VENDOR CONTACT:
HP Representative:
John Mackay
Phone: 248-318-3845
Email: john.mackay@hp.com

Or

Justin Thompson
Phone: 800-277-8988 ext. 7710652
Email: justin.e.thompson@hp.com

Pomeroy Representative (Sales Agent):
Brett Kiser
Phone: 859-586-0600 ext 1174
Phone: 859-466-4092
Email: bkiser@pomeroy.com

Terms and Conditions
Master Agreement

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

KETS Server Equipment

Section 2
Initial Contract Period
This Contract shall be for the initial period of two (2) years from the date of award.

Section 3
Renewal Clause – Optional Renewal Period
This Contract may be extended at the completion of the initial Contract period for four (4) additional one (1) 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 Vendor 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 4
Agencies to be Served
This Contract shall be for use by the following agency of the Commonwealth of Kentucky:

Kentucky Department of Education (KDE)
Kentucky's one hundred and seventy-four (174) school districts
Kentucky School for the Blind (KSB)
Kentucky School for the Deaf (KSD)

Section 5
Service Warranty
Vendor must be able to provide various levels of warranty service for all hardware offered on contract. Failure to be able to provide the following types of warranty options may result in suspension or termination of this contract.

Under all warranty options, the manufacturer shall provide limited warranty maintenance for items purchased through this contract. Limited warranty maintenance does not extend to the product that has been damaged or rendered defective due to:

a) A result of accident, misuse, or abuse
b) A result of an act of God
c) Operation outside the usage parameters stated in the products user manual
d) Modification of the product
e) A result of service by anyone other than (manufacturer), a (manufacturer) authorized reseller, or a (manufacturer) authorized service provider. Expendable parts, such as non-rechargeable batteries, carrying cases, etc. are not covered. Damage due to loss of any programs, data or removable storage media is not covered

DEPOT WARRANTY (Monitors ONLY): Depot warranty means that upon determining the hardware requires service, the vendor will provide to the District/School a shipping container within 24 clock hours for the District/School to package and ship the hardware to the manufacturer's authorized repair facility. The repaired hardware will be returned within 72 clock hours to the District/School.

Depot warranty for a minimum of three (3) years is required on all monitors. Vendors shall also offer to the purchaser options for four (4) or five (5) year Depot

warranty periods to begin at time of delivery of the equipment.

This warranty shall meet the following criteria:

- No charge for labor including installation of parts, connection of all power and signal cables, and all involved with making the hardware fully functional and establishing connectivity per type of hardware repaired;
- All technicians shall be certified professionals by manufacturer before providing warranty services;
- Hardware fully operational and returned within 72 clock hours. Vendor is not responsible for disaster recovery;
- The cost is the same throughout the state. For example, you cannot charge additional costs for servicing Paintsville versus Lexington;
- Replacement parts shall be of equal or better quality than original parts;
- There shall be no charge assessed to the District/School for any shipping and handling in the shipment or return of the equipment

ON-SITE WARRANTY: On-site means the vendor goes to the location of the equipment purchased, in a school, district office, state agency, etc. Customers shall be required to purchase one of two 3-year on-site Warranties with each and every server purchased under the KETS contract. Both warranties shall cover service for the server and all optional components purchased under this contract to include the Un-interruptible Power Surge (UPS) protection devices and video monitors for the entire 3-year period. Warranties shall meet the criteria detailed as follows:

Warranty #1 (Level 1): Vendor response within 4 business hours. Customers at their own discretion shall have the option of scheduling the vendor on-site the next business day. Vendor shall perform all fault determination and must return again on-site to install any new or reconditioned parts so the server is operational within 24 business hours (3 days) of initial call, Monday through Friday. This requires the customer to report the problem to the vendor. The customer shall not spend any time doing fault determination so they are free to work on other responsibilities.

- Three (3) year on-site coverage of the entire state of Kentucky (upgradeable to 4 or 5 years);
- Must have a toll-free phone number for all calls (no busy signals, answered by the third ring, hold time no longer than 2 minutes, and a call tracking system);
- All labor including installation of parts, connection of all power and signal cables, reinstallation of device drivers (e.g. network, video, hard disk, CD/ROM, SCSI controller, UPS, video monitor, RAID, etc.) and all involved with making the server fully functional and ready for installation of NOS;
- 5 business days per week, Monday through Friday;
- Call back within 1 hour of placing call; If the phone line remains busy after 3 tries you

must: E-mail the customer if at all possible (KDE and district offices all have this ability and 60% of the schools have this ability). If the school doesn't have e-mail and their phone line remains busy after three separate tries (each attempt must be at least 5 minutes apart) then you must either fax them, e-mail the district office or telephonically inform the DTC or technical staff at the district office;

- All technicians shall be certified professionals by server manufacturer before providing warranty services;
- Server hardware fully operational within 24 business hours or 3 days. Vendor is not responsible for disaster recovery (e.g., reloading application software, reloading network operating software (NOS), re-configuration of network and IP addresses, and reloading data);
- The cost is the same throughout the state. For example, you cannot charge additional costs for servicing Paintsville versus Lexington;
- 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

Warranty #2 (Level 2): Vendor response within 4 business hours. Vendor must be on-site to install any new or reconditioned parts so the server is operational within 24 clock hours of initial call, 7 days per week. This requires the customer to report the problem to the vendor. The customer shall not spend any time doing fault determination so they are free to work on other responsibilities.

- Three (3) year on-site coverage of the entire state of Kentucky (upgradeable to 4 or 5 years);
- Must have a toll-free phone number for all calls (no busy signals, answered by the third ring, hold time no longer than 2 minutes, and a call tracking system);
- All labor including installation of parts, connection of all power and signal cables, reinstallation of device drivers (e.g. network, video, hard disk, CD/ROM, SCSI controller, UPS, video monitor, RAID, etc.) and all involved with making the server fully functional and ready for installation of NOS;
- 7 days per week, 24 hours per day;
- Call back within 1 hour of placing call; If the phone line remains busy after 3 tries you must: E-mail the customer if at all possible (KDE and district offices all have this ability and 60% of the schools have this ability). If the school doesn't have e-mail and their phone line remains busy after three separate tries (each attempt must be at least 5 minutes apart) then you must either fax them, e-mail the district office or telephonically inform the DTC or technical staff at the district office;
- All technicians shall be certified professionals by server manufacturer before providing warranty services;
- Server hardware fully operational within 24 clock hours. Vendor is not responsible for disaster recovery (e.g., reloading application software, reloading network operating software (NOS), re-configuration of network and IP addresses, and reloading data);
- The cost is the same throughout the state. For example, you cannot charge additional costs for servicing Paintsville versus Lexington;

- 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

<u>Warranty Options.</u> In addition to the 3-year warranty purchase requirement that all districts must make with all server purchases, the vendor is required to also offer 4 and 5 year on-site warranty upgrade options that can be purchased at the district's discretion. These 4 and 5-year warranty options will be offered in two variations (Level 1 and Level 2) according to the Service Level Agreements above. The 4 and 5-year warranties are completely optional for districts to purchase.

<u>Self-Maintainer.</u> Vendor must be able to facilitate the customer to become a self-maintainer of hardware that is purchased. Being a self-maintainer allows the District/School to have staff certified on the manufacturer's brand of hardware to provide in-house servicing for hardware problems. Several districts within the Commonwealth currently are manufacturer certified to perform such service, which provides for cost savings as well as the opportunity within some districts for the Student Technology Leadership Program (STLP) to gain hands-on experience that can be invaluable educational experience.

<u>Warranty Penalties</u>. There shall be a complaint desk at KDE site so our customers can quickly document vendors that are failing to meet the service requirements of the contract. Quarterly reports will be generated which will assist us in identifying vendors whom have not successfully met service response times. The vendor shall meet service specifications in this Section 30.100 for a minimum of 95% of total annual service calls. The vendor is allowed this 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.

Vendors who exceed the 5% failure rate during the 1st quarter shall be required to meet with the OET Vendor Manager to establish a corrective plan for warranty service. Vendors who exceed the 5% failure rate for 2 consecutive quarters shall be required to meet with the OET Vendor Manager to establish a corrective plan for warranty service and the OET shall recommend a 2 week suspension of the vendor contract to the DMPS. Vendors who exceed the 5% failure rate for 3 consecutive quarters shall be required to meet with the OET Vendor Manager to establish a corrective plan for warranty service and the OET shall recommend a 3 week suspension of the vendor contract to the DMPS. Vendors who exceed the 5% failure rate for 4 consecutive quarters shall be required to meet with the OET Vendor Manager to establish a corrective plan for warranty service and the OET shall recommend termination of the vendor contract to the DMPS.

The contract holder shall be held solely accountable for all services conducted under the terms and conditions specified in this warranty. Service calls taken by any technical support center(s) shall be quickly turned over to second and third levels of support for quick resolution rather than attempts to resolve issues at that point. All support personnel shall be certified by the manufacturer of equipment (for example, if this vendor supplies Vendor X equipment, support staff shall hold a manufacturer's certification and be certified by Vendor X to perform service on Vendor X equipment).

Service Reporting. The vendor shall maintain accurate records indicating a minimum of the following:

- Total units sold with warranty per District
- Total units sold without warranty per District
- Number of service calls by District made in complete compliance to specifications outlined in this Section 30.100
- Number of service calls not resulting in complete equipment functionality within 48 hours of initial service call
- Detailed data regarding customers name, address, phone number, date of service, date service is complete, and reasons this service call was not complete within 48 hours shall be required

The vendor shall meet service specifications of Section 30.100 of the Solicitation for a minimum of 95% of total annual service calls. The vendor is allowed this 5% quarterly failure rate. The vendor shall prepare and present this information quarterly to the KETS Vendor Manager as specified in Section 40.072 of the Solicitation.

90-DAY SERVICE EVALUATION: The Commonwealth shall evaluate on-site warranty service by conducting multiple response time and quality assurance tests during the initial 90-day period of the contracts. This initial period will be a probationary contract with continuance dependent upon successful completion of the warranty service evaluation.

The vendor shall respond to various on-site service requests in any or all eight (8) regions throughout the entire state of Kentucky within four (4) working hours for all service requests. The technician must be certified by the manufacturer to provide service on equipment requesting service. If more than one (1) technician is responding to an on-site service request at least one (1) technician shall be certified by the manufacturer. Evaluation can occur on any day, Monday through Friday, at any time between 7:00am and 6:00pm Eastern Time, during the initial 90-day probationary period. Evaluation will also include testing call backs from service center, e-mail response times, time of delivery for parts, replacement and fix times, and skill level of your on-site and telephonic support staff.

If the vendor fails the support evaluation at any time during this initial 90-day probationary period, they may be terminated from the KETS approved vendor list.

Section 6
Deliverables
All deliveries of equipment must be provided within 30 days. All deliveries of equipment must include:

- Standard components as defined in Section 30;
- Power Cabling;
- Drivers;
- Initial supplies;
- Technical equipment manuals;
- Operator Manuals;
- Current firmware installed on hardware
- Optional Installation: If installation has been purchased, installation and setup of equipment shall include unpacking equipment from box(s), mechanical and electrical installation of all components to main unit. Connection of all power and signal cables, and removal of boxes from customer site.

Deliverables Penalties. Delivery penalties will be applied at a rate of 5% for each seven (7) day calendar week for those products not delivered within 30 calendar days of receipt of purchase order.
Deliverables Penalty Waiver. The vendor shall not be penalized if within the 30-day delivery period, they have supplied the DMPS, Office of Education Technology (OET), 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 per the terms provided in Section 30.080. In this case, the vendor must have submitted the new model to OET for evaluation testing, and notified DMPS proposing the new model upgrade before the date the purchase order was received. The new model shall not be shipped to the customer until which time the DMPS has approved it for the KETS contract. The vendor shall not use this penalty waiver to notify customers falsely with intentions to stall and send the same unit originally ordered. This conduct shall result in termination of contract. Once the vendor receives notification their new model is now available for sales; the 30-day clock starts again.
Section 7
Hardware Installation Option
Purchaser may choose installation at time of purchase. The Commonwealth requires the vendor to price installation charges separately from unit price. When installation is purchased, the vendor shall be responsible for unpacking, uncrating, mechanically and electronically installing all hardware and associated hardware options connected with

the order. The vendor shall make connection of all power and signal cabling and in all other respects making the equipment ready for operational use.

The Commonwealth and/or purchaser, at its own expense, shall prepare the site prior to the scheduled delivery date.

The vendor is not responsible for disaster recovery (e.g., application software, reloading data, reloading and configuring print drivers).

Section 8
Basis of Price Quotations/Revisions – Manufacturers Published Price List
Prices will be based on the manufacturers' published price list, and will only be changed as the price list is changed from general distribution. The proposed price changes must be delivered to the buyer, Office of Procurement Services, and the effective date will be the date the change is made in the electronic procurement system used by the Office of Procurement Services or at a later date if so proposed. Prices will be changed as new manufacturers' printed prices are posted, and ALL SUCH CHANGES WILL HAVE AN EFFECTIVE DATE TWENTY (20) DAYS FOLLOWING RECEIPT AND ISSUANCE OF A MODIFICATION BY THE OFFICE OF PROCUREMENT SERVICES. This will apply to price changes either plus or minus. The percentage rate (add on or discount) shall remain constant throughout the life of the Master Agreement (s).

Section 9
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 a 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 10
Equipment
All equipment must be a new and current model. The Commonwealth recognizes the rapid advancement of technology. If the Vendor can provide new equipment of advanced technology, the Commonwealth and the Vendor may choose by mutual agreement to install such equipment. The price of the new technology equipment cannot exceed the cost of the Contract.

Section 11
Equipment Manuals
All instruction, maintenance, and technical equipment manuals produced by the

manufacturer describing the characteristics and/or operation of the equipment shall be identified and incorporated as part of the contract.

All manuals shall be furnished in paper or electronic media versions, or both, for all equipment purchased.

Section 12
Distribution of Literature
Upon request, the Vendor shall furnish descriptive literature, technical data, catalog of peripherals, and service information for items on contract.

Section 13
Vendor's Report
The Vendor may be asked to furnish the buyer, Office of Procurement Services, a report showing volumes which have 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 vendor'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.

Section 14
Cancellation Clause – 30 Days Notice
The Commonwealth may cancel the 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 15
Exception to Required Use of Contract
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 16
Service Performance
All services performed under contract shall be in accordance with the terms and provisions of the 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 Vendor 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 17
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 Vendor. The Office of Procurement Services to effect this change will issue a Contract Modification. Until such time as the Vendor receives a Modification, the Vendor shall not accept Delivery Orders from any agency referencing such items or services.

Section 18
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 Vendor 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 19
Payments
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.

Section 20
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 Vendor's expense.

Section 21
Subcontracts
The Vendor shall make no contract with any other party for furnishing any of the work or services contracted herein, without the consent, guidance, and approval of the Commonwealth. Any subcontract hereunder entered into, subsequent to the execution of the contract with the prime vendor, must be annotated and approved by the Commonwealth. Name and address of subcontractors must be submitted with the bid response for approval by the Commonwealth. This provision will not be taken as requiring the approval of contracts of employment between the bidder and personnel assigned for services hereunder.

Section 22
Governing Law
This Master Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and any litigation with respect to this Master Agreement shall be brought in state or federal court in **Franklin County, Kentucky.**

ALL PROVISIONS OF SOLICITATION, RFB-758-0800003349, SHALL BE PART OF THIS MASTER AGREEMENT.