Commonwealth of Kentucky

MASTER AGREEMENT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description:	Microsoft Academic Select RFB 758 0700000860		
Doc ID No:	MA 758 0700001247 8	**Proc Folder:**	246713
Procurement Type:	Computer Equipment or Software		
Effective Date:	2007-07-31	**Expiration Date:**	2010-06-29
Not To Exceed Amount			
Administered By:	Kathy Robinson	**Cited Authority:**	FAP111-35-00-CG
Telephone:	502-564-4510	**Issued By:**	Kathy Robinson

Reason For Modification: Extend MA to the end of the initial contract period per the Master Agreement Terms and Conditions.

VENDOR

DELL COMPUTER CORPORATION

DELL MARKETING L.P C/O DELL USA L.P
PO BOX 802816
CHICAGO IL 60680-2816
US

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	Application Product Pools Discount	30	0.00		0.00000	0.00	0.00

Extended Description

Provide the Commonwealth of Kentucky's Department of Education, local schools, school districts and other Education Cabinet Departments and schools with support for the MS Academic Select Agreement established between the Commonwealth of Kentucky's Department of Education and Microsoft for the following MS Applications Product Pool.

Discount from Select Price 22%

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
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3	Server Product Pools Discount	30	0.00		0.00000	0.00	0.00

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Discount from Select Price 22%

Total Order Amount:	**0.00**

MASTER AGREEMENT FOR
Microsoft Academic Select

Contract Number: MA 758 0700001247

Issued To:
Dell Marketing, LP
One Dell Way
Round Rock, TX 78682

Account Executive: Kristen Reed
Kristen_Reed@Dell.com (859) 543-1102

Sales Representative: Sara Riddles
Sara_Riddles@Dell.com (888) 820-7454

Regional Sales Manager: Reed Kalagher
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Inside Sales Manager: Doug Roldan
Douglas_Roldan@Dell.com (888) 977-3355, ext. 72-81074

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Terms and Conditons
For Master Agreement

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Scope of Contract
The Office of Material and Procurement Services establishes this Master Agreement for the purchase and delivery of licenses, books, media, and training associated with Microsoft Academic and Student Select Agreements for the Kentucky Education Technology System, the KDE, and the Education Cabinet.

In conjunction with the Academic Select Agreement, LAR shall offer Microsoft's Student Select program as defined by Microsoft at http://www.microsoft.com/Education/StudentSelect.mspx. Student licenses shall be made available for purchase for all qualifying products. Minimal school involvement is expected. A third-party sales agent may be named to facilitate the order process. Schools shall not be expected to be a verification point or sales agent. Faculty and staff employees shall be provided the same rights to purchase under the terms of the Microsoft Academic Student Select Enrollment as allowed by Microsoft.

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General Procedures for Ordering From the Contacts

Districts shall complete the KETS Master Agreement order forms for the equipment they want to purchase. They shall describe the cost of each unit (A), total number of each unit (B), and total cost (A*B). They shall also have their financial and technology coordinators sign this form. The District then sends the KETS purchase order form to the vendor. The vendor shall ask for this form before completing any order. Vendors with on-line ordering shall ensure financial and technology coordinator approval prior to processing of order.

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Example: If Windows Vista is the most current version, Windows XP products shall still be offered through this contract.

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Vendor, manufacturer, or contractor recognizes that all Kentucky schools and the KDE are participating in the Universal Service Fund Program (E-Rate) and guarantees that any approved discounts for internal connections, to include any product or service procured as a result of this contract, be honored throughout the whole life of this contract award including any and all extensions.

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Agencies To Be Served
This contract shall be for use by the Commonwealth of Kentucky for the following:

Academic Select

- Kentucky Department Of Education
- Local Schools And School Districts
- Education Cabinet

Delivery of equipment shall be made only as authorized by receipt of an official purchase order as set forth in the contract provisions.

Student Select

- Kentucky Students
- Faculty and Staff Members

Section 7
Basis of Price Revisions
Prices shall remain firm for the initial period of the contract. Upon renewal, prices are subject to revision which may be either increases or decreases. Contract product and price updates shall be provided by the vendor in a Microsoft Excel spreadsheet for electronic import into the eMARS catalog. These updates shall be provided to the Office of Material and Procurement Services on a regular basis; however, no more frequent than every thirty days. This required template format may be seen at http://finance.ky.gov/business/eprocurement/vendorcatalogtemplate.htm (see attachment #3). Revisions may be requested by either of the contracting parties and shall be requested in writing. The requesting party shall furnish documented evidence substantiating the validity of the request. In the event the requested revision is refused, the requesting party shall have the right to withdraw from the contract, without prejudice. Provided, however, that the vendor shall continue service, at the contract prices, until a new contract can be established (approximately 90 days).

Section 8

Basis of Shipments
All unit prices hall be FOB Destination, freight prepaid. The vendor shall be fully responsible for all shipments and freight charges involved in delivery to the ordering entity.

Section 9
Quantity Basis of Contract
Any and all quantities mentioned in this contract are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of the contract. Requirements may exceed the quantities shown and the contractor shall be required to furnish all requirements shown on Delivery Orders dated during the life of the contract.

Section 10
Reporting Based on Quantity
The contractor is required to furnish the Commonwealth with quarterly reports of how many units are sold per District. Reports shall include product name, part number, unit cost, date of purchase, PO number, District and School name for all units purchased from the KETS contract.

Section 11
Delivery Time
The vendor shall maintain or have available an inventory sufficient to make shipment of the complete purchase order within thirty (30) calendar days from the receipt of the purchase order. Those that don't supply one hundred percent (100%) of items ordered within forty-five (45) calendar days of receipt of purchase order are subject to shipping penalties, contract suspension or termination. The forty-five (45) day clock starts on either (1) the day electronic or paper mail receipt of the district's purchase order by the vendor or (2) the date on the district's registered mail return receipt, whichever is sooner. Delivery time(s) in excess of forty-five (45) calendar days after receipt of order may result in penalties or termination of contract.

Penalties. Delivery penalties shall be applied at a rate of five percent (5%) for each seven (7) day calendar week **for total value of purchase order** not delivered within forty-five (45) calendar days of receipt of purchase order. **The penalty shall apply to the entire value of the purchase order. Partial shipments do not reduce the original value of the purchase order or penalty assessment.**

Section 12
Pricing
Product Pool price shall be the following percentage discount off Academic Select pricing for each of the three (3) Microsoft Product Pools:

Application Product Pool	**-**	**22%**
System Product Pool	**-**	**22%**
Server Product Pool	**-**	**22%**

Student Select Price shall be the Product Pool Application price plus the following percentage processing fee associated with a third-party sales agent.

Student Select Price	**-**	**25%**

Section 13
Free Online Training

Free Online Training Details:

There is free online training available from Microsoft for customers that purchase Software Assurance on select licenses.

For every Office System application license covered under Software Assurance you are entitled to 1 license for Information Worker Software Assurance eLearing.

For every Windows Client licenses covered under Software Assurance you are entitled to 1 license for Client Software Assurance eLearning.

For every Server License covered with Software Assurance you are entitled to 1 license for Server Software Assurance eLearning. 1 media kit per enrollment, per pool 1.

More information:
Microsoft Software Assurance for Education: http://www.microsoft.com/education/Software Assurance.mspx
Microsoft Academic Volume Licensing: http://www.microsoft.com/education/HowToBuyInstitution.mspx

Section 14
Addition or Deletion of Items

The Office of Material and Procurement Services reserves the right to add to any contract additional or new items. ONLY THE OFFICE OF MATERIAL AND PROCUREMENT SERVICES MAY ISSUE AUTHORIZATION FOR SUCH ADD-ON. The Office of Material and Procurement Services shall determine if any item usage warrants such an addition to a contract.

Vendors are required to submit one (1) updated "catalog" of approved software and pricing each month on, or about, the 1st of each month for the Academic and Student Select licenses. This submission shall be in accordance with any and all other terms of this agreement pertaining to software additions/approvals and shall be submitted electronically in the required format necessary for the Office of Material and Procurement to update the contract holder's Master Agreement. This submission shall also be emailed to the KETS Vendor Manager at OET for her approval as well. Office of Material and Procurement Services shall have final determination in the addition of any and all software to the vendor's Master Agreement.

Should an addition be in agreement with the Office of Material and Procurement Services and the contractor, the Office of Material and Procurement Services shall issue a Modification to the Master Agreement. Until such time as the vendor receives the Modification, the vendor shall not accept any order from any agency for items not on the Master Agreement.

Section 15
Items Other Than Contract Items
The vendor may accept orders only for items listed on contract. Any vendor that is found to accept and ship items other than those listed on their contract, against their Master Agreement number, risk cancellation of contract. Such shall not only be grounds for cancellation, but also removal of the vendor from the bid list.

Section 16
Post Contract Meetings and Agreements
The contract shall constitute the entire agreement between the state and the vendor. Unless contractually provided, those authorized to use this contract shall not be required to enter into or sign further agreements, company orders or other documents to complete or initiate the terms of the contract. Any such documents so obtained shall be non-binding on the state and be cause for breach of contract.

The vendor shall meet with OET in Frankfort, KY on a quarterly basis. The vendor shall prepare a report on a quarterly basis and deliver it to OET in paper or electronic format as stated in the Solicitation. The vendor shall prepare to discuss and present report information as well as any contractual issues, successes, lessons learned, performance measurements, product information, and pricing.

The Commonwealth may periodically request review of invoices of KETS delivered software. When requested a KETS vendor shall provide actual purchase invoices from the manufacturer for software delivered over a specified period of time sold against their contract.
Section 17
District Select Agreement Enrollments
Vendor shall work with the 175 districts within the Commonwealth of Kentucky to facilitate the implementation of each having their own Select Enrollment Number to fall underneath KDE's Select Agreement. All benefits of having an MS Select Enrollment shall also be provided to local districts including license tracking, etc. This shall allow districts to more easily manage and track licensing purchases made through the MS Select Agreement.

Section 18
Cancellation Clause

The Commonwealth may cancel the Contract by giving written notice, thirty (30) days prior to the effective cancellation date. In the event such action is taken, the contract shall be null and void upon receipt of a Modification from the Office of Material and Procurement Services canceling the contract.

Section 19
Orders & Payments
All purchase orders to the vendor shall be mailed to the order address stated on the Master Agreement, regardless of any differences stated by the sales representative or stated on the invoice.

Section 20
Invoices
Invoices for items ordered, delivered and accepted by state agencies shall be submitted by the vendor directly to the agency receiving delivery, unless otherwise stated on the contract. Invoices for equipment provided to employees, teachers, and students shall be invoiced to them. All invoices shall show the Master Agreement number. Prices charged cannot exceed the contract price. The Commonwealth of Kentucky is only responsible for payment when the purchaser is a state agency.

Section 21
Payment
The vendor shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. Unless otherwise specified, payment will not be made for partial deliveries accepted. Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

Initial invoice period shall commence upon date accepted by the ordering agency. After equipment has been received and invoices submitted to the using agency, it shall be the responsibility of the using agency to make payment. Any questions concerning payment shall be addressed to the ship-to agency listed on the agency purchase order. Do not submit invoices, past due statements, etc. to the Office of Material and Procurement Services.

Student Select purchases are paid for at the time of order by the qualified purchaser.

Section 22
Assignment
The Contractor shall not assign this Contract in whole or in part to another Contractor at any time during the initial or optional renewal terms of the contract. Any purported assignment shall be null and void.

Section 23
Subcontracts
The vendor shall make no contract with any other party for furnishing any of the commodities or services contracted herein and provided as part of the Academic Select Agreement. Should the Office of Material and Procurement Services be provided evidence of the vendor making such an arrangement, the contract shall be immediately cancelled. This provision shall not be taken as requiring the approval of contracts of employment between the bidder and personnel assigned for services hereunder.

One subcontractor can be utilized for processing of Student Select purchases. This option is made available to ensure the burden of processing does not fall on the schools.

Section 24
Recycle Requirements
Contractor is required to comply with Recycle Requirements for the purchase of goods, supplies, equipment, materials and printing with a minimum recycled content to the extent practicable per 200 KAR 5:330. This regulation can be viewed on the Internet at < http://www.lrc.state.ky.us/kar/200/005/330.htm>.

Section 25
Agreement Between Parties
The contract is the complete and exclusive statement of the agreement between the parties, which supersedes all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this contract. It is further agreed between the parties, that any valid modification of contractual agreement must be formalized by issuance of a Contract Modification from the Office of Material and Procurement Services.

Section 26
Governing Law
This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and any litigation with respect to this Contract shall be brought in state or federal court in Franklin County, Kentucky.

Section 27
Funding-Out Provision
The Vendor agrees that if funds are not appropriated to the agency or are not otherwise available for the purpose of making payments, the agency shall be authorized, upon sixty (60) days written notice to the Vendor, to terminate this contract. The termination shall be without any other obligation or liability of any cancellation or termination charges, which may be fixed by the contract.

ALL PROVISIONS OF SOLICITATION RFB 758 0700000860 SHALL BE PART OF THIS MASTER AGREEMENT.

Commonwealth of Kentucky

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Doc Description:	Microsoft Academic Select RFB 758 0700000860		
Doc ID No:	MA 758 0700001247 28	**Proc Folder:**	246713
Procurement Type:	Computer Equipment or Software		
Effective Date: 2010-07-01	**Expiration Date:** 2011-06-30	**Not To Exceed Amount**	
Administered By:	Stephanie Williams	**Cited Authority:**	FAP111-35-00-CG
Telephone:	502-564-8621	**Issued By:**	Stephanie Williams

Reason For Modification: Renewal

VENDOR

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Section 7
Basis of Price Revisions
Prices shall remain firm for the initial period of the contract. Upon renewal, prices are subject to revision which may be either increases or decreases. Contract product and price updates shall be provided by the vendor in a Microsoft Excel spreadsheet for electronic import into the eMARS catalog. These updates shall be provided to the Office of Material and Procurement Services on a regular basis; however, no more frequent than every thirty days. This required template format may be seen at http://finance.ky.gov/business/eprocurement/vendorcatalogtemplate.htm (see attachment #3). Revisions may be requested by either of the contracting parties and shall be requested in writing. The requesting party shall furnish documented evidence substantiating the validity of the request. In the event the requested revision is refused, the requesting party shall have the right to withdraw from the contract, without prejudice. Provided, however, that the vendor shall continue service, at the contract prices, until a new contract can be established (approximately 90 days).

Section 8

Basis of Shipments
All unit prices hall be FOB Destination, freight prepaid. The vendor shall be fully responsible for all shipments and freight charges involved in delivery to the ordering entity.

Section 9
Quantity Basis of Contract
Any and all quantities mentioned in this contract are purely estimates, and are not to be implied nor inferred as being guarantees. The State is obligated to buy only that quantity needed by its agencies during the term of the contract. Requirements may exceed the quantities shown and the contractor shall be required to furnish all requirements shown on Delivery Orders dated during the life of the contract.

Section 10
Reporting Based on Quantity
The contractor is required to furnish the Commonwealth with quarterly reports of how many units are sold per District. Reports shall include product name, part number, unit cost, date of purchase, PO number, District and School name for all units purchased from the KETS contract.

Section 11
Delivery Time
The vendor shall maintain or have available an inventory sufficient to make shipment of the complete purchase order within thirty (30) calendar days from the receipt of the purchase order. Those that don't supply one hundred percent (100%) of items ordered within forty-five (45) calendar days of receipt of purchase order are subject to shipping penalties, contract suspension or termination. The forty-five (45) day clock starts on either (1) the day electronic or paper mail receipt of the district's purchase order by the vendor or (2) the date on the district's registered mail return receipt, whichever is sooner. Delivery time(s) in excess of forty-five (45) calendar days after receipt of order may result in penalties or termination of contract.

Penalties. Delivery penalties shall be applied at a rate of five percent (5%) for each seven (7) day calendar week **for total value of purchase order** not delivered within forty-five (45) calendar days of receipt of purchase order. **The penalty shall apply to the entire value of the purchase order. Partial shipments do not reduce the original value of the purchase order or penalty assessment.**

Section 12
Pricing
Product Pool price shall be the following percentage discount off Academic Select pricing for each of the three (3) Microsoft Product Pools:

Application Product Pool	**-**	**22%**
System Product Pool	**-**	**22%**
Server Product Pool	**-**	**22%**

Student Select Price shall be the Product Pool Application price plus the following percentage processing fee associated with a third-party sales agent.

Student Select Price	**-**	**25%**

Section 13
Free Online Training

Free Online Training Details:

There is free online training available from Microsoft for customers that purchase Software Assurance on select licenses.

For every Office System application license covered under Software Assurance you are entitled to 1 license for Information Worker Software Assurance eLearing.

For every Windows Client licenses covered under Software Assurance you are entitled to 1 license for Client Software Assurance eLearning.

For every Server License covered with Software Assurance you are entitled to 1 license for Server Software Assurance eLearning. 1 media kit per enrollment, per pool 1.

More information:
Microsoft Software Assurance for Education: http://www.microsoft.com/education/Software Assurance.mspx
Microsoft Academic Volume Licensing: http://www.microsoft.com/education/HowToBuyInstitution.mspx

Section 14
Addition or Deletion of Items

The Office of Material and Procurement Services reserves the right to add to any contract additional or new items. ONLY THE OFFICE OF MATERIAL AND PROCUREMENT SERVICES MAY ISSUE AUTHORIZATION FOR SUCH ADD-ON. The Office of Material and Procurement Services shall determine if any item usage warrants such an addition to a contract.

Vendors are required to submit one (1) updated "catalog" of approved software and pricing each month on, or about, the 1st of each month for the Academic and Student Select licenses. This submission shall be in accordance with any and all other terms of this agreement pertaining to software additions/approvals and shall be submitted electronically in the required format necessary for the Office of Material and Procurement to update the contract holder's Master Agreement. This submission shall also be emailed to the KETS Vendor Manager at OET for her approval as well. Office of Material and Procurement Services shall have final determination in the addition of any and all software to the vendor's Master Agreement.

Should an addition be in agreement with the Office of Material and Procurement Services and the contractor, the Office of Material and Procurement Services shall issue a Modification to the Master Agreement. Until such time as the vendor receives the Modification, the vendor shall not accept any order from any agency for items not on the Master Agreement.

Section 15
Items Other Than Contract Items
The vendor may accept orders only for items listed on contract. Any vendor that is found to accept and ship items other than those listed on their contract, against their Master Agreement number, risk cancellation of contract. Such shall not only be grounds for cancellation, but also removal of the vendor from the bid list.

Section 16
Post Contract Meetings and Agreements
The contract shall constitute the entire agreement between the state and the vendor. Unless contractually provided, those authorized to use this contract shall not be required to enter into or sign further agreements, company orders or other documents to complete or initiate the terms of the contract. Any such documents so obtained shall be non-binding on the state and be cause for breach of contract.

The vendor shall meet with OET in Frankfort, KY on a quarterly basis. The vendor shall prepare a report on a quarterly basis and deliver it to OET in paper or electronic format as stated in the Solicitation. The vendor shall prepare to discuss and present report information as well as any contractual issues, successes, lessons learned, performance measurements, product information, and pricing.

The Commonwealth may periodically request review of invoices of KETS delivered software. When requested a KETS vendor shall provide actual purchase invoices from the manufacturer for software delivered over a specified period of time sold against their contract.
Section 17
District Select Agreement Enrollments
Vendor shall work with the 175 districts within the Commonwealth of Kentucky to facilitate the implementation of each having their own Select Enrollment Number to fall underneath KDE's Select Agreement. All benefits of having an MS Select Enrollment shall also be provided to local districts including license tracking, etc. This shall allow districts to more easily manage and track licensing purchases made through the MS Select Agreement.

Section 18
Cancellation Clause

The Commonwealth may cancel the Contract by giving written notice, thirty (30) days prior to the effective cancellation date. In the event such action is taken, the contract shall be null and void upon receipt of a Modification from the Office of Material and Procurement Services canceling the contract.

Section 19
Orders & Payments
All purchase orders to the vendor shall be mailed to the order address stated on the Master Agreement, regardless of any differences stated by the sales representative or stated on the invoice.

Section 20
Invoices
Invoices for items ordered, delivered and accepted by state agencies shall be submitted by the vendor directly to the agency receiving delivery, unless otherwise stated on the contract. Invoices for equipment provided to employees, teachers, and students shall be invoiced to them. All invoices shall show the Master Agreement number. Prices charged cannot exceed the contract price. The Commonwealth of Kentucky is only responsible for payment when the purchaser is a state agency.

Section 21
Payment
The vendor shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. Unless otherwise specified, payment will not be made for partial deliveries accepted. Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

Initial invoice period shall commence upon date accepted by the ordering agency. After equipment has been received and invoices submitted to the using agency, it shall be the responsibility of the using agency to make payment. Any questions concerning payment shall be addressed to the ship-to agency listed on the agency purchase order. Do not submit invoices, past due statements, etc. to the Office of Material and Procurement Services.

Student Select purchases are paid for at the time of order by the qualified purchaser.

Section 22
Assignment
The Contractor shall not assign this Contract in whole or in part to another Contractor at any time during the initial or optional renewal terms of the contract. Any purported assignment shall be null and void.

Section 23
Subcontracts
The vendor shall make no contract with any other party for furnishing any of the commodities or services contracted herein and provided as part of the Academic Select Agreement. Should the Office of Material and Procurement Services be provided evidence of the vendor making such an arrangement, the contract shall be immediately cancelled. This provision shall not be taken as requiring the approval of contracts of employment between the bidder and personnel assigned for services hereunder.

One subcontractor can be utilized for processing of Student Select purchases. This option is made available to ensure the burden of processing does not fall on the schools.

Section 24
Recycle Requirements
Contractor is required to comply with Recycle Requirements for the purchase of goods, supplies, equipment, materials and printing with a minimum recycled content to the extent practicable per 200 KAR 5:330. This regulation can be viewed on the Internet at < http://www.lrc.state.ky.us/kar/200/005/330.htm>.

Section 25
Agreement Between Parties
The contract is the complete and exclusive statement of the agreement between the parties, which supersedes all prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this contract. It is further agreed between the parties, that any valid modification of contractual agreement must be formalized by issuance of a Contract Modification from the Office of Material and Procurement Services.

Section 26
Governing Law
This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and any litigation with respect to this Contract shall be brought in state or federal court in Franklin County, Kentucky.

Section 27
Funding-Out Provision
The Vendor agrees that if funds are not appropriated to the agency or are not otherwise available for the purpose of making payments, the agency shall be authorized, upon sixty (60) days written notice to the Vendor, to terminate this contract. The termination shall be without any other obligation or liability of any cancellation or termination charges, which may be fixed by the contract.

ALL PROVISIONS OF SOLICITATION RFB 758 0700000860 SHALL BE PART OF THIS MASTER AGREEMENT.

ARRA

PREAMBLE

To the extent that this contract or grant involves the use of American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("ARRA") funds, the following terms and conditions apply.

For the purposes of applying these terms and conditions, the following definitions apply:

I. *A "prime recipient" is a non-Federal entity that receives Recovery Act funding as Federal awards in the form of grants, loans, or cooperative agreements directly from the Federal government.*

II. *A "subrecipient" is a non-Federal entity that expends Federal awards received from another entity to carry out a Federal program but does not include an individual who is a beneficiary of such a program.*

III. *A "vendor" is defined as a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. Prime recipients or subrecipients may purchase goods or services needed to carry out the project or program from vendors. Vendors are not awarded funds by the same means as subrecipients and are not subject to the terms and conditions of the Federal financial assistance award.*

To the extent required of vendor or subrecipient under the rules promulgated by the Federal Government under the American Recovery and Reinvestment Act of 2009, the vendor or subrecipient specifically agrees to comply with each of the terms and conditions contained herein.

The vendor or subrecipient understand and acknowledges that the federal stimulus process is evolving and that new requirements for ARRA compliance may still be forthcoming from federal government and the Commonwealth of Kentucky. Accordingly, the subrecipient/vendor specifically agrees that both it and any subgrantees/subcontractors will comply with all such requirements during the contract period.

AVAILABILITY OF FUNDING

Vendor/subrecipient agrees that programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed appropriations once the temporary federal funds are expended.

BUY AMERICAN REQUIREMENT (IF APPLICABLE)

Vendor/subrecipient agrees that in accordance with ARRA, Section 1605, neither vendor/

subrecipient or its subcontractors/subgrantees will use ARRA funds for a project for the construction, alternation, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The vendor/subrecipient understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

CONFLICTING REQUIREMENTS

Vendor/subrecipient agrees that, to the extent ARRA requirements conflict with Commonwealth of Kentucky requirements, the ARRA requirements shall control.

FALSE CLAIMS ACT

Vendor/subrecipient agrees that it shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subgrantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

ENFORCEABILITY

Vendor/subrecipient agrees that if the vendor/subrecipient or one of its s ubcontractors/subgrantees fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the Commonwealth of Kentucky may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the Commonwealth of Kentucky under all applicable state and federal laws.

INSPECTION OF RECORDS

Vendor/subrecipient agrees that it shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) interview any officer or employee of vendor/subrecipient or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

JOB POSTING REQUIREMENTS

Vendors/subrecipients who receive ARRA funded contracts are required to post jobs created and retained as a result of stimulus funds on the Commonwealth of Kentucky Job Bank at: https://e3.ky.gov/

PROHIBITION ON USE OF ARRA FUNDS

Vendor/subrecipient agrees that none of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

REPORTING REQUIREMENTS

Pursuant to Section 1512 of the ARRA, entities receiving ARRA funds must submit reports to the federal government no later than ten (10) calendar days after the end of each calendar quarter. This report must contain the information outlined below.

Accordingly, each subrecipient agrees to provide the Commonwealth with the following information in a timely manner:

a. Subrecipient's DUNS number;
b. Award number or other identifying number assigned by the prime recipient;
c. The total amount of ARRA funds received by subrecipient during the reporting period;
d. The amount of ARRA funds that were expended or obligated during the reporting period;
e. A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
    i. the name of the project or activity;
    ii. a description of the project or activity;
    iii. an evaluation of the completion status of the project or activity; and
    iv. an estimate of the number of jobs created and the number of jobs retained by the project or activity;
    v. the primary place of performance of the subaward, including the city, state, congressional district and country;
    vi. The names and total compensation of the five most highly compensated officers of the company if it received: 1) 80% or more of its annual gross revenues in Federal awards; and 2) $25M or more in annual gross revenue from Federal awards.
f. Any other information reasonably requested by the Commonwealth or required by state or federal law or regulation.

Each vendor must supply their DUNS number and an estimate of the number of jobs created and number of jobs retained as a result of the award of ARRA funds.

OMB Memorandum M-09-21 dated June 22, 2009 outlines the standard data elements and federal implementation guidance for use in complying with the reporting requirements under Section 1512 of the ARRA.

SEGREGATION OF FUNDS

Vendor/subrecipient agrees that it shall segregate obligations and expenditures of Recovery Act

funds from other funding, however, if ARRA funds and non-ARRA funds are co-mingled by purchaser (ARRA Recipient/Subrecipient) in a single purchase order, Recipient/Subrecipient acknowledges that Dell/Vendor will not separate such funds. The total purchase amount of all funds on any such co-mingled purchase order will be included in any report provided by Dell for ARRA purposes. Recipient/Subrecipient of funds shall specify on the first line of each purchase order utilizing ARRA funds placed with Dell/Vendor that ARRA funds are being used to fund the purchase order.. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

SUBCONTRACTOR/SUBGRANTEE REQUIREMENTS

Vendor/subrecipient agrees that it shall include these standard terms and conditions, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

WAGE REQUIREMENTS (IF APPLICABLE)

Vendor/subrecipient agrees that, in accordance with Section 1606 of the ARRA, both it and its subcontractors shall fully comply with this section in that, notwithstanding any other provision of law, and in a manner consistent with the other provisions of the ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in the Commonwealth of Kentucky are located at: http://www.gpo.gov/davisbacon/ky.html

WHISTLEBLOWER PROTECTION

Vendor/subrecipient agrees that both it and its subcontractors/subgrantees shall comply with Section 1553 of the ARRA, which prohibits all non-federal Vendor/subrecipients of ARRA funds, including the Commonwealth of Kentucky, and all contractors and grantees of the Commonwealth of Kentucky, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. Vendor/subrecipient agrees that it and its subcontractors/subgrantees shall post

notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.