Commonwealth of Kentucky

MASTER AGREEMENT

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

Doc Description:	KETS NETWORK HARDWARE AND SERVICES		
Doc ID No:	MA 758 1300000899 1	**Proc Folder:**	2542419
Procurement Type:	Computer Equipment or Software		
Effective Date:	2013-03-01	**Expiration Date:**	2016-02-28
Not To Exceed Amount			
Administered By:	Valerie Blade-Thomas	**Cited Authority:**	FAP111-35-00-CG
Telephone:	502-564-2351	**Issued By:**	Susan Noland

VENDOR

ENTERASYS NETWORKS INC

50 MINUTEMAN ROAD

ANDOVER MA 01810
US

Line	CL Description	Delivery Days	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	KETS Network Hardware and Services	0	1.00	EA	0.01000	0.00	0.01

Extended Description

KETS Network Hardware and Services Discount off MSRP
E-Rate Eligible Basic Services - Network
Wired Stackable 47 ports or less 67%
Wired Stackable 48 ports or more 67%
Wired Core 64%
Wireless Access Points 64%
Wireless Controllers 64%
Cables/Accessories 64%
Installation/Initial Configuration 30%
Training (Technician/System Admin Training) 30%
Maintenance (Hardware) Support 30%
Maintenance (Software) Support 25%
Non E-Rate Eligible Basic Services - Network
Network Management Software 64%
Network Professional Services 30%
Network Accessories 64%
Wireless Configuration Software 64%

See "Attachment A" for Terms and Conditions. The terms and conditions set out in "Attachment A" are incorporated into and are a part of the Contract.

MASTER AGREEMENT
MA 758 1300000899

KETS NETWORK HARDWARE & SERVICES

ENTERASYS NETWORKS, INC.
9 NORTHEASTERN, BLVD.
SALEM, NH 03079
PHONE: (603) 952-5221
CONTACT: MICHAEL SWIERK
EMAIL: mswierk@enterasys.com

Terms and Conditions

Section 1
Scope of Contract
The Office of Procurement Services issues this Master Agreement for:

KETS Network Hardware & Services

Section 2
Purpose
The purpose of this Contract is to provide network hardware and services to Kentucky's Public School Districts, the Kentucky School for the Blind (KSB), the Kentucky School for the Deaf (KSD), and the Education and Workforce Development Cabinet which includes but is not limited to the Kentucky Department of Education (KDE), the Education Professional Standards Board (EPSB) and the Kentucky Educational Television (KET) and the Council on Postsecondary Education (CPE).

The following categories shall be established for Network Hardware and services

E-Rate Eligible Categories
Wired Stackable – 47 ports or less
Wired Stackable – 48 ports or more
Wired Core
Wireless – Access Points
Wireless – Controllers
Cables/Accessories
Installation / Initial Configuration
Training (Technician/System Admin Training)
Maintenance (Hardware) Support
Maintenance (Software) Support

Non E-Rate Eligible Categories
Network Management Software
Network Professional Services
Network Accessories
Wireless – Configuration Software

As part of Professional Services, the contract holder may include manufacturer's Network hardware as a managed service.

Section 4
Initial Contract Period
This Contract established shall be valid through **February 28, 2016**.

Section 5
Renewal Clause – Optional Renewal Period
This Contract may be extended at the completion of the initial Contract period for **five (5) additional one-year periods.** This extension must have the written approval of the Vendor and the Office of Procurement Services. If the Contract provides for an optional renewal period, the Commonwealth of Kentucky reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. The Contractor will be advised of any proposed revisions prior to the renewal periods. In the event proposed revisions cannot be agreed upon, either party shall have the right to withdraw without prejudice from either exercising the option or continuing the contract in an extended period.

Section 8
Qualified Vendors
The manufacturer may propose the usage of up to three (3) agents. The Kentucky Department of Education reserves the right to review and give final approval to the proposed agents and/or any change in agents after the initial contract award. The manufacturer is still responsible for ALL aspects of the contract requirements regardless of the usage of an agent(s). A manufacturer SHALL NOT be allowed to have more than three (3) agents.

An agent is defined as a company or individual that represents the manufacturer in purchase order review, delivery and/or warranty and support services of the manufacturer's product(s). Quotes for products and/or service and invoices must be on the contract holder's letterhead. Payment for invoices from contract purchases must be addressed to the contract holder for E-Rate discounted equipment and services. Billing and payment may not be addressed to an agent when it is for E-Rate discounted equipment and services. The exception to this requirement is when the purchase is for non-E-Rate discounted equipment and services. Under these conditions, the contract

holder may choose to use an agent for billing and invoicing.

Section 9
General Procedures for Ordering From the Contract:
Equitable pricing shall be offered to all KETS customers. The Commonwealth of Kentucky's public school districts shall purchase from the KETS Master Agreements for the network solutions and categories that have been approved by KDE. Vendors shall be able to effectively handle this magnitude of sales, meet delivery deadlines with quality Enterprise (not Consumer) hardware and support equitably across every county in our state while meeting the performance standards for the life of the contract. The Commonwealth requests hardware that has consistency in parts and has undergone testing of internal components to the Enterprise level versus the consumer level. It is mandatory that vendors have capacity to provide contract management and support across every county in the Commonwealth. The vendor shall provide on-site support to **every school** in **every county** with the same timelines and costs with no exceptions for location.

a) Negotiation of Price: Districts can and are encouraged to negotiate a better price for items or a better discount for product categories available for purchase from the KETS Master Agreement. However, once a lower price or better discount has been negotiated with one district, it becomes the new statewide price/discount for that solution/product category for the duration of the KETS contract. Typically, vendors have special offers to quickly get rid of inventory that didn't sell as well as anticipated or is outdated. If a vendor offers a special price for any time period (e.g. Offer ends August 12), that price for that model for all districts does not end on August 12. Instead, it has now become the new price for the duration that the model is on contract. Example: If a large district like Jefferson County negotiates a lower price for a specific model from a vendor, it now becomes the new price for every district statewide for that model from that vendor. This works similar to upgrading models within any one level.

b) Vendor Quotes and Invoicing: Vendor quotes and invoices shall be submitted to the customer. Vendor shall submit invoices only for items ordered, delivered and accepted by the customer. Each quote and invoice shall include at a minimum:
   - State/KETS contract number
   - Customer purchase order number
   - Customer name and address
   - Date of Order
   - Date of Installation (if applicable)
   - Detailed equipment charges
   - Hourly rate, if applicable
   - Grand total for the quote or invoice

Section 10
Recycle Requirements
Cotnractors are 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 12
Agencies to be Served
This Contract shall be for use by the following agency of the Commonwealth of Kentucky:

Kentucky's Public School Districts, the Kentucky School for the Blind (KSB), the Kentucky School for the Deaf (KSD), and the Education and Workforce Development Cabinet which includes the Kentucky Department of Education (KDE), the Office of Education Technology (OET), the Council on Postsecondary Education (CPE), the Education Professional Standards Board (EPSB) and the Kentucky Educational Television (KET).

Section 13
Extending the Contract Use to Other Agencies
The Office of Procurement Services reserves the right, with the consent of the Vendor, to offer this Master Agreement to other state agencies requiring the product(s) or service(s).

Section 15
Warranty
The Contractor shall include one (1) year of maintenance/warranty in the initial purchase cost. After the initial one (1) year period, if hardware maintenance is desired, it will be the responsibility of the customer to procure from either this contract or other approved sources.

Warranty shall meet the following criteria:

- The contractor shall be available for service twenty-four (24) hours per day, three hundred and sixty-five (365) days per year, except for scheduled maintenance;
- The primary period of service (PPS) falls between the hours of 8:00am and 5:00pm customer's local time, Monday through Friday, excluding state observed holidays. Extended coverage up to (24 x 7) shall be available if needed;
- Contractor shall have a toll-free number for all calls (no busy signals, answered by the third ring, hold time no longer than two (2) minutes, and a call tracking system);
- Call back within one (1) hour of placing call; if the phone line remains busy after three (3) attempts the vendor shall email the customer (KDE and district offices all have this ability);

- All technicians shall be properly certified and or licensed to service network hardware;
- The one (1) year of maintenance/warranty in the initial purchase and/or minimum warranty for network hardware shall be fully operational per Service Level 3 of the Network & Voice Minimum Service Level Table;
- Contractor is not responsible for disaster recovery (e.g. reloading application software, reloading network operating software (NOS), re-configuration of the network and IP addresses, and reloading data);
- Replacement parts shall be new or reconditioned, and of equal or better quality than original parts;
- There shall be no charge for any shipping and handling of parts or labor charges for troubles or issues with the equipment;
- The contractor shall ensure the cost is the same throughout the state for installation;
- The contractor shall perform a backup on all devices that have backup capability prior to making hardware or software changes;
- The contractor shall be provided access to the customer's building where the network equipment is located as required to fulfill customer service requests.

Other services such as but not limited to moves, adds, changes (MAC) should be available under the professional services category.

NETWORK MINIMUM SERVICE LEVELS					
Service Level	Definition and Illustration of Typical use	Technician Onsite	Vendor Escalation	Example	Time To Repair
1	Critical hardware failure and/or performance issues	2 clock hours onsite (Unless otherwise agreed upon by customer and vendor) (clock starts at the time customer initiates a service request)	Vendor shall provide upon award of contract	Network core is completely down Destruction of a key facility or component Possible life-threatening situation Widespread outages affecting significant numbers of staff	8 clock hours (Unless otherwise agreed upon by customer and vendor) (clock starts at the time customer initiates a service request)
2	Limited hardware failure and/or performance issues impacting mission critical application and/or services	4 business hours onsite (Unless otherwise agreed upon by customer and vendor) (clock starts at the time customer initiates a service request)	Vendor shall provide upon award of contract	Network connectivity to a single building is lost Loss of a single wiring closet Loss of multiple wireless access locations Widespread performance issues such as building or wiring closet	16 business hours (Unless otherwise agreed upon by customer and vendor) (clock starts at the time customer initiates a service request)
3	Non critical performance issues and outages	16 business hours (Unless otherwise agreed upon by customer and vendor) (clock starts at the time customer initiates a service request)	Vendor shall provide upon award of contract	Outages impacting ten (10) or less users	40 business hours (Unless otherwise agreed upon by customer and vendor) (clock starts at the time customer initiates a service request)

Quarterly reports shall be prepared and submitted by the contractor to the KETS Vendor Manager which will assist KIDS in identifying contractors whom have not successfully

met service response times. The contractor shall meet service specifications for a minimum of ninety-five percent (95%) of total annual service calls. The contractor is allowed this five percent (5%) failure rate based on total service calls they receive annually due to vehicle break down, parts that get lost, addresses being difficult to find, etc.

Contractors who exceed the five percent (5%) failure rate during the 1st quarter shall be required to meet with the KETS Vendor Manager to establish a corrective plan for warranty service. Contractors who exceed the five percent (5%) failure rate for two (2) consecutive quarters shall be required to meet with the KETS Vendor Manager to establish a corrective plan for warranty service and the KDE may recommend a two (2) week suspension of the contract. Contractors who exceed the five percent (5%) failure rate for three (3) consecutive quarters shall be required to meet with the KETS Vendor Manager to establish a corrective plan for warranty service and the KDE may recommend a three (3) week suspension of the contract. Contractors who exceed the five percent (5%) failure rate for four (4) consecutive quarters shall be required to meet with the KETS Vendor Manager to establish a corrective plan for warranty service and the KDE may recommend termination of the contract.

Section 16
Deliveries

Deliverables, Penalty and Penalty Waiver: All deliveries of equipment shall be provided within thirty (30) calendar days of the contractor's receipt of the purchase order from the customer, unless otherwise requested by the purchasing agency in writing. Delivery is defined as the receipt of goods and completion of installation, if required.

Customers purchasing from this Contract shall have thirty (30) calendar days from the date the customer receives a complete order to notify the contractor of any issues with the order (i.e. missing or damaged parts). The contractor may consider the order accepted by the customer after the close of the thirty (30) calendar day window.

Deliverables Penalties: The Contractor agrees that when delivery and/or installation is not made within the contracted timeframes, one percent (1%) per day from the total invoice amount may be deducted from the contractor's invoice for each day the Contractor fails to meet the contracted timeframe. Penalties will continue to be charged to the contractor until the delivery and installation if applicable is complete.

Deliverables Penalty Waiver: The contractor shall not be penalized if within the thirty (30) day delivery period, they have supplied the KIDS and the customer with a written notice indicating the particular model ordered is not available in inventory anymore and a newer different model will be shipped in its place. In this case, the contractor must have submitted the new model to KIDS for evaluation testing. The new model shall <u>not</u> be shipped to the customer until which time the model has been added to the KETS

contract. The contractor shall not use this penalty waiver to notify customers falsely with intentions to stall and send the same unit originally ordered. This conduct may result in termination of contract. Once the contractor receives notification their new model is now available for sales; the thirty (30) day clock starts again.

Section 17
Installation
Installation Requirements: Installation shall be in accordance with the School Construction Technology Checklist found here:
http://education.ky.gov/districts/tech/taps/Documents/School_Construction_Technology_Checklist_Guide_v20.pdf

The customer may choose installation / initial configuration at the time of purchase. The Commonwealth requires the vendor to price installation charges separately from unit price. When installation is purchased, the contractor shall be responsible for unpacking, uncrating, mechanically and electronically installing all hardware and associated hardware options connected with the order. The contractor shall make connection of all power and signal cabling and in all other respects making the equipment ready for operational use.

The customer, at its own expense, shall prepare the site prior to the scheduled delivery date.

Contractor shall provide the agency with a minimum of three (3) business days advance notice before delivery equipment to the building. Contractors shall be totally responsible for removal of all cardboard boxes and packaging material from the customer building. Trash shall be completely removed from the customer premise.

Section 18
Wiring and Cabling
Major cabling shall not be a part of this contract(s). Should minor cabling be required, it will be coordinated and approved by the purchaser prior to installation. Minor cabling is defined as ten (10) or fewer lines.

Wiring and cabling shall be installed in a neat and professional manner and shall be in accordance with the National Electrical Code and the School Construction Technology Checklist found here:
http://education.ky.gov/districts/tech/taps/Documents/School_Construction_Technology_Checklist_Guide_v20.pdf

Section 20
Tax Exempt Status
Do not include Federal Excise Tax, Kentucky Sales or Use Tax in prices quoted in response to this Contract.

Section 21
Basis of Price Revisions
PRICE ADJUSTMENTS: Unless otherwise specified, the prices established by this Contract shall remain firm for the contract period subject to the following:

A: Price Increases: A price increase **shall not occur** during the first twelve (12) months of the contract. **A contractor may request a price increase after twelve (12) months of the contract, which may be granted or denied by the Commonwealth. Any such price increase shall be based on industry wide price changes.** The Contract holder must request in writing a price increase at least thirty (30) days prior to the effective date, and shall provide firm proof that the price increase(s) is justified. The Office of Procurement Services may request additional information or justification. If the price increase is denied, the Contract holder may withdraw from the Contract without prejudice upon written notice and approval by the Office of Procurement Services. Provided, however, that the Contractor must continue service, at the Contract prices, until a new Contract can be established (usually within sixty (60) days).

B: Price Decreases: The Contract price shall be reduced to reflect any industry wide price decreases. The Contract holder is required to furnish the Office of Procurement Services with notice of any price decreases as soon as such decreases are available.

C: Extended Contract Periods: If the Contract provides for an optional renewal period, a price adjustment may be granted at the time the Contract is renewed, subject to price increase justification as required in Paragraph A "Price Increases" as stated above.

Section 22
Vendor Terms and Conditions
The Commonwealth of Kentucky shall not be bound by any part(s) of the Contractor's response that contains information, options, conditions, terms, or prices neither requested nor required in the Contract. In the event of any conflicts between the specifications, terms and conditions indicated by the Commonwealth and those indicated by the Contractor, those of the Commonwealth take precedence. The Contract supercedes all bids or other prior agreements, oral or written, and all other communications between the parties relating to this subject.

Section 23
Post Contract Agreements
This Contract shall constitute the entire agreement between the State and awarded Contractor. Unless contractually provided, State agencies utilizing this Contract will not

be required to enter into nor sign further agreements, leases, company orders or other documents to complete or initiate the terms of this Contract. Any such documents so obtained will be non-binding on the State and agents of the State and will be cause for breach of contract.

Section 24
Equipment
All equipment must be a new and current model. The Commonwealth recognizes the rapid advancement of technology. If the Contractor can provide new equipment of advanced technology after the award of the Contract, the Commonwealth and the Contractor may choose by mutual agreement to install such equipment. The price of the new technology equipment cannot exceed the cost of the award Contract.

Section 25
Equipment / Condition
Unless otherwise indicated in this contract, it is understood and agreed that any item offered or shipped on this contract shall be new and the latest or current year model and be in first class condition. Any unit failing to meet the foregoing requirements shall be returned to the contractor, at their expense, and replaced with a new unit.

Section 26
Quantity Basis of Contract – Estimated Quantities
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 will be required to furnish all requirements shown on Delivery Orders dated during the life of the contract.

Section 27
Manuals
Instruction and operating manuals shall be furnished for all equipment installed.

Section 28
Distribution of Literature
Upon request, the Contractor shall furnish State agencies and other public bodies with descriptive literature and service information for items awarded.

Section 29
Vendor's Report
The Contractor(s) may be asked to furnish the buyer, Office of Procurement Services, a report showing volume which has been sold to the Commonwealth and its using agencies each six (6) months of the contract period. The report will include political subdivisions and university purchases. This report may be the contractor's computer printout sheet or form. This shall apply to all items, which are to become a part of this

contract. This report must reference usage by brief description, product number or other format designated by the Office of Procurement Services.

In addition to the reporting requirement by the Office of Procurement Services, the contractor shall submit both a quarterly sales report and a quarterly warranty/maintenance report to the Kentucky Department of Education KETS Vendor Manager. The contractor shall maintain accurate records indicating sales from the KETS contract. Reports will contain the following fields: contract number, invoice date, customer name, product number, description (must include model name and number), unit price, list price, quantity purchased, total price, discount off MSRP.

The contractor shall prepare and submit electronically this information no later than ten (10) business days after the end of each quarter to the KETS Vendor Manager. It will be responsibility of the contractor to submit the quarterly sales reports. The KETS vendor manager or the KDE shall not be responsible for reminders to submit reports. The KDE Office of KIDS shall report any failure to submit and/or late submissions of sales reports on the annual contract review.

Upon contract award, the Contractor shall provide a description of a copy of procedures for requesting escalation, complaint resolution and identify the staff available for installations, billing problems, etc. The Contractor shall provide updated information annually at a minimum.

The contractor shall maintain accurate records indicating service performance of hardware purchased from the KETS contract. Reports will contain the following fields: Customer name, service call date, Hardware & Service Description including models and versions respectively, Warranty or SLA Coverage, and Service Completion Date.

The contractor shall prepare and submit electronically this information no later than ten (10) business days after the end of each quarter to the KDE KETS Vendor Manager. It will be responsibility of the vendor SPOC to submit the quarterly service reports and the SPOC will not hold the KETS vendor manager responsible for reminders. The KDE Office of KIDS shall report any failure to submit and/or late submissions of warranty service reports on the annual contract review.

Section 30
FOB Basis of Shipment – Vendor Responsible
Quotations of unit prices on this Contract shall be F.O.B. Destination Freight Prepaid and Allowed. The Contractor shall be fully responsible for all shipments and freight charges involved to the ordering agency.

Section 31
Cancellation Clause – 30 Days Notice
The Commonwealth may cancel this Contract by giving written notice thirty (30) days

prior to 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 Procurement Services canceling the contract.

Section 32
Exception to Required Use of Contract
The establishment of this Master Agreement is not intended to preclude the use of similar products when requested by the agency. The Commonwealth of Kentucky reserves the right to contract for large requirements by using a separate solicitation.

Section 33
Service Performance
All services performed under contract shall be in accordance with the terms and provisions of this Contract. It will be the agency's responsibility to ensure that such services rendered are performed and are acceptable.

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

Major deviations of services performed will not be made without the written approval of the Office of Procurement Services. Problems that arise under any aspect of performance should first be resolved between the Contractor and the agency. Either party should refer in writing any such problems and/or disagreements that cannot be resolved to the Office of Procurement Services for settlement.

Section 34
Addition or Deletion of Items or Services
The Office of Procurement Services reserves the right to add new and similar items, with the consent of the Contractor, to this Contract. The Office of Procurement Services to effect this change will issue a Contract Modification. Until such time as the Contractor receives a Modification, the Contractor shall not accept Delivery Orders from any agency referencing such items or services.

Section 35
Agreement between Parties
The Contractor agrees that this 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 the Solicitation. 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 Procurement Services.

Section 36
Funding-Out Provision
The Contractor 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 Contractor, 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.

Section 37
Leasing
Leasing agreements shall meet all legal requirements for the Commonwealth of Kentucky and the Kentucky Department of Education. The Contractor shall quote hardware warranty coverage for the duration of the lease period. No changes or substitutions to the Commonwealth Lease Agreement may be made without the approval of the Kentucky Department of Education and the Finance Cabinet Office of Procurement Services. Lessee shall not be penalized for failure to return copies of device technical documentation such as CDs if reasonable efforts have been made to store, track and return them at the end of a lease. Information provided by the Contractor of leased items on any Lease quote or schedule of equipment shall include the following: description (including model name and number where applicable), price, quantity, total quantity price, and the KETS contract number. When there is a residual lease value the Contractor shall clearly identify the residual value per unit and the total quantity residual value. The residual value must be clearly identified in the lease quote and lease agreement. Lease payments will be addressed to the contract holder.

Section 38
Governmental Restrictions
In the event any Governmental restrictions may be imposed which would necessitate alteration of the material, quality, workmanship, or performance of the items offered on this proposal prior to delivery, it shall be the responsibility of the Contractor to notify the Office of Procurement Services in writing, indicating the specific regulation which requires such alterations. The Commonwealth reserves the right to accept any such alterations, including any subsequent price adjustments, or to cancel the contract.

Section 39
Payments
The Contractor 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 contractor's invoice in accordance with KRS 45.453 and KRS 45.454.

Section 40
Inspection
All supplies, equipment and services shall be subject to inspection or tests by the Commonwealth prior to acceptance. In the event supplies, equipment or services are defective in material or workmanship or otherwise not in conformity with specified requirements, the Commonwealth shall have the right to reject the items or services or require acceptable correction at the Contractor's expense.

Section 42
Subcontracts
The Contractor is permitted to make subcontract(s) with any other party for furnishing any of the work or services herein. The Contractor shall be solely responsible for performance of the entire Contract whether or not subcontractors are used. The Commonwealth shall not be involved in the relationship between the prime contractor and the subcontractor. Any issues that arise as a result of this relationship shall be resolved by the prime contractor.

All references to the Contractor shall be construed to encompass both the Contractor and any subcontractors of the Contractor.

Section 43
Federal Tax Exempt Purchases by the Commonwealth of Kentucky
Contracts Direct With Manufacturer: In the event a manufacturer bids direct and is awarded a contract, the Office of Procurement Services shall request the contractor to furnish evidence of registration with the U.S. Internal Revenue Service. This registration shall be in accordance with the "Temporary Rules, 1958 Excise Tax Act". After such registration, individual Excise Tax Exemption Certificates are not necessary on each individual order issued against the contract by the Office of Procurement Services. Therefore, quoted prices must be exclusive of Federal Excise Taxes.

Section 44
The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding $500,000. The Contractor shall comply with all terms and conditions of the Act.

Section 45
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 48
Access to Records

The contractor, as defined in KRS 45A.030 (9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004.

Section 50
Reduction in Contract Worker Hours
The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

Section 51
Accessibility
Contractor hereby warrants that the products or services to be provided under this Contract comply with the accessibility requirements of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1194. Contractor further warrants that the products or services to be provided under this Contract comply with existing federal standards established under Section 255 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 255), and its implementing regulations set forth at Title 36, Code of Federal Regulations, part 1193, to the extent the Contractor's products or services may be covered by that act. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

Section 52
Funding Limitations
If this Contract exceeds the amount of funding available, then the Finance and Administration Cabinet, Office of Procurement Services, reserves the right to cancel this Contract.

Section 53
Provisions for Termination of the Contract
This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

Section 54
ALL PROVISIONS OF SOLICITATION (RFB 758 1300000588) SHALL BE PART OF THIS MASTER AGREEMENT.

ATTACHMENT A
COST FORM

E-Rate Eligible Basic Services - Network	Discount off MSRP
Wired Stackable –47 ports or less	67%
Wired Stackable – 48 ports or more	67%
Wired Core	64%
Wireless – Access Points	64%
Wireless – Controllers	64%
Cables/Accessories	64%
Installation / Initial Configuration	30%
Training (Technician/System Admin Training)	30%
Maintenance (Hardware) Support	30%
Maintenance (Software) Support	25%

Non-E-Rate Eligible Basic Services - Network	Discount off MSRP
Network Management Software	64%
Network Professional Services	30%
Network Accessories	64%
Wireless – Configuration Software	64%

ATTACHMENT C

Secretary's Order 11-004

FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.

II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.

III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC

shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.

V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

ATTACHMENT E
SAMPLE COMMONWEALTH LEASE AGREEMENT
Term Lease Agreement

THIS TERM LEASE AGREEMENT is made this ____ day of _____, 20__

WHEREAS, The Commonwealth of Kentucky ("Lessee") and _____ ("Lessor") desire to enter into a Term Lease Agreement No. _____, dated _____ (the "Lease Agreement") and;

NOW, THEREFORE, the parties hereby agree as follows:

Lease
Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, all hardware, software and other property (collectively, the "Equipment" and individually the "Item" or "Items of Equipment" described in the Equipment Schedule (Exhibit A) attached hereto and made a part hereof). Lessee acknowledges responsibility for choosing the Equipment to be leased. Lessor hereby affirms to have the ability to perform responsibly in connection with this Lease Agreement. Lessor has the capability in all respects to perform fully the Lease requirements, and the experience, integrity, perseverance, reliability, capability, facilities, equipment, and credit that will assure good faith performance.

Order of Equipment
Lessor agrees to arrange for delivery of the Equipment within thirty (30) days of the date of the Lease Agreement. All Equipment shall be completely configured with components and software prior to delivery. Lessor shall provide at time of delivery to Lessee the operational manuals for all hardware and software provided by Lessor. Delivery shall include unpacking and setting up Equipment as requested by the Lessee. Original boxes and packing shall be removed from the Lessee's premises and retained by the Lessor if Lessor requires re-packing of equipment at the end of the Lease period. There shall be no additional costs for configuration, delivery, or setup of Equipment. There shall be no additional charge for any Equipment delivered and installed earlier than other Equipment.

Term
The date of the Lessee's signing of the Certificate of Acceptance (Exhibit B which shall be attached hereto and made a part hereof) shall be the "Lease Commencement Date". The term of this Lease with respect to each item of Equipment as detailed in the Equipment Schedule (Exhibit A) shall commence when the Certificate of Acceptance (Exhibit B) is signed by Lessee or as otherwise specified herein and shall end upon the expiration of the number of months specified in the Equipment Schedule (Exhibit A).

Use
Lessee covenants and represents to Lessor that the Equipment will be used exclusively for official governmental agency purposes and will not be used at any time during the Term of this Lease for personal, family, or household purposes.

Lessee's Inspection and Acceptance

The Lessee's acceptance of the Equipment shall be evidenced by the Lessee's signing of the Certificate of Acceptance (Exhibit B). Lessee shall inspect each item of Equipment within five (5) work days of delivery and installation for acceptability thereof and if Equipment is acceptable shall promptly execute the Certificate of Acceptance (Exhibit B). Unless within such period of time Lessee gives written notice to Lessor specifying any defect in the Equipment or any other proper objection to the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that Lessee has accepted the Equipment and the Lease shall be deemed to commence on the sixth day after delivery. If Lessee gives such written notice to Lessor, the Equipment shall be deemed to be unacceptable.

Equipment Location

Lessee shall keep and use the Equipment at the Lessee address location as specified below. However, Lessee may move the Equipment to another location upon informing the Lessor of the new location.

_____
_____
_____
_____

Equipment Maintenance
Lessee must maintain and use the Equipment in compliance with all laws and regulations and in accordance with a manufacturer-approved maintenance program or agreement. If the Equipment malfunctions, is damaged, lost or stolen, Lessee agrees to continue to make all payments due under this Lease Agreement and each Schedule. This does not limit nor eliminate any rights or remedies Lessee may have against the Equipment manufacturer or supplier related to Equipment malfunction.

Title and Personal Property
The Equipment at all times shall be and remain the sole and exclusive property of Lessor during the Lease Term and Lessee shall have no right, title, or interest herein. In the event Lessee purchases missing/unfound Equipment at the end of Lease term, title shall transfer to Lessee at that time.

Liens and Taxes
Lessor shall keep the Equipment free and clear of liens and encumbrances. Lessee

shall not be responsible for any taxes (property, local, state, or federal) related to ownership of the Equipment.

Lease Payments

Lease payments shall be made in accordance with Payment Schedule (Exhibit C attached hereto and made a part hereof).

The Lease payments for Equipment during the Term shall be payable to the Lessor in the amounts and sent to the address as specified on a per schedule basis on the Assignment Acknowledgement

Lease payments shall be paid on a _____basis. First Lease payment shall be due no less than thirty (30) days after Lease Commencement Date or Lessor billing date, whichever is the later, for all Equipment.

Assignment

LESSEE MAY NOT SELL, PLEDGE, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS LEASE AGREEMENT OR ANY SCHEDULE. Lessor may sell, assign, or transfer all or any part of this Lease Agreement, any Schedule, and/or the Equipment. Assignment requires Lessee's prior written approval which will not be unreasonably withheld. The new owner will have the same rights that Lessor had, but Lessee agrees Lessee will not assert against the new owner any claims, defenses or set-offs that Lessee may have against Lessor or any supplier. The parties agree that any assignment will not materially affect Lessee's rights and benefits under this Lease Agreement or any Schedule.

Loss and Damage

Lessee assumes risks and liabilities directly related to loss, theft, damage, or destruction to any Equipment. No loss, theft, damage, or destruction of the Equipment shall relieve Lessee of the obligation of Lease payments or any other obligation under this Lease.

Insurance

Until a Schedule is paid in full and the Equipment has been returned to Lessor, Lessor will obtain insurance on the Equipment and Lessee acknowledges that the costs are included in the amount due under the applicable lease.

Notices

Lessor shall keep Lessee informed of their current address at all times. Service of all notices under this Lease shall be sufficient if mailed to the party involved at its respective address as set forth in the Lease Agreement or at such addresses as such party may provide in writing from time to time. Any such notice mailed to such address shall be effective when deposited in the United States mail via certified mail or other

dated deliverance method such as Federal Express or UPS.

Return of Equipment or Purchase of Missing/Unfound Equipment

If Lessee does not exercise the lease End Purchase Option at the end of any Schedule term, as extended or renewed ("Termination Date"), Lessee will arrange for Equipment to be immediately crated, insured, and shipped, in good working condition, to Lessor by means Lessor will designate, with all expenses to be prepaid by Lessee. If Lessee fails to return the Equipment to Lessor as agreed, Lessee shall pay to Lessor the regular Lease payments each month from the Termination Date until the Equipment is returned. Lessee will be responsible for any damage to the Equipment during shipping.

Funding Out Provision

Lessee presently intends to continue this Lease hereunder for its entire Lease Term and pay all Lease payments thereto. Lessee will include in its budget proposal and use all reasonable and lawful means available to secure the appropriation of money for such payments. Lessor acknowledges that appropriation is a governmental function which Lessee cannot contractually commit itself in advance and this Lease Agreement does not constitute such a commitment. However, Lessee reasonably believes that moneys in an amount sufficient to make payments will be appropriated.

Other provisions of this Lease Agreement notwithstanding, the Lessor agrees that if funds are not appropriated to the Lessee or not otherwise available for the purpose of making payments hereunder, then the Lessee shall be authorized, upon sixty (60) days written notice to the Lessor, to terminate this Lease Agreement without obligation for the payment of any cancellation or termination charges. Lessee shall provide supporting documentation of funding lapse if Lessee initiates termination under this provision.

Non-waiver

No covenant or condition of this Lease shall be waived except by written consent of the Lessee and the Finance and Administration Cabinet, Office of Procurement Services by issuance of an official Modification.

Warranties

LESSOR IS LEASING THE EQUIPMENT TO LESSEE "AS IS", WITH NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Lessor assigns to Lessee for the term of this Lease Agreement and each Schedule any transferable manufacturer or supplier warranties. Such warranties are the sole covenant and obligation of the Equipment manufacturer or supplier; thereby Lessor or its assignees

are not liable for any breach of those warranties. Lessee agrees that upon Lessee's acceptance of the Equipment, Lessee will have no set-offs or counter-claims against Lessor.

For the sake of clarity, please distinguish between the general obligations of the manufacturer in connection with the sale and performance of the Equipment, and the limited obligations of Lessor, as Lessor, as stated in this Lease Agreement and each Schedule. Lessee acknowledges any right of return is solely with the manufacturer or supplier and not with the Lessor. Claims connected to the Equipment's performance must be addressed by Lessee directly with the Equipment manufacturer or supplier, separate and apart from the leasing relationship, and Lessee may not withhold lease payments during the pendency of such claims.

Default; Damages

If Lessee (a) fails to make any lease payment when due or (b) becomes insolvent or commences bankruptcy or receiverships proceedings or has such proceedings commenced against Lessee, or (c) terminates Lessee's existence by merger, consolidation, sale of substantially all Lessee's assets, or (d) defaults under any other agreement Lessee has with Lessor or Lessor's affiliates, or (e) otherwise breaches any provision of this Lease Agreement or any Schedule, Lessor may accelerate the remaining balance due on this Lease Agreement and any Schedule and demand the immediate return of the Equipment to Lessor. If Lessee does not return the Equipment to Lessor within (10) days of Lessor's notice of Lessee's default, Lessee will also pay a liquidated Equipment charge equal to the anticipated Lease-end residual value of the Equipment. Lessor may also use any remedies available to Lessor under the Uniform Commercial Code or any other applicable law. In the event of court action in which there is a final judgment, the losing party will pay all legal fees and expenses in addition to any judgment. Lessor will provide Lessee with notice and due process of law on any repossession or disposition of the Lease. To the extent permitted by law, Lessor will not be responsible to Lessee for any consequential or incidental damages. Lessor's delay or failure to enforce Lessor's rights under this Lease Agreement and each Schedule will not prevent Lessor from doing so at a later time.

Entire Lease Agreement

The terms and conditions of this Term Lease Agreement, Equipment Schedule (Exhibit A), Certificate of Acceptance (Exhibit B), Payment Schedule (Exhibit C), and the Master Agreement (_____ and any Modifications thereto) upon which it is based shall constitute the entire Lease Agreement between the Lessee and the Lessor. These terms and conditions shall not be amended, altered, or changed except by the written agreement of both parties and issuance of an official change order by the Finance and Administration Cabinet, Office of Procurement Services. Lessee shall not be required to sign any other lease agreement. Should Lessor request that any Commonwealth officer

or employee sign such documents, and such documents are signed, any such documents shall not be binding on the State and shall be cause for termination of the Lease. This Lease Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and any litigation with respect to this Lease Agreement shall be brought in state or federal court in Franklin County, Kentucky.

THIS LEASE IS SUBJECT TO THE TERMS AND CONDITIONS WRITTEN ABOVE AND WHICH LESSEE AND LESSOR ACKNOWLEDGE HAVING READ. THIS LEASE SHALL BE EFFECTIVE UPON ON THE DATE WRITTEN FIRST ABOVE.

LESSOR

By: _____

Print Name: _____

Title: _____

Date: _____

LESSEE

By: _____

Print Name: _____

Title: _____

Date: _____

Lease Authorized by:

_____
Finance & Administration
Office of Procurement Services
Master Agreement # _____
Assigned to this Lease

EQUIPMENT SCHEDULE
(Exhibit A)

This Equipment Schedule (Exhibit A) is attached to and is governed by the terms and provisions of the Term Lease Agreement dated _____, _____ by and between The Lessor, _____ (Lessee) and _____ (Lessor).

1. The Equipment leased hereunder is as outlined below:
(attach additional pages, if necessary)

Quantity	Make/Model #	Serial Number(s)	Cost Per Unit	Residual Amount

Detail of inspection criteria required at termination of Lease period.

_____

_____

_____

Interest Rate _____ as determined by the criteria set out below:

Are manuals for hardware and software to be returned at end of Lease period?
Yes No If yes, what is the cost of non-returned manuals? _____ (Select one)
The per annum interest rate from which the Lease Rate Factors shall be calculated is the interest rate based on the three (3) year U. S. Treasury Constant Maturity or other date as shall be established by the Federal Reserve, as described in the weekly Federal Reserve Statistical Release H.15 ("Treasury Rate") plus or minus a spread (quoted in Basis Points). This rate shall be fixed as defined by the base rate +/- spread for the life of any Lease Agreement established during that month. This interest rate shall be all-inclusive and shall not be subject to any fees or other costs.

5. Lease Terms:

Term - 24 months _____ 36 months _____ 48 months _____ or 60 months _____

Payment Period - _____ based on Commencement Date

Residual Value Per Unit - _____ X Quantity = Total Residual Value _____

(Shall reference Equipment residual total as detailed on Equipment Schedule (1.))

Monthly/Quarterly/Annual Lease Payment - _____ (circle one)

CERTIFICATE OF ACCEPTANCE
(Exhibit B)

In compliance with the terms, conditions and provisions of the Term Lease Agreement dated _____, _____("Lease") by and between the undersigned ("Lessee") and _____ ("Lessor"), Lessee hereby accepts all of the Equipment for all purposes under the Lease and all attendant documents as of _____,

_____ (Lease Commencement Date).

LESSOR (LESSEE)

Using Agency: _____

By: _____
(Authorized Approval By - Name)

Title: _____

Date: _____

TERM LEASE QUOTE FORM

Lease Period - _____ months

From _____ till _____
(Date) (Date)

Original Equipment Cost _____

Less Residual Value of Equipment _____

Ancillary costs (itemize and attach separately) – Total _____

Total Cost for Lease _____

Interest Rate Spread _____

Monthly/Quarterly/Annual Lease Payment (circle one) _____

Lease Payment Schedule (Level Payments) - to be attached

This quote issued as of _____, _____ based on the three (3) year U. S. Treasury Constant Maturity or other date as shall be established by the Federal Reserve, as described in the weekly Federal Reserve Statistical Release H.15 ("Treasury Rate") plus/minus a spread to the Base Rate as defined.

BY:

_____,
LESSOR

_____ _____
(Authorized Approval by - Name) (Title)

[ATTORNEY'S LETTERHEAD]

OPINION OF COUNSEL

RE:	Term Lease Agreement No. , dated as of , 200 , by and between _____ ("Lessor") and Commonwealth of Kentucky ("Lessee")

_____ or its Assignee:

This firm has acted as counsel to Lessee with respect to the Term Lease Agreement described above (the "Lease") and various related matters, and in this capacity has reviewed a duplicate original or copy of the Lease, including all Exhibits and attachments thereto. Based upon the examination of these and such other documents, records and papers as we deem relevant and necessary as the basis for the opinion set forth below, it is this firm's opinion that:

Lessee is authorized and has power under applicable law to enter into the Lease, and to carry out its obligations thereunder and the transactions contemplated thereby.

The Lease has been duly authorized, approved, executed, and delivered by and on behalf of Lessee, and is a valid and binding contract of Lessee enforceable in accordance with its terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.

No further approval, consent, or withholding of objections is required from any federal, state, or local governmental authority with respect to the entering into or performance by Lessee of the Lease and the transactions contemplated thereby.

The authorization, approval, and execution of the Lease and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public bidding and all other applicable laws, rules and regulations.

The entering into and performance of the Lease and other related documents, and the appropriation of moneys to pay the Lease payments coming due thereunder, will not result in the violation of any judgment, order, law, rule or regulation applicable to Lessee, or any constitutional, statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee, nor result in the creation of any lien, charge, security interest, or other

encumbrance upon any assets of Lessee or the equipment pursuant to any indenture, mortgage, deed or trust, bank loan, credit agreement or other instrument by which the Lessee is a party or by which it or its assets may be bound.

There is no litigation, action, suit or proceeding pending or before any court, administrative agency, arbitrator or governmental body which (i) if adversely determined, will have a material adverse effect on the ability of Lessee to perform its obligations under the Lease, or (ii) challenges the organization or existence of Lessee; the authority of Lessee or its officers or its employees to enter into the Lease; the proper authorization, approval and/or the appropriation of moneys to make Lease payments under the Lease for the current fiscal year of Lessee; or the ability of Lessee otherwise to perform its obligations under the Lease and the transactions contemplated thereby.

The person's signature which appears therein or is designated therein is the appropriate person to execute the Lease and has actual authority to do so.

We acknowledge and agree that Lessor intends to rely on the above statements in order to enter into Lease.

Respectfully yours,

By: _____

Attorney for: _____

Dated: _____