the Customer's Work Location(s). The PS will allow the Customer to accelerate time to value for the Nutanix Solution and KST will implement the Nutanix Solution in a controlled manner. KST will share Nutanix's recommended practices throughout the Project, with an end outcome being a successful non-disruptive addition of the Nutanix Solution to the Customer's datacenter workload environment. KST will provide standard As-Built Configuration Documentation for the Nutanix Solution.

KST will build and implement the Nutanix Solution, which includes the base Nutanix XCP infrastructure, along with the associated Nutanix Supported Hypervisor. This Nutanix infrastructure serves as the foundation for Customer workload components.

KST will work with the Customer on a collaborative approach, allowing the Customer to garner knowledge and experience with provisioning Nutanix infrastructure.

KST shall ensure that the Nutanix Solution, including software and associated hypervisor, will be fully operational and ready for production readiness, in compliance with Nutanix's recommended practices and the target Customer configuration discussed during the Engagement Kickoff.

This SOW is subject to the customer responsibilities and any applicable restrictions in product documentation, provided that KST provides such product documentation prior to commencing work under this SOW.

**3.2 Tasks.** KST shall perform the following tasks (all words in this section shall have the dictionary-definition meaning unless understood differently based on industry practice; notwithstanding the foregoing, any word used in this section that is explicitly defined in the Contract, or this SOW shall have the meaning ascribed to it therein):

- Conduct Engagement Kickoff
  - Discuss Customer's target configuration for the Nutanix Solution
  - Determine Project Schedule
- Prepare Logical Configuration
  - KST will provide configuration capture documentation
- Physical Installation into Customer Provided Equipment
  - Mount Nutanix Equipment in Rack
  - Cable Data Connections to Top of Rack Switches
  - Cable OOB Hardware Management Port Management Ports (Top of Rack or Separate Switch)
  - Cable Power Connections to Power Distribution Units
- Implement Nutanix Supported Hypervisor (VMW, Hyper-V Deployments)
  - Install Hypervisor Software with Customer Provided Media
    - NOTE: For AHV Deployments, AOS and AHV are deployed and configured as one set of packages
  - Apply Appropriate Hypervisor Patches
  - Apply Customer License Keys
  - Configure Virtual Networking (VLAN's)
  - Configure Administrative Settings (DNS, NTP, Syslog, AD, SNMP)
- Implement Nutanix AOS
  - Storage Containers
  - Data Replication
    - 1:1 Configurations Only
  - Administrative Configuration
    - Authentication (AD)
    - Call Home and Email Alerts
    - Prism and Acropolis Licensing
    - Miscellaneous: DNS, NTP, SMTP, Syslog, SNMP v3
- Integrate Virtualization Management Applications
  - Deploy Prism Central
  - Integrate into Existing vCenter Server / SCVMM, if applicable
  - KST will deploy net-new Basic Topology vCSA/SCVMM in-scope, as needed
- Execute Test and Validation Plan approved by CPA, to ensure proper functionality of the Nutanix Solution
- Conduct Knowledge Transfer, one to four hours, for the As-Built Nutanix Solution and Nutanix Portal
- Produce As-Built Documentation for Nutanix Solution
- Perform other tasks as reasonably required for the Project or other tasks not directly stated in this SOW but have a direct impact on completion of the Project.

**3.3 Deliverables.** KST shall provide the following ("Deliverables"):

- Project Schedule
- As-Built Documentation for Nutanix Solution



- License Keys and Passcodes for Nutanix Solution
- Nutanix Cluster(s) Deployed and is Ready to Run VM's

As part of the PS, CPA will evaluate and accept the Deliverables in accordance with Section 9 of this SOW.

#### **4. Out of Scope**

The following items are not included:

- The implementation of any hardware or software not referenced in this SOW.
- Server remediation activities. KST will be responsible for assisting CPA in remediating Nutanix server related issues and newly built VMs that are supporting this product.
- Creation and troubleshooting of custom scripts.

#### **5. Pricing**

##### **5.1 Costs**

The PS are based on Contractor's project approach and assumptions described in this SOW. The PS described in this SOW are performed on a fixed price basis at the fees specified in Attachment B (Price Sheet) of the Contract. All costs associated with this SOW are included in Attachment B (Price Sheet) of the Contract.

##### **5.2 Payment Type**

Payment will be made by CPA to KST in accordance with the terms of the Contract.  
KST

#### **6. Project Schedule**

KST will work with CPA to develop a Project Schedule outlining tasks and dates for the PS that are mutually agreeable to KST and CPA. The Deployment Date for the Nutanix Solution to go live shall be no later than ten (10) weeks from the Effective Date of the Contract.

#### **7. Customer Responsibilities**

All PS provided by Contractor will be based on the following assumptions and customer responsibilities:

- CPA will designate a single point of contact to whom all communications may be addressed and who has the authority to act on all aspects of the PS throughout the duration of the Project; such contact shall be available during normal CPA hours of business (Monday through Friday, 8:00am to 5:00pm local time, excluding holidays).
- CPA will have suitable technical staff available for the duration of the Project. The CPA staff will need to participate in and support the various tasks of the Project as reasonably required or other tasks not directly stated, but have a direct impact on completion of this Project.
- CPA is responsible for the identification and interpretation of, and ensuring compliance with, all laws, statutes, rules, regulations, and standards applicable to its operations.
- Subject to CPA's security requirements and upon Contractor's reasonable advance written request, CPA will provide reasonable access to CPA's Work Location and facilities, including where applicable, computer equipment, telecom equipment, facilities, workspace, and telephone for Contractor's use during the project. KST shall comply with the terms of the Contract regarding Use of State Property.

- CPA will provide Contractor with access, information, and credentials as reasonably needed for all existing equipment at CPA's site that will be configured or modified under this SOW prior to Contractor's arrival at CPA's site, subject to CPA's security requirements.
- CPA will confirm site readiness including circuits, cabling, power, cooling, and rack space prior to Contractor's arrival at CPA's site.
- CPA will specify physical and logical network topology for existing network infrastructure and identify connectivity requirements for other network-attached devices.
- CPA will be responsible for installing and verifying the operation of all equipment not provided by KST under the Contract; equipment not provided by KST will be installed, tested, and operational prior to Contractor's arrival on-site.
- CPA will ensure that all circuits have been labeled in a manner that clearly identifies each component.
- CPA will provide loading dock access for receiving equipment, verifying that all equipment, supplies and materials have been received and are on-site and available before the PS start date.
- CPA will coordinate access to a secure area for staging and configuration (unless staged at Contractor's facility).
- CPA will ensure adequate power to terminate the equipment.
- CPA will arrange for network access to terminate the equipment.
- CPA will provide disposal services to remove boxes and packing materials.
- CPA is responsible for all server and network security definitions. Contractor technical resources will obtain appropriate configuration requirements during the Engagement Kickoff.
- CPA will provide all security lockdowns required for any deployed systems prior to scheduling resources to arrive on-site. CPA will provide timely technical assistance in the event a lockdown prevents a deployed solution from functioning properly. If a solution cannot be found without impacting the schedule, CPA and Contractor will document the solution and determine to extend the timeline or back-out the lockdown until the solution works. Lockdowns will not be required or implemented for virtual appliances.

**Note:** Success of the Project is dependent on the responsibilities above. If responsibilities indicated above are not completed prior to the Deployment Date, the Project timelines may need to be rescheduled based on Contractor engineering availability.

## 8. Assumptions

The following assumptions apply to this SOW. Changes to these assumptions may affect scope and cost.

- Contractor will not be responsible for any project delays or costs solely caused by CPA's failure to deliver, or by CPA's delayed provision of, information, systems, or feedback reasonably requested by Contractor in writing.
- Tasks will be completed during normal business hours between 8:00 a.m. and 5:00 p.m. Project site local time, Monday through Friday, excluding Contractor-observed and CPA-observed holidays, unless otherwise specified in this SOW or agreed by CPA and Contractor in writing.
- Changes to the scope of work identified in this SOW will require a Change Request Form that could affect the Project Schedule, milestone, or cost of the Project.
- Contractor will assign all staff resources as to best-fit total requirements and no individual employee is being specifically promised or quoted for the Project.
- Contractor shall rely upon any standard operating procedures or practices of CPA and any direction or regulatory or other guidance provided by CPA.
- Any configuration or modification made by KST to any third-party software or materials provided by CPA or work incorporating such items will be subject to the ownership and other rights agreed to by CPA with the applicable third party. CPA understands any such configuration or modification may negate the third-party warranty and/or support.

- Time estimates for the Project Schedule do not include time required for Customer change control processes. Any change control process delays that impact the time and level of effort to deliver the PS will require a Change Request for the time difference.
- The PS may include advice and recommendations, but all decisions about the implementation of such advice and recommendations will be made by CPA.
- All business days worked as part of this Project will be consecutive unless agreed to in advance by both CPA and Contractor.
- CPA is capable of receiving equipment and transporting it to the install location.
- Go live activities shall occur during CPA's maintenance window available on selected Sundays between 5:00 AM and 10:00 AM (larger window available upon request).
- All power, network connectivity, and environmental considerations will be addressed before the Project start date.
- Written deliverables, if any, will be distributed electronically to CPA.

## **9. Acceptance of PS**

Upon completion of the PS, CPA will evaluate and provide written acceptance of the PS, including Deliverables, in accordance with the following:

- A. The evaluation period shall be ten (10) business days for CPA to confirm that the PS were completed in compliance with this SOW. On or before the 10<sup>th</sup> business day, CPA shall provide KST with either (1) CPA's written acceptance of the PS, or (2) provide CPA's written rejection of the PS.
- B. If the PS comply with this SOW, then CPA shall provide written acceptance of the PS. If CPA reasonably believes that the PS were not completed in compliance this SOW, then CPA shall provide KST with a written rejection notice identifying the deficiencies with reasonable detail. CPA reserves the right to revoke prior to accept for latent deficiencies.
- C. Upon KST's receipt of CPA's written notice of rejection, KST shall have five (5) business days, or such other time as CPA and KST may agree is reasonable, within which to correct all such deficiencies. Upon KST's written notification to CPA that KST has corrected such deficiencies, CPA shall have three (3) business days to evaluate the corrected PS to confirm that the deficiencies identified by CPA have been corrected and brought into compliance with this SOW and that the corrections have not directly caused other deficiencies. CPA and KST shall continue the evaluation process until the PS reaches CPA approval for compliance with this SOW. If such identified deficiencies have been brought into compliance with this SOW and no other deficiencies are identified as having resulted from such corrections made by KST, then CPA shall provide written acceptance of the PS.

## **10. Change Order Request Process**

- A. Change Initiation. Either party may initiate a request to make changes to this SOW for reasons that may include changes in the technical scope, changes in the schedule, or other changes to project details (each a "Change Request"). The initiating Project Manager will submit in writing the Change Request to the other party's Project Manager.
- B. Change Request Review.
  - (1) Both parties will have two (2) business days, or other mutually agreed upon time period, to review the Change Request and agree to implement it, recommend it for further changes, or reject it. KST reserves the right to reject any Change Request at its discretion provided that KST provides CPA with written notice describing KST's reasons for rejection in reasonable detail.
  - (2) If the parties agree to implement a Change Request, KST will prepare a Change Request Form for the parties' review and signature. The Change Request Form will contain the details of the Change Request and, as applicable, schedule and price impact estimates.
- C. Cost Estimate Preparation. If KST determines that the Change Request impacts the pricing for this SOW, KST will provide CPA with a fixed-fee cost estimate based on the scope of the Change Request.

**D. Change Implementation.**

- (1) Implementing any Change Request requires a Change Request Form executed by an authorized representative from KST, including both billable and un-billable Change Requests.
- (2) For any Change Request resulting in an increase in price or a material change to the scope of services, the Deputy Comptroller is CPA's authorized representative to sign the Change Request Form. Additionally, a written amendment to incorporate the Change Request signed by KST and CPA's Deputy Comptroller is required. Further, when a Change Request impacts pricing, CPA will issue a Change Order to the purchase order containing this SOW or issue an additional purchase order for the Change Request.

**ATTACHMENT D**  
**NUTANIX END USER LICENSE AGREEMENT**

This Nutanix End User License Agreement (“Agreement”) is between the Texas Comptroller of Public Accounts, 111 E. 17<sup>th</sup> Street, Austin, Texas 78774 (“CPA”, “You” or “Your”) and Nutanix, Inc. a Delaware corporation, with offices located at 1740 Technology Drive, Suite 150, San Jose, CA 95110, USA. (referred to herein as “Nutanix”). Nutanix and CPA are each a “party” under this Agreement and collectively are referred to as “parties”. This Agreement is an attachment to the contract between CPA and KST Data, Inc., signed by CPA contemporaneously herewith (the “CPA Contract”).

“*Authorized Nutanix System*” means either (i) a device that runs the Software and is branded as a Nutanix device; or (ii) a device that runs the Software and is branded with a third party’s brand pursuant to an original equipment manufacturing agreement between Nutanix and the third party; or (iii) a device (including its specific configuration) that has been authorized in writing by Nutanix to run the Software.

“*Documentation*” means Nutanix’s published user and administration manuals and other documentation for the Software that is furnished to CPA.

“*License Period*” means, unless otherwise stated on the Entitlement, the life of the Authorized Nutanix System upon which the Software is initially installed.

“*Licensed Unit*” means the unit of measure by which CPA’s use of Software is licensed, as described in Your Entitlement.

“*Purchased Software*” means Software that has been purchased by CPA for a separate license fee.

“*Software*” means any Nutanix software, Purchased Software, library, utility, tool or other computer or program code, in object (binary) or source-code form provided, directly or indirectly to CPA, including without limitation firmware. The term “Software” also includes any Updates, Upgrades or other new features, functionality or enhancements to the Software made available directly or indirectly to CPA by Nutanix.

“*Support Guide*” means the Nutanix Worldwide Support Program Guide attached as Exhibit 2 to this Agreement which may be updated from time to time by Nutanix upon notification to CPA.

“*Update*” means either a Minor Release, a Maintenance Release or a Patch Release as those terms are defined in the Support Guide.

“*Upgrade*” means a Major Release as that term is defined in the Support Guide.

This Agreement applies to all Software and Documentation made available by Nutanix to CPA.

**1. License Grant and Entitlement.** The Software and Documentation are licensed, not sold, to CPA by Nutanix. This Agreement confers no title or ownership and is not a sale of any rights in the Software. Subject to the terms and conditions of this Agreement, the terms of Your entitlement which evidences Your authorization to use the Software and the authorized scope of use of the Software (“Entitlement”), and payment of the purchase price and/or all fees, CPA is hereby granted a limited, revocable, non-assignable, non-exclusive, non-sublicensable and non-transferable right to run one copy of the object code version of the Software on one Authorized Nutanix System during the License Period, for internal business operations only (“Permitted Use”). To the best of its knowledge, Nutanix represents and warrants that Nutanix has the full power and authority to grant the licenses described in this Agreement. Nutanix acknowledges that CPA is an agency of the State of Texas and CPA’s internal business purposes include any activities consistent

Attachment D

KST-CPA Hyperconverged Solution- Equipment Provisioning Contract

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with its statutory authority. The Entitlement shall be specified in writing on the order acknowledgement or equivalent document issued by Nutanix or the party from whom CPA has lawfully acquired the products. The Entitlement shall specify the name of the product, the number of Licensed Unit(s) and the usage level, version and/or feature set authorized. Your Permitted Use is limited to the number of Licensed Unit(s) stated in Your Entitlement. Use of the Software outside the scope of Your Entitlement is unauthorized and shall constitute a material breach of this Agreement and void the warranty and/or support obligations of which CPA may otherwise be entitled. CPA agrees to use best efforts to prevent and protect the contents of the Software and Documentation from unauthorized disclosure or use. Nutanix and its licensors reserve all rights, including but not limited to ownership and intellectual property rights, not expressly granted to CPA. Nutanix's licensors are the intended third party beneficiaries of this Agreement and have the express right to rely upon and directly enforce the terms set forth herein. There are no implied licenses granted by Nutanix under this Agreement. Except as expressly specified above, CPA shall have no rights to the Software.

## 2. Use.

**2.1 Limitations on Use.** CPA must not use the Software or Documentation except as permitted by this Agreement. CPA must not:

- (a) alter, decompile, disassemble, modify, unbundle or create any derivative works of the Software, the underlying source code, or the Documentation in any way, including without limitation customization, translation or localization;
- (b) port, emulate the functionality, reverse compile, reverse assemble, reverse engineer, create derivative works, or otherwise reduce to human readable form or attempt to separate any of the components of the Software or derive the source code for the Software;
- (c) copy, redistribute, encumber, sell, rent, lease, license, sublicense, or otherwise transfer rights to the Software or Documentation, use the Software for the benefit of any third party or on a hosted basis;
- (d) remove or alter any trademark, logo, copyright or other proprietary notices, legends, symbols or labels in the Software or Documentation or any product in which the Software is embedded;
- (e) disclose the results of testing, benchmarking or other performance or evaluation information related to the Software or the product to any third party without the prior written consent of Nutanix;
- (f) access or use the Software or Documentation for any competitive purposes (e.g. to gain competitive intelligence; to design or build a competitive product or service, or a product providing features, functions or graphics similar to those used or provided by Nutanix; to copy any features, functions or graphics; or to monitor availability, performance or functionality for competitive purposes);
- (g) use any "locked" or key restricted feature, function or capability without first purchasing the applicable license and obtaining a valid key, even if such feature, function or capability is enabled without a key; or
- (h) distribute any copy of the Software to any third party, including as may be embedded in equipment sold in the secondhand market;
- (i) unless specifically permitted in writing in an Entitlement, transfer the Software from an Authorized Nutanix System to another Authorized Nutanix System or to another device.

CPA must not cause, encourage or permit any third party to do any of the foregoing.

If CPA believes that any of the foregoing restrictions are prohibited by local law, CPA agrees to provide Nutanix with at least ninety (90) days advance written notice of Your belief and provide all reasonably requested information from Nutanix to evaluate Your claim. Nutanix may, in its discretion, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that Nutanix's proprietary rights in the Software are protected and to reduce any adverse impact on Nutanix's proprietary rights.

**2.2 Third Party Software.** CPA acknowledges that the Software may contain copyrighted software of third parties which are obtained under a license from such parties ("Third Party Software"). All third party licensors retain all right, title and interest in and to such Third Party Software and all copies thereof, including all copyright and other intellectual property rights. Your use of any Third Party Software shall be subject to, and CPA shall comply with, the terms and conditions of this Agreement, and the applicable restrictions and other terms and conditions set forth in any Third Party Software documentation or printed materials, including without limitation an end user license agreement.

**3. Open Source Components.** Software may use or include one or more of the open source software components listed in the Nutanix open source attribution file, which is available at [www.nutanix.com/opensource](http://www.nutanix.com/opensource). Please refer to the open source attribution file for the open source license disclosures and pertinent terms.

**4. Proprietary Rights.** CPA acknowledges and agree that the Software belongs to Nutanix or its licensors. CPA agrees that CPA neither owns nor hereby acquires any claim or right of ownership to the Software and Documentation or to any related patents, copyrights, trademarks or other intellectual property, including all modifications and derivative works of any of the foregoing. Nutanix and its licensors retain all right, title and interest both tangible and intangible in and to all copies of the Documentation and the Software at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. This license is not a sale of the original or any subsequent copy. The Software and Documentation are protected by copyright and other intellectual property laws and by international treaties. Any and all other copies of the Software or Documentation made by CPA are in violation of this license. All content accessed through the Software is the property of the applicable content owner and may be protected by applicable copyright law. This license gives CPA no rights to such content. All trademarks used in connection with the Software and Documentation are owned by Nutanix, its affiliates and/or its licensors and other suppliers, and no license to use any such trademarks is provided hereunder. All suggestions or feedback provided by CPA to Nutanix with respect to the Software shall be Nutanix's property and deemed Confidential Information of Nutanix. CPA hereby assign to Nutanix all right, title and interest in and to any feedback provided to Nutanix.

**5. Support.** Nutanix's support obligations for the Software are delineated in Exhibit 1 to this EULA. CPA acknowledges that Support is a separate product from the Software.

**6. Term and Termination.** This Agreement and Your right to use the Software and Documentation may be terminated by CPA at any time upon written notice. This Agreement automatically terminates if (a) CPA or any of Your employees or consultants fail to comply with its terms and conditions; or (b) CPA terminates or suspends Your business, become insolvent, admit in writing Your ability to pay Your debts as they mature, make an assignment for the benefit of creditors or become subject to any bankruptcy or insolvency proceeding. Upon expiration or termination of this Agreement for any reason: (a) all licenses granted by Nutanix shall immediately terminate; (b) CPA shall immediately discontinue use of the applicable Software and products; (c) CPA shall destroy all copies of the Software and Documentation in Your possession, custody or control; and (d) if requested, CPA shall certify to Nutanix in writing that such return or

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destruction has occurred. The preamble as well as Sections 2, 4, 6, 7, 8, 10, 12, 14, 15 and 16 shall survive any expiration or termination of this Agreement.

## **7. Warranty.**

7.1 Nutanix warrants to CPA that the Purchased Software will substantially conform to the specifications in the Documentation for the ninety (90) day period from (i) the date of shipment of the Authorized Nutanix System to CPA or (ii) the date Nutanix first makes the initial version or release of the Purchased Software available to CPA, whichever is earlier. Nutanix does not warrant that the operation of the Purchased Software will be uninterrupted or error free, or that all defects can or will be corrected.

7.2 Nutanix's entire liability, and Your exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to remedy the defective Purchased Software within a reasonable period of time so as to cause it to operate as warranted; (ii) to replace the affected Purchased Software; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the affected Purchased Software for a refund of the amount paid by CPA for the affected Purchased Software and the pre-paid and unused portion of any remaining term of Support for the affected Purchased Software.

7.3 TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS AND EXCEPT AS PROVIDED IN SECTION 7.1 ABOVE, CPA AGREES THAT THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND THAT NUTANIX AND ITS LICENSORS MAKE NO OTHER WARRANTIES AS TO THE SOFTWARE OR DOCUMENTATION, INCLUDING WITHOUT LIMITATION UNINTERRUPTED USE, ACCURACY, AND DATA LOSS. TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, NUTANIX AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE (EVEN IF NUTANIX KNOWS OR SHOULD HAVE KNOWN OF SUCH PURPOSE), AND ANY WARRANTIES ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE, OR THAT THE SOFTWARE WILL BE COMPATIBLE OR WORK WITH ANY THIRD PARTY SOFTWARE OR HARDWARE OR ANY OTHER NUTANIX PRODUCTS INCLUDING OTHER AUTHORIZED NUTANIX SYSTEMS. NUTANIX AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION OR ANY RESULTS OF USE THEREOF WILL BE FREE OF DEFECTS, ERRORS OR VIRUSES, RELIABLE OR ABLE TO OPERATE ON AN UNINTERRUPTED BASIS OR IN A PARTICULAR ENVIRONMENT OR THAT ERRORS THEREIN, IF ANY, WILL BE CORRECTED. CPA FURTHER ACKNOWLEDGES THAT THE SOFTWARE IS NOT INTENDED OR SUITABLE FOR USE IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OR TIME DELAYS OF, OR ERRORS OR INACCURACIES IN THE CONTENT, DATA OR INFORMATION PROVIDED BY THE NUTANIX SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

**8. LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED BY LAW, NUTANIX AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL DAMAGES, EVEN IF NUTANIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY LOST REVENUES, GOODWILL OR PROFITS, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE

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HARDWARE, SOFTWARE OR SERVICES, LOST DATA, WORK STOPPAGE, RE-RUN TIME, INACCURATE OUTPUT, COMPUTER FAILURE OR MALFUNCTION. CPA AGREES THAT CPA SHALL HAVE THE SOLE RESPONSIBILITY FOR PROTECTING YOUR DATA, BY PERIODIC BACKUP OR OTHERWISE. IN ANY CASE, NUTANIX'S SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE THE REPLACEMENT OF THE SOFTWARE FOUND TO BE DEFECTIVE. TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATEMENT THE LIMITATION OF DAMAGES IN SUCH CASES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OR LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATIONS MAY NOT APPLY TO CPA IN WHICH CASE NUTANIX'S LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE LICENSE FEES CPA PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, ANY LIMITATION OF NUTANIX'S LIABILITY SHALL NOT APPLY TO CLAIMS REGARDING A VIOLATION OF CONFIDENTIALITY, ANY LIABILITY AS A RESULT OF NUTANIX'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 OF THIS AGREEMENT OR DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF NUTANIX.

**9. Infringement.** Subject to the remainder of this section, Nutanix shall defend or settle and shall indemnify CPA and the State of Texas and their officers, agents, employees, representatives, assignees and designees, at Nutanix's own expense, any third-party action against CPA to the extent based upon a claim that the Software infringes any copyright or trademark or misappropriates any trade secret (a "Claim"), and will pay such damages or costs as are finally awarded against CPA attributable to such Claim, provided that CPA (i) notify Nutanix promptly in writing of any such Claim, (ii) give Nutanix sole control of the defense and/or settlement of such Claim provided that Nutanix coordinates defense and settlement matters with the Texas Attorney General's Office (iii) give Nutanix all reasonable information and assistance, and (iv) are not in material breach of this Agreement. Any settlement entered into by Nutanix pursuant to this paragraph shall not require a payment or admission of liability on the part of CPA. Should the Software become, or in the opinion of Nutanix be likely to become, the subject of such an infringement Claim, Nutanix may replace or modify, in whole or in part, the Software to make it non-infringing. Nutanix assumes no liability hereunder for: (a) any method or process in which the Purchased Software may be used; (b) its compliance with Your specifically requested specifications; (c) use of Purchased Software other than a current unaltered release of the Purchased Software or use of any older version of the Purchased Software when the use of a newer release of the Purchased Software made available to CPA would have avoided the infringement; (d) the combination, operation or use of the Purchased Software with non-Nutanix products or services; or (e) use of the Purchased Software in a manner or for a purpose for which it was not intended.

**10. Confidentiality.** "*Confidential Information*" shall mean the Software and Documentation and all other information disclosed by a part to the other party that, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature at the time of its disclosure either in writing or orally, except for information which the receiving party can demonstrate: (a) is previously rightfully known to the receiving party without restriction on disclosure; (b) is or becomes, from no act or failure to act on the receiving party's part, generally known in the relevant industry or public domain; (c) is disclosed to the receiving party by a third party as a matter of right and without restriction on disclosure; or (d) is independently developed by the receiving party without access to the Confidential Information. The receiving party shall use its best efforts to preserve and protect the confidentiality of the Confidential Information at all times. The receiving party shall not disclose, disseminate or otherwise publish or communicate Confidential Information to any person, firm, corporation or other third party without the prior written consent of the disclosing party. The receiving party shall not use any Confidential Information other than in the course of the activities permitted hereunder. The

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receiving party shall notify the disclosing party in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with the disclosing party in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use. If the receiving party is legally compelled to disclose any of the Confidential Information, then, prior to such disclosure, the receiving party will (i) immediately notify the disclosing party prior to such disclosure to allow the disclosing party an opportunity to contest the disclosure, (ii) assert the privileged and confidential nature of the Confidential Information, and (iii) cooperate fully with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event such protection is not obtained, the receiving party shall disclose the Confidential Information only to the extent necessary to comply with the applicable legal requirements. The foregoing obligations shall survive any termination or expiration of this Agreement.

**11. Technical Information.** CPA agrees that Nutanix may collect or process technical and related information arising from Your use of the Software which may include but may not be limited to internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-personally identifiable Software usage statistics to facilitate the provisioning of Updates, Support, invoicing or online services.

**12. Injunctive Relief.** CPA acknowledges and agree that Your breach or threatened breach of this Agreement shall cause Nutanix irreparable damage for which recovery of money damages would be inadequate and that Nutanix therefore may obtain timely injunctive relief to protect its rights under this Agreement in addition to any and all other remedies available at law or in equity.

**13. Compliance with Laws; Export Control.** Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. CPA acknowledges that the Software is of United States origin, and is subject to the U.S. Export Administration Regulations, and may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. CPA represents that (1) CPA are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department lists of Specially Designated Nationals, Foreign Sanctions Evaders, Sectoral Sanctions Identifications, or Palestinian Legislative Council; or the U.S. Commerce Department Denied Persons List, Entity List, or Unverified List; or the U.S. State Department Nonproliferation Sanctions, or Debarred List; and (2) CPA will not permit the Software, directly, or indirectly, to be used for any purposes prohibited by law, including any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of Software and Documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement. CPA agrees that the Software may not be exported/re-exported to Cuba, Iran, North Korea, Sudan and Syria. Furthermore, CPA agrees not to resell, transfer, or re-export products without prior authorization from Nutanix or the U.S. government to any military entity of: Albania, Armenia, Azerbaijan, Belarus, Cambodia, China (PRC), Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Macau, Moldova, Mongolian P.R., Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine, Vietnam.

**14. Governing Law.** To the extent permitted by applicable law, this Agreement is governed by and construed in accordance with the substantive laws of the State of Texas. Any and all obligations under this Agreement are due in Travis County, Texas and venue is proper in only such county. This Agreement will

not be governed by the conflict of laws rules of any jurisdiction or the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**15. Miscellaneous.** If any part of this Agreement is held invalid or unenforceable, that part shall be construed to reflect the parties' original intent, and the remaining portions remain in full force and effect. The controlling language of this Agreement is English. If CPA has received a translation into another language, it has been provided for Your convenience only. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof. CPA may not assign, delegate any performance, or otherwise transfer by operation of law or otherwise this Agreement or any rights or obligations herein without Nutanix's advance written consent. CPA agrees not to copy, sell, give or assign the Software or any part thereof to a third party. Nutanix may assign this Agreement to any person or entity at its sole discretion and Nutanix shall provide CPA prompt written notice of any such assignment. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns. This Agreement constitutes the entire and sole agreement between CPA and Nutanix with respect to the Software and Documentation and supersedes all prior and contemporaneous agreements relating to the Software and Documentation, whether oral or written (including any inconsistent terms contained in a purchase order). This Agreement supersedes any "clickwrap," "shrinkwrap," or other license agreement that may accompany the Software. This Agreement may be amended only in writing signed by authorized representatives of both Parties and specifically referring to this provision. This Agreement will be interpreted without being construed for or against either Party. The words "includes" and "including" and the abbreviation "e.g." will be deemed to be followed by the words "without limitation".

16. [reserved]

## 17. General

17.1 **Dispute Resolution.** In the event of a dispute under this Agreement, each party agrees to follow the procedures set forth in Chapter 2260 of the Texas Government Code, and to comply with the rules CPA has adopted under Chapter 2260 of the Texas Government Code, codified at 34 Texas Administrative Code §§1.360-1.387.

17.2 **Waiver.** Nothing in this Agreement shall be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to CPA as an agency of the State of Texas or otherwise available to CPA.

17.3 **Notices.** All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be delivered in person or sent by U.S. Mail, certified, return receipt requested, to the following addresses:

**To CPA:** Texas Comptroller of Public Accounts  
ATTN: Operations and Support Legal Services, Contracts Section  
111 E. 17th Street, Room 201  
Austin, Texas 78774

*With an email copy to: [contracts@cpa.texas.gov](mailto:contracts@cpa.texas.gov)*

**To Nutanix:** Nutanix  
ATTN: Vice President of Sales.  
1740 Technology Drive, Suite 150  
San Jose, CA 95110, United States

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With an email copy to [Legal@nutanix.com](mailto:Legal@nutanix.com)

Notice will be effective on receipt by the affected party. Either party may change the designated notice address in this section by written notification to the other party.

17.4 **Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of events beyond the reasonable control of such party, which may include without limitation denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a “**Force Majeure Event**”). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations effected by the Force Majeure Event for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance.

17.5 **Compliance with Laws.** Each party agrees to comply with all applicable laws and regulations with respect to its activities hereunder, including, but not limited to, any export laws and regulations of the United States.

17.6 **Relationship Between the Parties.** Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. Neither party will have the power to bind the other or to incur obligations on the other’s behalf without such other party’s prior written consent.

17.7 **Non-Exclusive Remedies.** Except as set forth in **Sections 2.5 and 10.2**, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

17.8 **Equitable Relief.** Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be, adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.

17.9 **No Third-Party Beneficiaries.** This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

17.10 **Texas Public Information Act.** Notwithstanding any provisions of this Agreement to the contrary, Nutanix understands that CPA will comply with the Texas Public Information Act (Chapter 552, Texas Government Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Nutanix is required to make any information created or exchanged with CPA pursuant to this Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to CPA. In order to comply with such requirement, any information created or exchanged with CPA shall be in Word, Excel, or pdf format, as applicable. Within three (3) days of receipt, Nutanix will refer to CPA any third party requests, received directly by Nutanix, for information to which Nutanix has access as a result of or in the course of performance under this Agreement.

17.11 **Headings.** The headings in this Agreement are for the convenience of reference only and have no legal effect.

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17.12 Non-Appropriation of Funds. Nutanix acknowledges that this Agreement is subject to termination or cancellation, without penalty to CPA, either in whole or in part, in connection with a termination or cancellation of the CPA Contract because of a non-appropriation of state funds. CPA is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. In the event of a termination for non-appropriation, Section 7.2 of the Contract will apply. The parties acknowledge that no payments are intended to be made from CPA directly to Nutanix under this Agreement.

17.13 State Auditor's Audit Rights. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.154, Texas Government Code, the state auditor may conduct an audit or investigation of Nutanix or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by Nutanix or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Nutanix or any other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by CPA to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154, Texas Government Code. Nutanix shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Nutanix and the requirement to cooperate is included in any subcontract it awards.

17.14 Debts or Delinquencies to State. Nutanix acknowledges and agrees that, to the extent Nutanix owes any debt, including but not limited to delinquent taxes or child support to the State of Texas, any payments or other amounts Nutanix is otherwise owed under or related to this Agreement may be applied by CPA toward any debt Nutanix owes the State of Texas until the debt is paid in full. These provisions are effective at any time Nutanix owes any such debt or delinquency. Nutanix shall comply with rules adopted by CPA under Sections 403.055, 403.0551, 2252.903, Texas Government Code and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

17.15 Nutanix Certifications.

- Nutanix represents and warrants that it has read and understood and shall comply with CPA's Anti-Fraud Policy, located on CPA's website at <https://comptroller.texas.gov/about/policies/ethics.php>, as such Policy currently reads and as it is amended throughout the term of this Agreement.
- Nutanix represents and warrants that, pursuant to Section 2155.003 of the Texas Government Code, it has not given, offered to give, nor intends 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 Agreement.
- Pursuant to Section 2155.004(a), Texas Government Code, Nutanix represents and warrants that neither it nor any person or entity which will participate financially in this Agreement has received compensation for participation in the preparation of specifications for this Agreement. In addition, under Section 2155.004, Texas Government Code, Nutanix certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.
- Nutanix hereby represents and warrants that, pursuant to 15 U.S.C. Section 1, et seq. and Texas Business and Commerce Code Section 15.01, et seq., neither Nutanix nor the firm, corporation, partnership, or institution represented by Nutanix, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated

directly or indirectly the offer made to any competitor or any other person engaged in such line of business.

- Under Section 231.006, Texas Family Code, regarding child support, Nutanix certifies that the individual or business named in the Agreement is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, if Nutanix is subject to Section 231.006, Texas Family Code, then it must include names and Social Security numbers of each person with at least 25% ownership of Nutanix. This information must be provided prior to award. If applicable, enter the Name and Social Security Number for each person below:

Name \_\_\_\_\_ SSN \_\_\_\_\_

Name \_\_\_\_\_ SSN \_\_\_\_\_

Name \_\_\_\_\_ SSN \_\_\_\_\_

- To the extent applicable, Nutanix represents and warrants that, in accordance with Section 2155.4441, Texas Government Code, it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state provided that Nutanix shall not be required to make any changes with regard to future purchases consistent with its existing supply chain and other vendors.
- Nutanix represents and warrants that this Agreement is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency.
- Nutanix represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code.
- Nutanix represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to CPA under this Agreement and that Nutanix's provision of the requested items under this Agreement would not reasonably create an appearance of impropriety.
- Nutanix represents and warrants that CPA's payments to Nutanix and Nutanix's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005, 556.0055, or 556.008, Texas Government Code. The parties acknowledge that no funds are being exchanged under this Agreement.
- Nutanix represents and warrants that Nutanix and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Nutanix is in compliance with the State of Texas statutes and rules relating to procurement and that Nutanix is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
- Sections 2155.006 and 2261.053, Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004, Texas Government Code, occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Nutanix certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

- Pursuant to Section 2270.002 of the Texas Government Code, Nutanix certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Contract.
- Foreign Terrorist Organizations. Nutanix represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

19. Signatures. The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties named below. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

**Texas Comptroller of Public Accounts**

By: Lisa Craven

Lisa Craven

Deputy Comptroller

Date: 7-11-19

**Nutanix, Inc.**

By: Aaron Boynton

Name: Aaron Boynton

Title: VP, Corporate Controller

Date: July 8, 2019

NUTANIX SUPPORT AGREEMENT

BY REGISTERING FOR, USING OR RECEIVING ANY OF NUTANIX'S SUPPORT SERVICES ("SUPPORT" AS FURTHER DESCRIBED IN SECTION 2 BELOW) CPA (A) REPRESENTS THAT IT HAS THE LEGAL CAPACITY AND AUTHORITY TO BIND YOURSELF AND/OR THE PERSON OR ENTITY FOR WHOM YOU ARE ENTERING INTO THIS AGREEMENT; (B) REPRESENT THAT CPA HAS READ AND UNDERSTANDS THIS AGREEMENT; (C) REPRESENTS AND WARRANTS THAT THE INFORMATION THAT YOU HAVE PROVIDED OR WILL PROVIDE TO NUTANIX IS OR WILL BE CORRECT AND COMPLETE TO THE BEST OF YOUR KNOWLEDGE, THAT NUTANIX MAY RELY UPON THE INFORMATION THAT YOU PROVIDE AND THAT ANY INCORRECT OR INCOMPLETE INFORMATION THAT YOU PROVIDE TO NUTANIX MAY RESULT IN NUTANIX WITHHOLDING OR SUSPENDING THE SUPPORT; AND (D) AGREE TO BE BOUND BY THIS AGREEMENT. THIS AGREEMENT APPLIES TO SUPPORT PURCHASED BY YOU FOR THE PRODUCT(S) THAT YOU OR THE ENTITY THAT YOU REPRESENT OBTAINED FROM NUTANIX, INC. ("NUTANIX") OR FROM AN AUTHORIZED NUTANIX DISTRIBUTOR OR RESELLER VIA THE "PARTNER" (AS FURTHER DEFINED BELOW).

This Nutanix Support Agreement ("Support Agreement") is between the Texas Comptroller of Public Accounts, 111 E. 17<sup>th</sup> Street, Austin, Texas 78774 ("CPA" "You" or "Your") and Nutanix, Inc. a Delaware corporation, with offices located at 1740 Technology Drive, Suite 150, San Jose, CA 95110, USA (referred to herein as "Nutanix"). Nutanix and CPA are each a "party" under this Support Agreement and collectively are referred to as "parties". This Support Agreement is an exhibit to the Nutanix End User Agreement signed contemporaneously herewith by Nutanix and CPA ("Nutanix EULA").

**1. Definitions.**

- a. "Documentation" means any on-line read me, help files, manuals or other explanatory materials describing the features, functionalities and the specifications of the Product(s) as provided by Nutanix.
- b. "Error" means any reproducible failure of the Software to perform any material function as set forth in the Documentation.
- c. "Hardware" means the Nutanix branded hardware, including its components and spare parts that are provided directly or indirectly to CPA by Nutanix.
- d. "Partner" means KST Data, Inc., located at 1121 S. Carroll Avenue, Suite 125, Southlake, TX 76092, a third party that will provide managed IT services to CPA.
- e. "Product(s)" means (i) a device consisting of the Hardware and Software, or (ii) the Hardware if it is sold separately by Nutanix or (iii) the Software if it has been licensed separately by Nutanix.
- f. "Software" means any Nutanix branded software, library, utility, tool or other computer or program code, in object (binary) or source-code form provided, directly or indirectly to CPA by Nutanix made by or on CPA's behalf, including without limitation firmware. The term "Software" also includes all Software releases and any Updates, Upgrades or other new features, functionality or enhancements to the Software.
- g. "Support Guide" means the Nutanix Worldwide Support Program Guide attached as Exhibit 2 to this Agreement which may be updated from time to time by Nutanix upon notice to CPA.
- h. "Support Term" means the term of Support CPA has purchased (e.g.: one year, three years), set forth in the software and support Entitlement (as defined in the End User License Agreement which applies to Your Products) document provided to CPA by Nutanix.
- i. "Update" means either a Minor Release, a Maintenance Release or a Patch Release as those terms are defined in the Support Guide.
- j. "Upgrade" means a Major Release as that term is defined in the Support Guide.

**2. Scope of Support.**



2.1. During the Support Term for which Support fees have been timely paid, Nutanix shall:

- a. provide Support in accordance with the Support Guide and in accordance with Nutanix Support Policies found at [support.nutanix.com](http://support.nutanix.com);
- b. answer questions from CPA regarding the operation of the Products primarily via Nutanix's support portal and secondarily via telephone and e-mail, according to the procedures set forth in the Support Guide;
- c. provide CPA with any generally available Updates and Upgrades;
- d. use commercially reasonable efforts to correct any Errors reported by CPA and confirmed by Nutanix in accordance with the priority level assigned to the Error by Nutanix in its reasonable discretion. Nutanix may address Errors through the provision of Updates or Upgrades;
- e. repair or replace Hardware components that fail due to manufacturing defects in materials and workmanship as further described in Section 3, "Hardware Support", below; and
- f. Nutanix may provide on-site technical support, and if so provided, Nutanix will be responsible for Nutanix's own travel and related expenses incurred in providing the on-site Support. If Nutanix determines that the issue reported was not an Error or otherwise caused by Product(s) and if the on-site support was requested by CPA, then Nutanix may charge CPA through Partner for Nutanix's then-current daily time and materials rate plus reasonable travel and lodging expenses for the on-site Support, provided that such charges (1) were approved by CPA in writing prior to incurring such charges and (2) do not exceed the current State of Texas Regulations.

2.2. Nutanix will use commercially reasonable efforts to respond to each reported problem, as set forth in Section 2.1. Such response may take the form of Updates or Upgrades, procedural solutions, correction of Documentation errors, Hardware replacement, or other remedial measures as Nutanix may determine, in its sole discretion, to be appropriate. Nutanix will respond to reported problems within the timeframes specified in the Support Guide depending on the level of Support purchased by CPA. Support does not include Hardware or Software installation or training. Only Products that are properly registered, validly licensed, and unaltered are eligible for Support

2.3. The Support Term is governed by the Entitlement document between CPA and Nutanix.

2.4. During the Support Term, Support services shall be provided to CPA or to Partner on behalf of CPA (pursuant to CPA's explicit consent).

### **3. Hardware Support.**

3.1. If Nutanix determines that replacement parts are required for Support, and Support for Hardware is included in the Support purchased by CPA, then Nutanix will deliver the replacement parts to CPA, at no charge, as described in the Support Guide.

3.2. Replacement parts may be new or refurbished, at Nutanix's option.

3.3. All defective parts must be returned following Nutanix's return material authorization ("RMA") policy set forth at <http://www.nutanix.com/support/support-faqs/#rma-policy>. CPA reserves the rights to remove data prior to returning the defective parts pursuant to an RMA. However, if CPA has purchased the Nutanix non-return disk option, all defective parts except the relevant disk must be returned following the Nutanix RMA policy. If CPA does not follow Nutanix's RMA policy, Nutanix may invoice CPA through its authorized distributor or reseller via the Partner the full cost of the replacement part(s).

3.4. All Products that are returned become Nutanix property.

**4. Software Maintenance.** Nutanix will provide CPA with any generally available Updates and Upgrades as set forth in Section 2.1(c) above. Nutanix has no obligation to develop Upgrades. Except for firmware or embedded Software that is integral to the functioning of Hardware, Nutanix does not guarantee that Upgrades will be compatible with the Hardware CPA purchased.

**5. Exclusions.**

5.1. Nutanix will have no Support obligations for any conditions attributable to:

- a. negligence or misuse or abuse of the Products;
- b. use of the Products other than in accordance with Nutanix's official specifications as found in the Documentation;
- c. modifications, alterations or repairs to the Products made by a party other than Nutanix or a party authorized by Nutanix;
- d. installation, operation or maintenance of the Product(s) not in accordance with instructions supplied by Nutanix, including but not limited to, installation, operation or maintenance of the Software on devices (including their specific configurations) that are not included on Nutanix's hardware compatibility list;
- e. the Product(s) being subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, accident or any failure by CPA or a third party to comply with environmental and storage requirements for the Product(s) specified by Nutanix, including, without limitation, temperature and/or humidity ranges;
- f. requests to provide Support for Software that is no longer supported as outlined in Nutanix's end of life policies found at <http://www.nutanix.com/support/support-faqs/#end-of-life-policy-software>; or
- g. use of the Product(s) with any non-Nutanix apparatus, data or programs outside the typical, recommended or reasonably anticipated use of the Product(s).

**6. CPA Requirements.**

6.1. Nutanix's Support obligations are conditioned upon CPA meeting the following obligations:

- a. timely payment of all applicable Support fees in accordance with Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code;
- b. designation of a limited number of authorized persons trained by Nutanix ("Technical Personnel"). Such Technical Personnel are the preferred contacts for the receipt of Support from Nutanix. The number of persons permitted to be Technical Personnel is outlined in the Support Guide;
- c. registration of all Products with Nutanix and providing notice to Nutanix of all sites where the Product(s) are located and site moves for such Product(s);
- d. providing Nutanix reasonable access to CPA site and/or network and personnel as Nutanix reasonably requests to assist Nutanix in performing the Support;
- e. installation of Updates as reasonably directed by Nutanix;
- f. installation of recommended replacement parts in the Products as reasonably directed by Nutanix;
- g. refraining from arbitrarily changing Product settings or configurations reasonably recommended by Nutanix;

h. expeditiously providing notice to Nutanix of any Error;

i. ensuring that proper licenses have been obtained for all Software and adhering to all licensing terms and conditions; and

j. making available to Nutanix any of Your systems' performance data, information and other materials reasonably required by Nutanix solely to provide Support ("Your Materials"), the accuracy of which is CPA responsibility.

6.2. CPA will be responsible for screening first-line technical inquiries and escalating to Nutanix only those issues that Technical Personnel have not been able to resolve.

6.3. Nutanix will not be responsible for CPA's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Products returned to Nutanix for repair. It is CPA's responsibility to backup all existing data, software, and programs, and, as appropriate, to erase all existing data.

## **7. Intellectual Property.**

7.1. Subject to Your rights in Your Materials, Nutanix will exclusively own all rights, title and interest in and to the Software, any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, Documentation, techniques and materials of any kind used or developed by Nutanix or Nutanix's personnel in connection with performing Support ("Nutanix Materials"), including all worldwide patent rights (including patent applications and disclosures), copyrights, moral rights, trade secret rights, know-how and any other intellectual property rights therein.

7.2. All Software provided to CPA under this Agreement shall be licensed to CPA on the terms of the end user license agreement pursuant to which the Software was originally licensed to CPA. CPA will have no rights in the Nutanix Materials except as expressly agreed to in writing by Nutanix and CPA.

7.3. Nothing in this Agreement will be deemed to restrict or limit Nutanix's right to perform similar support services for any other party or to assign any employees or subcontractors to perform similar support services for any other party.

7.4. CPA agrees that it may be necessary for Nutanix to collect, process and use system performance data in order to perform Nutanix obligations to provide Support., CPA consents to these activities and to the transfer of the system performance data to Nutanix affiliated companies and service providers located throughout the world who are subject to confidentiality agreements with Nutanix.

**8. Reinstatement of Support.** If CPA has not continuously purchased and complied with the terms and conditions of a Support Agreement, Your Products may not have the most recent Updates and Upgrades necessary for the performance and security of Your Products. CPA may request that Nutanix perform an inspection of Your Products, which may be subject to a separate fee from Nutanix, to certify that Your Products continue to operate within their official Product specifications. If Nutanix is able to certify that Your Products operate within their official Product specifications, CPA may reinstate Support if Nutanix then offers it in general commercial availability and upon payment to Nutanix as follows: (i) the pro rata Support fees that would have been payable at Nutanix's then applicable annual rate of Support for the period the Products were not covered by Support; and (ii) the Support fees for the annual period commencing upon the reinstatement of Support. In addition, for any Products that have been off Support for more than ninety (90) days, CPA must pay twenty percent (20%) of the annual rate of Support for recertification services.

**9. Purchase Terms.** Partner will purchase Support on behalf of CPA from a Nutanix authorized distributor or reseller. The Support will be purchased concurrently with the purchase of the initial Software licenses.

## **10. Warranty and Liability for Support.**

10.1. **Limited Warranty.** Nutanix warrants that the Support will be performed with reasonable care and skill and in a professional and workmanlike manner. Should You believe that Nutanix has breached the limited warranty described in this Section 10.1, You must provide Nutanix with a reasonably detailed written notice within thirty (30) days of occurrence of the nonconformance. Following such written notice of nonconformance, Nutanix will re-perform the Support to achieve commercially reasonable conformance with the above limited warranty. Re-performance of the Support shall be Your sole remedy, and Nutanix's sole liability, for any non-compliance with the limited warranty set forth above.

10.2. **DISCLAIMER OF OTHER WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS AND EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 ABOVE, ALL SUPPORT IS PROVIDED "AS IS" AND NUTANIX HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR WARRANTY IS GIVEN THAT ERRORS (AS DEFINED HEREIN) OR FAULTS IN THE HARDWARE WILL BE FIXED OR FIXED WITHIN A SPECIFIED PERIOD OF TIME.

10.3. **EXCLUSION OF CERTAIN LOSSES.** TO THE MAXIMUM EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, IN NO EVENT SHALL NUTANIX BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, OR FOR ANY LOSS OF GOODWILL, LOST PROFITS, LOSS OF BUSINESS OR LOST OPPORTUNITIES IN ANY WAY RELATING TO THIS AGREEMENT, EVEN IF NUTANIX HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.

10.4. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF NUTANIX EXCEED THE FEES PAID BY YOU FOR SUPPORT IN THE 12 MONTHS PRECEDING THE DATE OF THE CLAIM. FOR PURPOSES OF THIS SECTION, A "CLAIM" SHALL MEAN, COLLECTIVELY, ALL CAUSES OF ACTION, DAMAGES, CLAIMS OR DISPUTES OR SIMILAR REQUESTS FOR COMPENSATION THAT ARE RELATED TO OR ARISE FROM THIS AGREEMENT AND FROM A PARTICULAR EVENT, ACT, OMISSION, FAILURE OR ROOT CAUSE.

**11. Relationship of the Parties.** Nutanix is performing Support as an independent contractor, and not as an employee, agent, joint venturer or partner of You, and neither of the parties has the authority to bind the other by contract or otherwise. Nutanix acknowledges and agrees that Nutanix personnel are not eligible for or entitled to receive any compensation, benefits or other incidents of employment that You make available to Your employees. Nutanix is solely responsible for all taxes, expenses, withholdings, and other similar statutory obligations arising out of the relationship between Nutanix and Nutanix personnel and the performance of Support by Nutanix personnel.

**12. English.** All Support will be provided in the English language unless agreed otherwise. The parties confirm that they have requested that this Agreement and all related documents be drafted in English at the express wishes of the parties. Les parties ont exigé que le présent contrat et Nutanix les documents connexes soient rédigés en anglais selon la volonté expresse des parties.

**13. Miscellaneous.** This Support Agreement, including any other documents referenced herein, constitutes the entire agreement between the parties and supersedes all previous agreements, oral or written, with respect to the subject matter of this Support Agreement. This Support Agreement supersedes any "clickwrap," "shrinkwrap," or other agreement that may accompany the Support. In the event of any conflict between the terms of this Support Agreement and any of the documents, (including but not limited to the Support Guide) referenced herein, the terms of this Support Agreement shall control with respect to Support provided under this Support Agreement. This Support Agreement may not be amended without the prior written consent of both parties. You may not

assign this Support Agreement, or any portion thereof, without Nutanix's prior written consent. Nutanix may freely assign this Support Agreement in whole or in part and Nutanix shall provide CPA prompt written notice of any such assignment. Nutanix may have subcontractors perform its obligations under this Support Agreement, and Nutanix shall be liable for any performance of subcontractors under this Support Agreement. Nutanix will not be liable for performance delays or for nonperformance, due to causes beyond its reasonable control. In utilizing the Support, you will comply with United States law and the laws of the jurisdiction in which Support is obtained. This Support Agreement is governed by and construed in accordance with the substantive laws of the State of Texas, U.S.A. and the Parties expressly and irrevocably agree and submit to the exclusive jurisdiction of the federal and state courts located in Travis County, Texas, U.S.A.

The undersigned signatories represent and warrant that they have full authority to enter into this Support Agreement on behalf of the respective parties named below. This Support Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

**Texas Comptroller of Public Accounts**

**Nutanix, Inc.**

By: 

By: 

Lisa Craven

Name: Aaron Boynton


Deputy Comptroller

Title: VP, Corporate Controller

Date: 7-11-19

Date: July 8, 2019

Exhibit 2 to Nutanix End User License Agreement  
 NUTANIX WORLDWIDE SUPPORT PROGRAM GUIDE

**NUTANIX** Support Program Guide 

## Nutanix Worldwide Support Program Guide

September 2018

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 1767 Technology Drive, Suite 100, San Jose, CA 95128



## Introduction

Thank you for choosing Nutanix products and support offerings.

Nutanix Worldwide Support offers world-class programs to meet your organization's technology needs. We recognize the investment you have made in our products and would like to complement this with highly responsive, quality support to ensure your success.

Your business is of great value to us and as part of our commitment we've created this Support Program Guide to answer your questions about our support service offerings and features.

## Highlights

- Worldwide presence with support centers in United States (East Coast - Durham, NC and West Coast - San Jose, CA), Australia, China, Japan, India, and the Netherlands
- Leading technology experts consisting of VCPs, vExperts, CCIEs, MSPs, Linux and Nutanix Platform Professionals with years of experience in supporting data center solutions
- 24x7x365 support availability with four-hour parts replacement for customers with mission-critical applications
- Access to the Nutanix customer portal with latest information on our products, documentation, patches, and FAQs
- State of the art replication labs in all major geographies for quick and efficient turnaround of requests



Nutanix Support (Systems Reliability Engineers) Teams Around the Globe



Nutanix SRE Teams are located in Australia, Japan\*, China\* and India, Netherlands, and the United States (East Coast - Durham, NC and West coast - San Jose, CA). Nutanix uses the "Follow the Sun Support Model" to support customers 24 hours a day, 7 days a week, 365 days a year.

\*Indicates regional support center

SUPPORT TIER	DESCRIPTION
Production (Platinum)	Ideal for business critical workloads
Mission Critical (Platinum Plus)	Ideal for mission critical workloads Additional features include shorter response cycles, direct access to senior engineers, advanced analytics and root cause analysis





### Production Support Program (Platinum)

Nutanix's Production support program is designed for mid-size to large enterprises that operate business-critical 24x7 operations. The Production service plan enables customers to 24-hour access to support personnel, priority call and case handling, and next business day on-site service. This program is available as a 1 to 5 year package.

#### Features:

- **24x7 telephone and web support:** Nutanix's Systems Reliability engineers can answer technical questions and assist with equipment operation, 24 hours a day. Customers may call Nutanix at 1-855-NUTANIX, extension 3. Local in-country numbers are available at <https://www.nutanix.com/support-services/product-support/support-phone-numbers/>.
- **Priority call handling:** Customer calls to Nutanix are given priority status and handled by the next available support engineer.
- **Next business day parts delivery:** When on-site hardware service is required, Nutanix will dispatch authorized service personnel to the customer's site to restore equipment to normal operation. Technicians will arrive on-site between 8AM and 5PM, Monday to Friday, with the exception of local holidays. The call must be dispatched before 3PM local time to meet this service level. Customers who prefer not to wait for on-site repair may buy a spares kit, which includes parts that are considered likely to need replacement.
- **Software subscription plan:** The customer is entitled to all versions of released software, including bug fixes, patches and major releases issued during the period the support contract is in effect. Note that additional features implemented in new versions may require purchase of an additional license to use the new feature. Customers with a current software subscription will be alerted to new releases and can download them from a location provided by Nutanix support. Please refer to the "Software End of Life (EOL) Policy" sections (pages 18-19) for more details. You can also find the current hardware and software policies on our website <https://www.nutanix.com/support-services/product-support/policies/>.
- **Alerts and Pulse monitoring:** An automated alert system sends regular system status reports and alerts when critical system events occur to Nutanix support. Nutanix support engineers use information from these notifications to respond to and prevent potential problems, or to quickly resolve problems that are identified. After a hardware component failure is confirmed, Nutanix will dispatch a part and a service technician to remediate the error. To learn more about Pulse and how the alert monitoring works, please visit our site at: [http://download.nutanix.com/mcs/Pulse\\_DataSheet.pdf](http://download.nutanix.com/mcs/Pulse_DataSheet.pdf).
  - **Pulse monitoring proactively identifies events such as:**
    - Disk failure
    - Fan failure
    - Power supply module failure
    - Software crashes
    - Temperature issues
- **Spares request and integrated logbook planning:** For timely problem resolution, Nutanix stocks spares in strategic locations in North America, EMEA and APJ.
- **On Line resources:** Nutanix's Support web portal offers extensive product documentation, access to software, patches, knowledge base, unrepresented search capabilities and other helpful information. Customers may create cases at any time by entering a case on the support web site at [portal.nutanix.com](http://portal.nutanix.com). If you require a support account, please self-register at [portal.nutanix.com](http://portal.nutanix.com). In case of issues with account creation, please e-mail [portal-accounts@nutanix.com](mailto:portal-accounts@nutanix.com). If you require emergency assistance, please contact us by using our local in-country numbers which you can find at <https://www.nutanix.com/support-services/product-support/support-phone-numbers/>.



## Mission Critical Support Program (Platinum Plus)

Nutanix's Mission Critical program is designed for large enterprises that operate Nutanix products in a mission-critical 24x7 environment and cannot afford to take any down-time. The Mission Critical service plan enables customers to priority call and case handling 24 hours a day, direct access to senior-level engineers, and up to 4 hours on-site service. This program is available as a 1 to 5 year package.

### Features:

- **24x7 telephone and web support.** Nutanix's technical support engineers can answer technical questions and assist with equipment operation, 24 hours a day. Local in-country numbers are available at <http://www.nutanix.com/support-services/product-support/support-phone-numbers/>.
- **Priority call handling.** Customer calls to Nutanix are given priority status and handled by the next available support engineer. The response times SLA are twice as quick as any other service level. Furthermore, this level of service provides guaranteed access to senior-level engineers.
- **Up to 4 hours parts delivery.** When on-site hardware service is required, Nutanix will dispatch authorized service personnel to the customer's site to restore equipment to normal operation. Technicians will arrive on-site up to 4 hours after the defective part has been diagnosed by Nutanix. This service will be available 24x7, 365 days of the year. Customers who prefer not to wait for on-site repair may buy a spares kit which includes parts that are considered likely to need replacement.
- **Software subscription plan.** The customer is entitled to all versions of released software, including bug fixes, patches and major releases issued during the period the support contract is in effect. Note that additional features implemented in new versions may require purchase of an additional license to use the new features. Customers with a current software subscription will be alerted to new releases and can download them from a location provided by Nutanix support. Please refer to the "Software End of Life (EOL) Policy" sections (pages 18-19) for more details. You can also find the current hardware and software policies on our website <https://www.nutanix.com/support-services/product-support/policies/>.
- **Pulse and Alerts monitoring.** An automated alert system sends regular system status reports and alerts when critical system events occur to Nutanix support. Nutanix support engineers use information from these notifications to respond to and prevent potential problems, or to quickly resolve problems that are identified. After a hardware component failure is confirmed, Nutanix will dispatch a part and a service technician to remediate the error. To learn more about Pulse and how the alert monitoring works, please visit our site at: [http://download.nutanix.com/misc/Pulse\\_DataSheet.pdf](http://download.nutanix.com/misc/Pulse_DataSheet.pdf)
  - **Pulse monitoring proactively identifies events such as:**
    - Disk failure
    - Fan failure
    - Power supply module failure
    - Software crashes
    - Temperature issues
- **Spares support and integrated logistics planning.** For timely problem resolution, Nutanix stocks spares in strategic locations in North America, EMEA and Asia.
- **On-Line resources.** Nutanix's Support web portal offers extensive product documentation, access to software, patches, knowledge base, unprecedented search capabilities and other helpful information. Customers may create cases at any time by entering a case on the support web site at [portal.nutanix.com](http://portal.nutanix.com). If you require a support account, please self-register at [portal.nutanix.com](http://portal.nutanix.com). In case of issues with account creation, please e-mail [portal-accounts@nutanix.com](mailto:portal-accounts@nutanix.com). If you require emergency assistance, please contact us by using our local in-country numbers which you can find at <http://www.nutanix.com/support-services/product-support/support-phone-numbers/>. If you require a support account, please self-register at [portal.nutanix.com](http://portal.nutanix.com). In case of issues with account creation, please e-mail [portal-accounts@nutanix.com](mailto:portal-accounts@nutanix.com). If you require emergency assistance, please contact Telephone Support at 1-855-NUTANIX extension 3. Local in-country numbers are being added as we expand our service offerings. Please see [www.nutanix.com/support](http://www.nutanix.com/support) for the complete list of local numbers.



Compare Product Support Programs

	Production Support	Mission Critical Support
<b>SOFTWARE SUPPORT</b>		
Technical Support	24x7x365	24x7x365
<b>TARGET RESPONSE TIMES</b>		
Priority 1	1 hour	30 minutes
Priority 2	4 hours	3 hours
Priority 3	8 hours	8 hours**
Software Support: Major & minor maintenance, patch releases, upgrades		
Pulse Advanced Performance Analytics		
Automatic Support Monitoring		
Maximum Number of Support Admins Per Contract	8	Unlimited
Direct Routing to Senior-Level Engineers		
Root Cause Analysis		***
Contract Term	1-5 Years	1-5 Years
<b>HARDWARE SUPPORT FOR NUTANIX NX</b>		
Hardware Replacement: Duration of on-site parts arrival after diagnosis	NBD*	4-hour part replacement**
Field Engineering for Parts Replacement	***	

Notes

- \* The full description of NBD delivery by region can be found at <https://www.nutanix.com/support-services/technical-support/faq/>
- \*\* 4-hour arrival guarantee not available in all locations
- \*\*\* In the event there is an incident that affects system availability, and upon customer request, we will provide detailed root cause analysis for Priority 1 support requests
- \*\*\*\* Production Support program allows access to an PE Monday-Friday 8AM to 5PM local time

Contacting Nutanix Support:

Online: <http://portal.nutanix.com>

Phone: <https://www.nutanix.com/support-services/product-support/support-phone-numbers/>



## Additional Support Offerings

### U.S. Federal Support

Support Services specifically designed for U.S. Federal agencies, their Service Providers, Systems Integrators, and Federal Contractors to meet the unique requirements of the U.S. Government. For full details please visit: <http://go.nutanix.com/rs/031-GVQ-112/images/federal-support-service.pdf>

### Designated Support Engineer (DSE)

The Nutanix Designated Support Engineer (DSE) allows a named member of our award-winning Support organization to focus on your Nutanix solution. The DSE typically engaged in the post-sales/post deployment phase (though could be enlisted earlier to help with POC work or during the deployment phase). They act as an extension of your operations team and help support the entire Nutanix stack - including all Nutanix features and functionality, Hypervisor(s), Storage and Networking. The DSE are located in one of Nutanix Worldwide Support's Center of Excellence - the current list includes Sydney, Bangalore, Amsterdam, Durham, NC and San Jose, CA.

#### Target Audience:

- New and existing Nutanix customers, who want the benefits of a focused Support Engineer with in-depth knowledge of their environment.
- Customers running mission critical workloads on the Nutanix System who want to minimize the impact of critical issues.

Your DSE is backed up by a very senior team, which handles your issues if the primary DSE Engineer is unavailable owing to training, vacation or because it is after hours. All of the issues are directly assigned to this senior team, and do not go through the regular case queue.

For more details, please visit: <http://go.nutanix.com/rs/031-GVQ-112/images/nutanix-designated-support-engineer-service.pdf>

### Resident Support Engineer (RSE)

A Nutanix Resident Support Engineer (RSE) is a DSE who permanently resides on the customer premises, dedicated to support and Business As Usual activities for the customer or project during normal business hours.

### Technical Account Manager (TAM)

A Nutanix Technical Account Manager (TAM) is a designated point of contact who provides ongoing health checks, and advice and guidance on best practices to proactively keep your Nutanix environment operationally healthy. Backed by an award-winning support organization, a TAM helps your organization by:

- Tracking key technical matters that may impact your business.
- Coordinating with other Nutanix organizations to quickly escalate or resolve problems.
- Conducting system analysis and provide proactive recommendations to jointly prepare for new projects and minimize risk.
- Providing best practice guidance to optimize operations and ongoing performance of your Nutanix implementation.

For more details, please visit: [http://go.nutanix.com/rs/031-GVQ-112/images/Nutanix\\_TRM-010716-05.pdf](http://go.nutanix.com/rs/031-GVQ-112/images/Nutanix_TRM-010716-05.pdf)



### Non-Returnable Hard Disk Drive (NRDK) Program

Nutanix understands that when HDDs or SSDs require replacement, you may want to keep your hard drives in-house to protect your data in order to comply with data security compliance regulations. For this reason, we offer a Nutanix NRDK option, which eliminates the need for clients to return defective hard disk drives.

The NRDK program can be added-on to your existing support packages. The program applies to all existing models of the Nutanix product. The client is responsible for disposing of the replaced hard disk drives in agreement with their own data security compliance requirements and other applicable laws.

#### Service terms:

- NRDK can be purchased as a 1 to 5 year contract and is available for all Nutanix product models
- NRDK can be purchased per disk (HDD or SSD)
- NRDK option is only available for purchase in conjunction with one of Nutanix's support programs

### Non-Returnable Node (NRNODE) Program

Nutanix understands that when full nodes require replacement, you may want to keep your node in-house in accordance with your specific compliance regulations. For this reason, we offer a Nutanix NRNODE option, which eliminates the need for clients to return full nodes.

The NRNODE program can be added-on to your existing support packages. The program applies to all existing models of the Nutanix product. The client is responsible for disposing of the replaced nodes (all inclusive components) in agreement with their own data security compliance requirements and other applicable laws.

#### Service terms:

- NRNODE can be purchased as a 1 to 5 year contract and is available for all Nutanix product models
- NRNODE can be purchased per node
- NRNODE option is only available for purchase in conjunction with one of Nutanix's support programs

Please note that both NRDK and NRNODE options will be required for customers that want to maintain possession of their data and nodes.



### Understanding Case Priorities

All issues reported to Nutanix are assigned a priority. The priority will establish a targeted initial response level. Customers should expect to receive an initial analysis of the problem from Nutanix within the indicated time. These targeted response levels are not a guarantee of service within the timeframe.

### Definitions of Priority Level and Targeted Initial Response:

Nutanix will use the following guidelines to assess issues and provide an initial response in a timely manner based on their priority level:

Priority Level	Description	Target Initial Support Response
P1	Emergency. System is not available, and productivity has been halted. Product is not properly functioning in its current state. All data unavailability or data loss issues are assigned this priority level.	Within 1 hour (30 minutes for Mission Critical support offering)
P2	Critical. System is available but experiencing issues that have a direct impact on productivity. Major inconvenience.	Within 4 hours (2 hours for Mission Critical support offering)
P3	Normal. System is having an occasional issue that has been identified as needing to be resolved, but the issue has not greatly affected productivity. Minor inconvenience.	Software support within 8 hours and Hardware replacement by next business day (4 hours for Mission Critical support offering)
P4	Low. Questions about documentation, processes or procedures. General requests about information.	By next two business days
RFE	Requests for Enhancements. Feature requests for the product that would improve the experience or functionality for the customer.	Within 2 weeks



### Best Practices of an Effective Support Relationship

Based on our experience in supporting enterprise class customers with converged infrastructures, we would like to share with you some recommendations and best practices for a highly effective support relationship.

**Keep Your Profile Up to Date:** We encourage you to create and maintain your profile information on the customer portal. This minimizes some of the overhead in processing your case and allows us to respond to your requests quickly and effectively.

**Educate Your Administrators:** We have found that customers who invest in Nutanix education courses for their Administrators and IT Staff, are much more effective in defining the symptoms of problems and in working with us to resolve the underlying issue. The return on this investment is almost immediate when you consider the cost of the education versus the cost of downtime. Nutanix nu school has a number of learning tracks starting with the Platform Professional Certification. Please contact Nutanix Training and Certification for more information at <https://www.nutanix.com/support-services/training-certification/>

**Plan Ahead:** Before deploying our products, you will need to review Nutanix Release Notes and other related technical documentation for your environment. These are available on the Nutanix Customer Portal. We also recommend that you carefully define your project plans and include adequate test time and a "crisis" plan to ensure your administrators know how to contact the vendors involved.

**Assign Appropriate Resources:** Individuals assigned to deploy Nutanix should be experienced in the installation, operation, and maintenance of the hardware. Many installation issues are actually issues with 3rd party components and software.

**Utilize Self Help:** Organizations can take full advantage of Nutanix self-help tools available on the Nutanix Portal. Here, you can find technical documentation, knowledge base solutions, discuss issues with other administrators in our Discussion Forum, and reference our white papers, tech notes and compatibility guides.

**Enabling Alerts and Remote Tunnel Access:** To the extent allowed by your organization's security policies, we encourage you to use the product's Pulse and Alerts (e-mail home) feature, which, when enabled, sends all alerts to a central case management system thus notifying the support staff to proactively respond with corrective action. The Remote Tunnel - when enabled, allows support staff to login remotely via a secure SSH tunnel to proactively diagnose Acropolis Operating System (AOS) and resolve any alerts which may have been triggered from Pulse and Alerts or from the customer. Benefits of Pulse Alerts are at [http://download.nutanix.com/docs/Pulse\\_Detailsheet.pdf](http://download.nutanix.com/docs/Pulse_Detailsheet.pdf)

**Provide Complete and Accurate Information:** As with any troubleshooting process, accurate and timely resolution depends on accurate and timely information. For any crashes, hangs or latency issues, the SRE will ask you for various logs to correlate the operations, and get to the root cause. We appreciate you providing the necessary information in a timely manner, so we can make progress.



## Nutanix Team Roles and Responsibilities

Nutanix has a number of roles in the Worldwide Support. Your understanding of which group you are speaking with and what their responsibilities are goes a long way in streamlining issues.

**Systems Reliability Engineer (SRE):** Your support cases are assigned to an SRE and they are your main contact for providing technical support and guidance. Their responsibilities include:

- Responding to support cases on the phone and by e-mail
- Recreating customer technical environments
- Researching, identifying and resolving product technical issues
- Working with cross-functional teams within Nutanix to resolve issues
- Documenting case notes accurately, and developing solutions for the knowledgebase

**Customer Service Advocate (CSA):** CSA responsibilities include:

- Providing licensing and portal support for Nutanix products
- Ensuring that we log your issue (non-technical) accurately in our call tracking system
- Setting appropriate expectations regarding incident response times based on your support agreement
- Working with cross-functional teams within Nutanix to resolve issues
- Updating customer profiles and support cases with all relevant information

**Field Engineers – Part and FE Dispatches** require customer personnel on site to sign for part delivery and grant FE access upon arrival. Every effort is made to ensure the FE is scheduled to be on site within an hour of the committed part delivery. Field Engineer activity when servicing the customer site:

- Meet with on-site contact, verify the correct part has been received and gain access to equipment.
- Call in to Nutanix SRE prior to performing hardware repair/replacement.
- Confirm with Nutanix SRE that HW has been repaired and system restoration has been initiated.
- Prepare the defective part for shipment and provide it to the customer or site contact for return mailing.
- Released by customer.

**Escalation Engineer/Manager:** If an issue is at risk of not being resolved through the normal case lifecycle process, the issue goes into escalation, either initiated by the customer or by Nutanix Support. A dedicated escalation team takes the case over and drives it to resolution. The responsibilities of the escalation team are:

- Mobilizing all internal needed to resolve the issue, including third parties
- Provide regular status reports to internal and customer management teams to report on progress
- Closing out the issue to the satisfaction of all parties
- Root cause analysis, and follow up on lessons learned from the issue

**Developmental Engineering:** This team is responsible for developing new releases, with new features, as well as maintaining the in-market code lines, including bug fixes and maintenance and patch releases.

**Product Management:** This team is responsible for soliciting customer input and looking at industry trends to define new features for new releases. The product roadmap can be shared with customers, on-demand.

**Support Managers:** Member of the Support Management Team





### Support Case Life Cycle

All Support cases, whether opened through the web or the phone, go through a consistent lifecycle. The stages of the case lifecycle include:

1. Creating your profile with a product serial number
2. Collecting information to help troubleshoot the problem
3. Creating a Support Case
4. Working the issue with the Systems Reliability Engineer (SRE), in conjunction with other parts of the Nutanix organization
5. Resolving and Closing the Support Case

#### 1. Creating Your Profile

If you are new to Nutanix Support, we need to create a personal profile on our Customer Portal. In order to do so, please go to the Nutanix Customer Portal at [www.portal.nutanix.com](http://www.portal.nutanix.com) and click on "Create account".



This will bring you to the following page, where you can register for a my.nutanix.com account. This account is your gateway into various online web properties/tools provided by Nutanix.





If you are having issues creating your account or profile, please e-mail [portal-accounts@nutanix.com](mailto:portal-accounts@nutanix.com). You will now be presented with a list of available web properties enabled under your new profile. Select "Support Portal" to begin your online support experience.

NUTANIX

Search

Welcome back, Kamal

There are two items for you that are currently visible for your account. We'll show you a list of available web properties enabled under your new profile. Select "Support Portal" to begin your online support experience.

- 4 Blog  
Get the latest news from Nutanix
- 2017  
Get the latest news from Nutanix
- Community & Events  
Join the Nutanix community
- Support Portal  
Get the latest news from Nutanix

This will bring to the "Activation" screen to complete the setup process.





Once successfully authenticated, you will then be re-directed back to the "Welcome" Page to select your desired Web property

12/24/2020

English

### Welcome back, Kunal

How do you want to proceed? Please select a property to get started. You can also select the property you want to return to after logging out.

- 1. My Properties (1)
- 2. My Properties (1)
- 3. My Properties (1)
- 4. My Properties (1)

Once you have successfully logged in, you'll be brought to the main landing page. This is a good time to go into the Products -> Installed Base tab from navigation menu and edit the information to confirm its current. By doing so, it helps the Nutanix SRE working on your case understand your environment as soon as they engage with you, and ensures that any replacement parts are shipped to the right address.

The screenshot shows the Nutanix dashboard interface. On the left is a navigation menu. The main content area is divided into two sections: 'My Dashboard' and 'My Insights'. 'My Dashboard' includes a 'New Cases' counter showing 103, a 'New Resolved' counter showing 0, and a table of cases with columns for Case Number, Event, Priority, Case Resolution, and Case. 'My Insights' features a heart icon and a list of items.

Case Number	Event	Priority	Case Resolution	Case
00000001	Installation/Configuration Error	High	Not Resolved	Product ID: 20000001
00000002	Installation/Configuration Error	High	Not Resolved	Product ID: 20000002
00000003	Installation/Configuration Error	High	Not Resolved	Product ID: 20000003

## 2. Collecting Information to Troubleshoot your problem

A majority of issues that need diagnosis requires the following information for advanced troubleshooting:

- System Serial Number
- Cluster ID
- Software Versions of all relevant software (Nutanix OS and Hypervisor)
- Time System became unavailable
- Whether the issue is reproducible?
- Steps taken thus far in remediation
- Results of Nutanix Cluster Check (NCC)
- Workload characteristics - Applications running
- and number of VMs per block

Please submit these when you create a case through the Attachments button in the next page, or uploading it to the FTP server



### 3. Creating a Support Case

When opening a case on the web, the fields required to be filled in are fairly self-explanatory. The fields "Priority" and "Issue" have pull-down menus. The "Subject" and "Description" fields define the problem.

Please use the "Priority" field per the definitions earlier in this documentation, to ensure timely response and setting our expectations about the impact to you.

#### Via Phone

An alternative mechanism for case creation is through the phone. The main international number for Nutanix Support is: +1-855-NUTANIX (Open 24/7)

Other local country toll free numbers are constantly being added to the Nutanix Support web page, and are available at: <http://24x7nm.nutanix.com/support>

If an SRE is available when you call, the call will be handled by them directly. In case of overflow, the call will roll over to our Customer Service team who will log the Support case on your behalf. They will need the following information to do so:

- Account Name
- Your full name
- Your phone number
- Your e-mail address
- Whether the issue is service impacting (Priority 1)
- Case Subject: «A brief description of the issue/symptom»
- Case Description: «Detailed description of the issue»

Via the Support Portal

Dashboard

Open Cases: 123  
Closed Cases: 456

### Create a New Case

Subject:

Priority:  Category:  Product:

Submit



4(a). Working the Issue

An SRE is assigned to your case and owns your problem until we mutually agree the issue can be closed. He or she will contact you via email and/or phone as appropriate during the resolution process. Your responsibility is to have the appropriate people and resources available to work with the SRE during the service hours defined in your support agreement.

We will inform you if we need to reassign your case for better skills or time zone match.

The SRE works with you to try to resolve the issue, taking whatever step is necessary to first fully diagnose the problem and then to find a solution. This may involve:

- Asking you for more information
- Asking you to install specific software and/or patches
- Asking for specific debug data from your machine
- Trying to reproduce the problem on our test machines
- Verifying software bugs with our engineering
- Asking you to implement and test workaround suggestions that may avoid the problem
- Asking you to involve your staff to help troubleshoot
- Working with you to involve relevant third-party software or hardware vendors (if we suspect a problem in their product)
- You can view the status of your case and annotate it through the Customer Portal.

View Cases

Case ID	Case Title	Case Status	Case Priority	Case Owner	Case Last Update
02	Problem (P) being resolved as except in P2, it had a	Open	High	John Doe	1/15/18
03	Problem (P) being resolved as except in P2, it had a	Open	High	John Doe	1/15/18
04	Problem (P) being resolved as except in P2, it had a	Open	High	John Doe	1/15/18
05	Problem (P) being resolved as except in P2, it had a	Open	High	John Doe	1/15/18
06	Problem (P) being resolved as except in P2, it had a	Open	High	John Doe	1/15/18
07	Problem (P) being resolved as except in P2, it had a	Open	High	John Doe	1/15/18
08	Problem (P) being resolved as except in P2, it had a	Open	High	John Doe	1/15/18
09	Problem (P) being resolved as except in P2, it had a	Open	High	John Doe	1/15/18
10	Problem (P) being resolved as except in P2, it had a	Open	High	John Doe	1/15/18



4(b). Escalating a Support Case

You can escalate a support case at any time through the support portal by selecting your case and clicking "Escalate". Alternatively, you can contact your SRE, or asking to speak with the Support Manager of your region. Support escalations occur because your expectations of an issue resolution are not in line with the outlined action plan and timeframes that follow the normal resolution process.



In either case, the issue is escalated to the Worldwide Technical Support management team. The manager who takes on the escalation then creates a task force consisting of the necessary resources from Technical Support, Engineering, QA, and Product Management and formulates an action plan to address the issue. This action plan is then shared with you, the checkpoint schedule and the milestones determined, and agreement sought on the closure criteria of the escalation. Updates are provided on the progress as agreed upon, until the issue is resolved.

5. Closing a Support Case

A case is closed when you confirm that a resolution has been reached, or if we do not hear from you within two weeks of a request for information, and multiple attempts have been made to contact you during this period. A case may also be closed without final resolution, with acknowledgement and agreement from you.

Customer Satisfaction Surveys

After a support case is closed you will be invited by email to fill out a short survey about your experience.

Your feedback is a valuable way of measuring how well the Nutanix Worldwide Technical Services team is meeting your expectations. Customer satisfaction surveys give you the opportunity to provide us with valuable information to help improve our interactions with you, as well as any product improvement suggestions.





## Software End of Life (EOL) Policy, Nutanix Versioning & Compatibility Matrix

- 1 We are committed to providing high quality, supportable products to our customers. Rapidly changing technologies drive the need to introduce new products and integrations, and to retire prior products. To this end, we provide an End of Life (EOL) Policy so that our customers and partners understand our product release and support cycles and how these relate to hardware compatibility for hardware platforms on our Hardware Compatibility List. This EOL Policy only pertains to customers with an active, valid support contract ("Support"). All capitalized terms shall have the meaning ascribed to them in Exhibit A, "Definitions".
  - a Software Version Number. Software versions are designated, in Nutanix's sole discretion, using the following format: "X.Y.Z.n (LTS)".
    - i "X" defines the Major Release version number
    - ii "Y" defines the Minor Release version number
    - iii "Z" defines the Maintenance Release version number
    - iv "n" defines the Patch Release version number
      - The abbreviation "LTS" designates whether the version release is a Long Term Support Release
- 2 Software EOL Policy
  - a Overview. Nutanix develops its software products using two separate tracks, Long Term Support Releases (LTS) and Short Term Support Releases (STS).
  - b LTS Release EOL and release cycle.
    - i Each LTS Release is Maintained for 12 months after the Release Date for the next Release that is an Upgrade
    - ii At the end of the Maintenance period, each LTS Release will then receive Troubleshooting for the subsequent six (6) months
    - iii For example, if Nutanix releases AOS 5.5 (LTS) on December 1, 2017 and AOS 5.6 on April 1, 2018 then AOS 5.5 will be Maintained until April 1, 2019 and Troubleshooting for AOS 5.5 will be available until October 1, 2019
  - c STS Release EOL and release cycle. Each STS Release shall receive Troubleshooting for three (3) months from the Release Date of the next Release that is an Upgrade
  - d Updates will not be designated as either an LTS Release or an STS Release. When an Update is made available, the previous Update within the same Upgrade family shall cease to be Maintained
- 3 Anticipated Software Release Cadence.
  - a Upgrades are typically made available every three (3) months for STS Releases and every twelve (12) months for LTS Releases
  - b Updates are typically made available every four to six weeks
  - c In addition, Updates that only consist of Patch Releases are made available on an as-needed basis
- 4 Hardware Compatibility Guidelines. Compatible hardware platforms ("Approved Platforms") are listed on Nutanix's Hardware Compatibility List ("HCL") which can be found here: <https://portal.nutanix.com/#/page/compatibility-matrix-key-software-hardware-requirements>. Approved Platforms listed on the HCL are specific with regard to the version of such platform as well as for the components included therein. For Approved Platforms the following guidance applies.
  - a Nutanix will periodically place platforms on the HCL to be "Approved Platforms"
  - b As of the date that a platform becomes an Approved Platform, Nutanix agrees that it shall provide LTS Releases that are compatible with that Approved Platform for the next five (5) years (including backward compatibility). The preceding sentence assumes that the customer has installed all LTS Releases that are Upgrades during the term of Support.
  - c Nutanix's commitments under this EOL Policy only apply as long as the manufacturer of the Approved Platform has not "end of life'd" or discontinued support for the Approved Platform.

The Nutanix SW EOL policy can be found at <https://www.nutanix.com/support/services/product-support/policies/>. Listed below is the Software End-of-Support schedule



### Extended Support Policy

Extended Support is an extraordinary product which extends the standard Support term from a maximum of 5 years to 7 years. If Extended Support is offered and purchased by a customer, then Nutanix will provide a subset of the services outlined in the Standard Support Guide. During the Extended Support term (years 6 and 7 of Support) Nutanix has no obligation to provide other Updates or Upgrades to the software release. In purchasing Extended Support, the Customer should keep the following in mind:

- a. New versions of software may not work on old hardware, the Nutanix compatibility matrix should be checked prior to any software upgrades for supportability.
- b. New versions of hypervisor may not work on old Nutanix software, the Nutanix compatibility matrix should be checked prior to any hypervisor upgrades for supportability.
- c. Only security updates will be provided after five years, assuming it is possible to create a fix on that release.
- d. If a fix exists in an Update that is generally available, it will be provided to correct the Error or a workaround will be provided if one exists.

### Third-Party Hardware and Software Policy

Nutanix has the following policy regarding the use of third party components within its devices:

- a. If a customer uses a third-party component in a Nutanix device, and a fault is traced to the use of this third-party component, then at the discretion of Nutanix, support and warranty service may be withheld.
- b. If a product fault is determined to not be related to the use of third-party components, then Nutanix will continue to support the customer per our standard support policies.
- c. At no time will hardware RMA support be provided on third-party components. If hardware is replaced, and the fault is determined to have been caused by the installation of a third-party component, Nutanix reserves the right to charge reasonable time and material rates for the service provided.

### Return Material Authorization Policy

To receive replacement parts for defective material it is necessary to contact Nutanix support. Replacement products and components are shipped to end users and valued added resellers (VARs) based on dispatch instructions generated by Nutanix support personnel. All replacement parts are supplied from field distribution centers. Nutanix products and components that are covered under the terms and conditions of Nutanix's Limited Warranties ("Covered Products") and returned to Nutanix must be pre-authorized by Nutanix with an RMA number marked on the outside of the package, and sent prepaid, insured and packaged appropriately for safe shipment. Only packages with RMA numbers written on the outside of the shipping carton and/or the packing slips and shipping paperwork will be accepted by Nutanix's receiving department, or its designated repair partner. All other packages will be rejected.

**End User Support:** Once Nutanix support personnel have determined a replacement part is needed, a replacement will be shipped. The end user will receive a dispatch number which also acts as the RMA number. Nutanix will be responsible for all freight charges for returned Covered Products or components provided Customer uses Nutanix designated carrier.

**VAR Support:** Once a VAR has determined there is a defective part at one of its customer sites a replacement is provided from its spare part inventory, if available. The VAR then contacts Nutanix support and request a replacement. A replacement product or component will be shipped to the VAR in advance of receiving the defective product. The VAR will receive a dispatch number which also acts as the RMA number. The VAR will be responsible to return the defective product within ten (10) business days and for all freight charges for returned Covered Products.

**Non compliance:** Parts not received by Nutanix, or its designated repair partner within fifteen (15) business days of dispatch will be invoiced to the appropriate party (either the end user or VAR) at Nutanix's then current list price.



Table 1. End-of-Life Milestones and Dates

AFIS Version	GA Date	End of Maintenance	End of Life
2.0 Z	*	Jul 2012	Feb 2015
2.1 Z	Apr 2012	Nov 2012	Feb 2015
2.6 Z	Aug 2012	Feb 2014	Feb 2015
3.0 Z	Feb 2013	Nov 2013	Jul 2016
3.1 Z	Aug 2013	Mar 2014	Jul 2016
3.5 Z	Dec 2013	Jul 2015	Jul 2016
4.0 Z	Jul 2014	May 2015	Feb 2016
4.1 Z	Feb 2015	Jan 2016	Oct 2016
4.3 Z	Oct 2015	May 2016	Feb 2017
4.6 Z	Feb 2016	Sep 2016	Jul 2017
4.7 Z	Jun 2016	Jan 2018	Jan 2019
5.0 Z*	Jan 2017	Jan 2018*	Oct 2018
5.1 Z	Apr 2017	Mar 2018	Dec 2018
5.5.2 (LTS)	Dec 2017	Apr 2019	Oct 2019
5.8 Z	Apr 2018	Jul 2018	Oct 2018

\*Note: \*GA Date has extended the End of Maintenance Date for 408 x 80 for 6 months



## EXHIBIT A DEFINITIONS FOR EOL POLICY

**Documentation** means any on-line read me, help files, manuals or other explanatory materials describing the features, functionalities and the specifications of the Software as provided by Nutanix.

**Error** means any reproducible failure of the Software to perform any material function as set forth in the Documentation.

**Long Term Support (LTS) Release** means a Software release that Nutanix commits to maintain and support for longer than other releases, to provide greater stability to customers who have longer new feature adoption cycles. An LTS release will be designated "LTS" as part of the Software version number. Any release that is not designated as LTS will be deemed to be a STS Release.

**Maintenance Release** The number in the "Z" position in the Software version number indicates a Nutanix Software release as a Maintenance Release. A new Maintenance Release has a number of bug fixes and generally does not include new features.

**Maintained** means that Nutanix will provide Updates that have workarounds and bug fixes for Errors but will not provide Upgrades.

**Major Release** The number in the "X" position in the Software version number identifies a Nutanix Software release as a Major Release. A new Major Release has a large feature payload and a number of bug fixes.

**Minor Release** The number in the "Y" position in the Software version number identifies a Nutanix Software release as a Minor Release. A new Minor Release has a nominal feature payload and a number of bug fixes.

**Short Term Support (STS) Release** means a Software release that is Maintained for three months after initial release and will receive Troubleshooting for six months after initial release.

**Patch Release** The "n" position in the Software version number identifies a Software release as Patch Release. A Patch Release typically has a smaller number of bug fixes than a Maintenance Release. Nutanix may limit the distribution of some Patch Releases.

**Release** means either a LTS Release or a STS Release.

**Release Date** means the date a new Upgrade is generally made available.

**Software** means any Nutanix software licensed to customers as for commercial purposes.

**Troubleshooting** refers to Nutanix Support consisting of phone support and if necessary, the provision of Patch Releases primarily for security purposes.

**Update** means either a Maintenance Release or a Patch Release.

**Upgrade** means either a Minor Release or a Major Release.

Log in to the Nutanix Support Portal (<https://portal.nutanix.com/#page/home>) to view the Hardware and Software Compatibility Matrix. (<https://portal.nutanix.com/#page/compatibilitymatrix>)

Nutanix's AOS EOL schedule can be found at: <http://download.nutanix.com/misc/v2/Nutanix-AOS-EOL+schedule.docx.pdf>



**THANK YOU!**

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(408) 915-4039

## **ATTACHMENT E - NUTANIX LIMITED WARRANTY**

### **LIMITED WARRANTY**

1. **EQUIPMENT**. Nutanix warrants solely to Customer that the Hardware will be substantially free from material defects in material and workmanship for the one (1) year period from the date of shipment of the Products (the "Hardware Warranty Period"). Nutanix's entire liability, and Customer's sole and exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to repair the defective Hardware within a reasonable period of time; (ii) to replace the defective Hardware; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the Product for a refund of the amount paid for the Product and the pre-paid and unused portion of any remaining term of Support for the Product. Defective parts must be returned under Nutanix RMA policy at [www.nutanix.com/support](http://www.nutanix.com/support), and if the defective part is not returned Nutanix may invoice Customer for the replacement part. If Customer has purchased Nutanix's no-return-disk option, then Customer will not be invoiced for a replacement disk drive if Customer does not return a failed drive. All Products that are replaced become Nutanix's property. Nutanix will not be responsible for Customer's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Nutanix for repair, whether under warranty or not. This Limited Warranty applies only to Nutanix-branded products. Third party products resold by Nutanix may have separate warranty terms, which can be found at [www.nutanix.com/support](http://www.nutanix.com/support).

2. **REPLACEMENT PARTS**. All replacement parts carry a warranty on the terms and conditions set forth immediately above of the following duration: (i) if the replacement part is installed with more than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be until the expiration of the Hardware Warranty Period; (ii) if the replacement part is installed during the Hardware Warranty Period but with fewer than ninety (90) days remaining on the Hardware Warranty Period, then the warranty on the replacement part shall be ninety (90) days from the date of installation of the replacement part; and (iii) if the replacement part is installed after the expiration of the Hardware Warranty Period under the terms and conditions of Support, then the warranty on the replacement part shall be the earlier of ninety (90) days from the date of installation of the replacement part and the last day of Support. Replacement parts may be new or refurbished.

3. **SOFTWARE**. Nutanix warrants to Customer that the Software will substantially perform in accordance with Nutanix's official Product specifications for the ninety (90) day period from the date of shipment of the Products. Nutanix does not warrant that the operation of the Software will be uninterrupted or error free, or that all defects can be corrected. Nutanix's entire liability, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to remedy the defective Software within a reasonable period of time so as to cause it to operate as warranted; (ii) to replace the affected Software; or (iii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, to accept return of the affected Software for a refund of the amount paid by Customer for the affected Software and the pre-paid and unused portion of any remaining term of Support for the affected Software.

4. **SERVICES**. Nutanix will use reasonable efforts to provide Services in a workmanlike manner. Customer must notify Nutanix of any failure to so perform within ten (10) days after the date on which such failure first occurs. Nutanix's entire obligation, and Customer's exclusive remedy, under this warranty will be for Nutanix, at Nutanix's option: (i) to use reasonable efforts to re-perform the deficient Services within a reasonable period of time; or (ii) if, after reasonable efforts Nutanix is not able to correct the deficiencies, refund the portion of any Services fee that corresponds to the failure to perform.

5. **EXCLUSIONS**. Nutanix will have no obligation under these Limited Warranties to the extent that any problem with a Product results from or is otherwise attributable to: (i) negligence or misuse or abuse of the Product; (ii) use of the Product other than in accordance with Nutanix's official specifications; (iii) modifications, alterations or repairs to the Product made by a party other than Nutanix or a party authorized by Nutanix; (iv) any failure by Customer or a third party to comply with environmental and storage requirements for the Product specified by Nutanix, including, without limitation, temperature or humidity ranges; or (v) use of the Product in combination with any non-Nutanix apparatus, data or programs outside Nutanix's typical, recommended or reasonably anticipated use of the Products within their official Product specifications. Customer shall be solely liable for all freight, storage, and repair costs associated with any return that, in Nutanix's sole discretion, is not eligible for return hereunder, and Nutanix may invoice Customer for any of the foregoing costs.

6. **WARRANTY DISCLAIMER**. EXCEPT PURSUANT TO THE LIMITED WARRANTIES EXPRESSLY DESCRIBED ABOVE, NUTANIX DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCTS OR SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF

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MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. NUTANIX DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

7. HAZARDOUS USE RESTRICTION. THE PRODUCTS ARE NOT DESIGNED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAILSAFE PERFORMANCE, INCLUDING OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS, OR ANY OTHER SYSTEM WHOSE FAILURE COULD LEAD TO INJURY, DEATH, ENVIRONMENTAL DAMAGE, OR MASS DESTRUCTION.

8. CAPITALIZED TERMS. Capitalized terms not defined herein shall have the meaning set forth in the Purchase Terms and Conditions of which these Limited Warranties are a part, which may be found at [www.nutanix.com/support](http://www.nutanix.com/support).

Limited Warranties  
764-0003-0001 Revision B  
March 9, 2012

**ATTACHMENT F - Stipulated Loss Schedule**

**Stipulated Loss Schedule**

In accordance with Section V.B of this Contract, Lost, Stolen or Damaged Equipment, CPA will reimburse Contractor in the amount specified in this Attachment F, Stipulated Loss Schedule, in the event of loss, theft or damage beyond repair of Contractor's Equipment while in possession of CPA.

<b>60 Month Term</b> <b>Reimbursement Formula for Nutanix:</b> <b>(Monthly Unit Price * Number of Full Months Remaining in the Period of Performance) + \$1.00. The effective date of the buyout will be the last day of the month in which CPA provides written notification to KST Data that the buyout is approved.</b> <i>Example: POP 1/1/2019-12/31/24. Written notification is received from CPA on 4/18/2019 the buyout is approved. The CPA Notification Month would be 4 and the Number of Full Months remaining in the Period of Performance would be 56. The effective date of the buyout would be 4/30/2016.</i>			
<b>CPA Approval Notification Month in Equipment Period of Performance</b>	<b>Number of Full Months Remaining in the Period of Performance</b>	<b>CPA Approval Notification Month in Equipment Period of Performance</b>	<b>Number of Full Months Remaining in the Period of Performance</b>
1*	59	31	29
2	58	32	28
3	57	33	27
4	56	34	26
5	55	35	25
6	54	36	24
7	53	37	23
8	52	38	22
9	51	39	21
10	50	40	20
11	49	41	19
12	48	42	18
13	47	43	17
14	46	44	16
15	45	45	15
16	44	46	14
17	43	47	13
18	42	48	12
19	41	49	11
20	40	50	10
21	39	51	9
22	38	52	8
23	37	53	7
24	36	54	6
25	35	55	5
26	34	56	4
27	33	57	3
28	32	58	2
29	31	59	1
30	30	60+	0

\*For the purpose of this Stipulated Loss Table only, Month 1 starts on the equipment arrival date at CPA and ends on the last day of the first month of the Initial Period of Performance.





### ATTACHMENT G Texas Comptroller of Public Accounts

#### Confidential Treatment of Information Acknowledgement (CTIA)

I have read and understand the Comptroller's Summary Public Information Disclosure Manual, a copy of which has been made available to me. I understand that confidential information made available to me by the Comptroller's office may include the Comptroller's own information and information held by the Comptroller's office from other entities. I understand that confidential information is to be held in strictest confidence, and I will act in accordance with applicable federal and state laws, regulations and Comptroller policy with regard to the safekeeping and disclosure of confidential information. I understand that I am not to use such information to the detriment of the Comptroller's office or the State of Texas.

I understand that it is my responsibility to consult with the Comptroller's office and obtain approval to disclose confidential information made available to me, and to ensure that any and all disclosures I make are made to people or entities authorized to receive such information.

I understand that I shall either return to the Comptroller's office or destroy any confidential information in my possession according to Comptroller guidelines, when I no longer require such information for authorized purposes.

I understand that computer system password(s) I receive or devise to access computer systems, which may be made available to me for my use by the Comptroller's office, are confidential. I will not disclose to any unauthorized person any password(s) which I am given or devise, and I will not write such password(s) or post them where they may be viewed by unauthorized people. I understand that I am responsible for any computer transactions performed as a result of access authorized by use of my password(s). I understand that use of a password not issued specifically to me, or to a group of which I am a member, is expressly prohibited.

I understand that criminal and/or civil penalties and/or civil damages may apply if I obtain unauthorized access to, or make an unauthorized disclosure or inspection of, certain types of confidential information (e.g., IRS Federal Taxpayer Information, Protected Health Information, Sensitive Personal Information). Such penalties and/or damages may include, but are not limited to, the following:

- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$4,000 fine (Texas Labor Code §301.085);
- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$1,000 fine (Texas Tax Code §171.361);
- a misdemeanor, punishable by up to 180 days in jail and/or up to a \$2,000 fine (Texas Tax Code §22.27(c));
- a felony, punishable by up to 5 years in prison and/or a fine of up to \$5,000 (26 USC. §7213);
- a misdemeanor, punishable by up to 1 year in jail and/or up to a \$1,000 fine (26 USC §7213A);
- civil damages equal to sum of the greater of \$1,000 for each unauthorized inspection/disclosure or sum of actual damages sustained plus punitive damages for gross negligence, and the cost of action (26 USC §7431); and
- civil and criminal penalties related to criminal justice information (28 CFR §20.25).

I understand that an attempt to circumvent any computer security system or other security control by any means is a violation of Comptroller policy. I also understand that failure to observe these restrictions may constitute a "Breach of Computer Security" as defined in Texas Penal Code, Section 33.02(b), and that such an offense constitutes a Class B misdemeanor, a state jail felony, or a felony of the first, second or third degree.

I understand that any copyrighted material including, but not limited to, commercial computer software, which may be made available to me for my use by the Comptroller's office, is protected by copyright laws and is not to be copied for any reason without permission from the copyright owner. I understand that the violation of copyright laws, including computer software, may result in fines and/or imprisonment.

By my signature hereon, I acknowledge my understanding of the contents of this form and the continued applicability of these provisions after my access to confidential information and computer systems has been terminated.

Printed name of person requesting access		Name of employer	
Signature of person requesting access		Date	
Work phone (Area code and number)		Work email address	

For general questions regarding this form, contact the Comptroller's Information Security Office by calling 512-936-5671.

*Under Ch. 559, Government Code, you are entitled to review, request and correct information we have on file about you, with limited exceptions in accordance with Ch. 552, Government Code. To request information for review or to request error correction, contact us at 1-800-531-5441, ext. 6-6057.*

**ATTACHMENT H**  
**Nondisclosure Agreement**

In consideration of Texas Comptroller of Public Accounts ("CPA") communicating with the undersigned Respondent regarding a potential contract resulting from the referenced solicitation (e.g., RFP, RFO, IFB) and because of the sensitivity of certain information provided to Respondent, both parties agree that all information regarding CPA or gathered, produced, collected or derived from or related to the potential contract, or provided to Respondent under a resulting contract ("Confidential Information") must remain confidential subject to release only upon prior written approval of CPA, and more specifically agree as follows:

1. The Confidential Information may be used by Respondent only to assist Respondent in connection with the business relationship contemplated in the solicitation or performance of a contract with CPA resulting from the solicitation.
2. Respondent shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as proposed consultant or independent contractor to CPA.
3. Unless otherwise provided in the solicitation or resulting contract, Respondent agrees to maintain the confidentiality of all Confidential Information in the same manner that it protects the confidentiality of its own materials of like kind, but in no event less than reasonable care. Respondent shall take reasonable precautions to protect the Confidential Information including, but not limited to, not disclosing Confidential Information in any manner to any person, firm, or entity, except for authorized employees, agents, or contractors of Respondent with a need to know who are bound by confidentiality obligations at least as stringent as those contained in this agreement prior to any disclosure of such Confidential Information.
4. The Confidential Information may not be copied, reproduced, disclosed, distributed, or otherwise divulged without CPA's prior written approval. Confidential Information and any copies thereof shall be CPA's exclusive property.
5. All Confidential Information made available to Respondent, including copies thereof, must be returned to CPA upon the first to occur of (a) expiration or termination of any contract resulting from the solicitation, or (b) request by CPA.
6. The foregoing does not prohibit or limit Respondent's use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, provided such prior knowledge was not subject to a confidentiality obligation, (b) independently developed by it, (c) acquired by it from a third party under no obligation of confidentiality to CPA, (d) which is or becomes part of the public domain through no breach by Respondent of this nondisclosure agreement or other contractual obligations to CPA, or (e) approved by CPA in writing for unrestricted disclosure.
7. If Respondent is required by applicable law, regulation, or legal process to disclose any Confidential Information, then Respondent shall provide CPA with prompt notice of any such requirement prior to delivery of the Confidential Information to allow CPA a reasonable opportunity to seek a protective order or equivalent.
8. This nondisclosure agreement shall become effective as of the date Confidential Information is first made available to Respondent and shall survive the expiration or termination of any contract resulting from the solicitation and be a continuing requirement.
9. The breach of this nondisclosure agreement by Respondent shall entitle CPA to immediately terminate any contract with Respondent resulting from the solicitation upon written notice to Respondent for such breach. The parties acknowledge that the measure of damages in the event of a breach of this nondisclosure agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether CPA elects to terminate any contract with Respondent resulting from the solicitation upon the breach hereof, CPA may require Respondent to pay to CPA the sum of \$5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to CPA in the event of a breach hereof by Respondent of this nondisclosure agreement. CPA does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this nondisclosure agreement.
10. This nondisclosure agreement is governed by and construed under the laws of the State of Texas. Any and all obligations of this agreement are due in Travis County, Texas and venue is proper in only such county.

  
\_\_\_\_\_  
Signature of Authorized Representative

MARK EDSON, VP  
Printed Name & Title of Authorized Representative

7-16-17  
\_\_\_\_\_  
Date Signed

KST Data  
\_\_\_\_\_  
Company Name ("Respondent")

**ATTACHMENT I**

**Contractor's DIR Contract No. DIR-TSO-3692**

**[COVER SHEET]**

**ATTACHMENT J**  
**Contractor's Offer dated April 30, 2019**  
**Cover Sheet**

**ATTACHMENT K**  
**CPA's PR**

CPA PR No. 304-19-0368TT issued by CPA on April 11, 2019 and Responses to Questions from Potential Respondents to CPA PR No. 304-19-0368TT issued by CPA on April 23, 2019 (collectively referred to as "CPA's RFO") are incorporated by reference into this Contract as Attachment K. In the event of conflict between these documents, the following shall control in this order of priority:

1. Responses to Questions from Potential Respondents to CPA PR No. 304-19-0368TT issued by CPA on April 30, 2019.
2. CPA RP No. 304-19-0368TT issued by CPA on April 11, 2019.