



Answer as its Third Affirmative Defense. Pursuant to agreement with counsel for Plaintiff, Defendant, by withdrawal of the inequitable conduct defense, does not waive its right to re-plead such defense in the event that it becomes aware of evidence indicating inequitable conduct on the part of Plaintiff during discovery. Further, the parties, through counsel, have agreed that the non-waiver effect of the withdrawal of this defense shall not, in any way, be meant to expand or enlarge the proper scope of discovery on the matter.

Bedrock, through counsel, has indicated that it does not oppose Defendant's Motion for Leave to file the attached First Amended Answer, Affirmative Defenses, and Counterclaims. Because Bedrock does not oppose the proposed amendment, Defendant respectfully requests that the Court GRANT Defendant leave to file the amended pleading filed concurrently herewith.

Dated: September 17, 2009

Respectfully submitted,

/s/ Paul V. Storm

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**ATTORNEYS FOR DEFENDANT  
SOFTLAYER TECHNOLOGIES,  
INC.**

**CERTIFICATE OF CONFERENCE**

I hereby certify that on the 11<sup>th</sup> day of September, 2009, I conferred with Douglas A. Cawley, counsel for Plaintiff Bedrock Computer Technologies LLC and Plaintiff does not oppose this motion or the filing of the First Amended Complaint, Affirmative Defenses, and Counterclaims.

/s/ Paul V. Storm  
Paul V. Storm

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of September, 2009, a true and correct copy of the foregoing DEFENDANT SOFTLAYER TECHNOLOGIES, INC.'S UNOPPOSED MOTION FOR LEAVE TO FILE A FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS has been sent to the following counsel of record by electronic mail through ECF filing in accordance with the Federal Rules of Civil Procedure and the local Rules of the Eastern District of Texas:

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A handwritten signature in blue ink that reads "Theresa S Costin". The signature is written in a cursive style with a long horizontal flourish at the end.

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Theresa S. Costin