

**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](mailto:Kristen_Reed@Dell.com) (859) 543-1102

Sales Representative: Sara Riddles  
[Sara\\_Riddles@Dell.com](mailto:Sara_Riddles@Dell.com) (888) 820-7454

Regional Sales Manager: Reed Kalagher  
[Reed\\_Kalagher@Dell.com](mailto:Reed_Kalagher@Dell.com) (512) 723-3460

Inside Sales Manager: Doug Roldan  
[Douglas\\_Roldan@Dell.com](mailto:Douglas_Roldan@Dell.com) (888) 977-3355, ext. 72-81074

## Terms and Conditions For Master Agreement

### **Section 1**

#### **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.

### **Section 2**

#### **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.

Negotiation of Price. Districts can and are encouraged to negotiate a better price with KETS vendors for only the specific manufacturer's Enterprise models listed on the KETS Master Agreement. However, once a lower price has been negotiated with one district, it becomes the new statewide price for that model for the duration that particular model is on the KETS contract. Typically, vendors have special offers to quickly get rid of inventory that didn't sell well as anticipated or is outdated. If a vendor offers a special price for any time period (e.g. Offer ends 12 August), that price for that model for all districts does not end on 12 August. 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. The Commonwealth shall make other districts aware of any new or special price offerings as they change during this competitive process.

This contract shall offer the most current version of software license along with legal "downgrade rights" for the various versions of software that the agencies are using. In addition, prior versions of CD-media and documentation shall also be offered through this contract.

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

Upgrades. We encourage vendors to upgrade their product lines as quickly as possible. If a vendor wants to upgrade to a new product version they shall submit a request and pricing to the Office of Material and Procurement Services (OMPS) and to the Office of Education Technology (OET) with the newly proposed version number, specifications, and price.

Vendors shall maintain their own Web site accessible to all districts where they can easily/quickly view latest model numbers, configurations, and prices offered on the KETS contract. This information shall be easily accessible and easily recognized as "KETS Master Agreement" pricing. Districts shall not have to

spend an extraneous amount of time on the vendor's website searching for this information.

If the vendor is offering items free of charge (freebies), the vendor shall notify OMPS and KDE so we can ensure all other districts get the same "freebies". The vendor cannot offer "freebies" for a certain time only or to only a certain district or school. Once "freebies" are offered, they become a statewide standard for anyone purchasing that version from the KETS contract until that version is no longer available.

Vendor Responsibilities. The vendor shall name a person that shall be the single point of contact (SPOC) for contract issues. The vendor shall insure that this person and all salespersons of their product shall be knowledgeable in:

- 1) All the details of the KDE (KETS) Microsoft Select contract.
- 2) The Kentucky school, district office and KDE customer base.
- 3) The most current KETS Master Plan on our Web site and year round current events in KETS. Many times the field staff, corporate main office or agent has no idea what requirements were in the original bid.

The SPOC shall be aggressive each day in sharing information or presenting a point of view with the selling staff and the manufacturer of the KETS hardware. To "stay in touch" with the Kentucky customer and the requirements of this contract, this SPOC shall be required to be present at least once a week at OET in Frankfort or anywhere else in Kentucky where their services are needed by our customers.

Besides keeping each other informed this face-to-face interaction minimizes the probability of small issues becoming big ones in a short period of time. It is reassuring to see the vendor's representative on a weekly basis. Instead of this being just another contract to your company, we must feel that you are making a commitment to be a contributing and well-informed member of our KETS Project team. If any issues with the contract are at hand for a particular vendor, it is nice to be able to inform this person face-to-face of the problem and know that results are coming soon since they know we will see them again face-to-face the next week.

In a nutshell, having a "local" one-stop shop for all needs fills that void of dealing with large companies whom typically have large corporate offices out of state and cannot provide the personal touch for contract management that is needed with a contract of this size. Having an office in Kentucky also demonstrates partnership with multiple manufacturers and commitment to resources and the needs of Education in Kentucky. We shall have a Help Desk at OET and on our Web site so our customers can quickly document vendors that are failing to meet the requirements of the bid. The Commonwealth reserves the right to terminate the Vendor's contract based upon these complaints.

### **Section 3**

#### **Deliverables**

**Select CD and Evaluation License:** Vendor shall provide, at no charge, to the KDE a Microsoft Select CD subscription and associated licenses to be evaluated at OET (Office of Education Technology) on every evaluation workstation and server. All workstation and file server contract holders are required to provide an evaluation unit of every workstation and file server to the OET. The establishment of this contract shall require that a license be made available, at no charge, to the KDE, for all Select products for evaluation purposes. KDE currently has three (3) Intel workstation vendors, one (1) Apple workstation vendor and three (3) file server vendors.

### **Section 4**

#### **Universal Service Fund**

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.

## **Section 5**

### **Contract Period**

The contract shall have an initial contract period of **May 1, 2007 through June 30, 2010** in accordance with the terms of the Microsoft Select Agreement. The first year shall be a fourteen (14) month software assurance period. Subsequent years shall be regular twelve (12) month billing periods.

A ninety (90) day probationary contract shall be awarded effective May 1, 2007. During this initial ninety (90) days of the contract, the vendors ability to provide product and warranty service shall be evaluated. If the vendor fails at any time during the ninety (90) day period, the Commonwealth may elect to terminate the contract. At the successful conclusion of the ninety (90) day probationary period, a full term contract shall be issued.

This contract may be extended at the completion of the initial contract period for three (3) additional 1 (one) year periods, running in correlation with the Select Agreement. The optional renewal of this contract shall be formalized by mutual agreement between the Commonwealth and the vendor. However, the Commonwealth's agreement to extend shall depend on past performance, the reliability of delivered products, the responsiveness of warranty services, and the current contract item pricing. Also important shall be the past demonstrations of willingness of the vendor to amend the contract in response to the continuing industry trend of better technology at lower prices.

## **Section 6**

### **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 shall 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:

<b>Application Product Pool</b>	-	<b>22%</b>
<b>System Product Pool</b>	-	<b>22%</b>
<b>Server Product Pool</b>	-	<b>22%</b>

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

<b>Student Select Price</b>	-	<b>25%</b>
-----------------------------	---	------------

## **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 eLearning.

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.msp](http://www.microsoft.com/education/SoftwareAssurance.msp)

Microsoft Academic Volume Licensing: <http://www.microsoft.com/education/HowToBuyInstitution.msp>

## **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 1<sup>st</sup> 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.**