

ATTACHMENT A

CONTRACT

FOR

KETS Network Products and Services

BETWEEN

THE COMMONWEALTH OF KENTUCKY

**The Finance and Administration Cabinet
On Behalf Of
KY Department of Education (KDE)**

AND

Dell Marketing, L.P.

MA 758 2100000652

VENDOR CONTACT INFORMATION:

Name: Stephanie Storm

**Address: 1 Dell Way
Round Rock, TX 78682**

Phone: 512-720-7634

Email: Stephanie.Storm@Dell.com

This Master Agreement (“Contract”, “Award” or “Agreement”) is entered into, by and between the **Commonwealth of Kentucky, Kentucky Department of Education** (“the Commonwealth” or “Customer” or “KDE”) and **Dell Marketing, L.P.**, (“Contractor” or “Vendor” or “Dell”) as the Prime Vendor.

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

This Contract is for KETS Network Products & Services. This Contract will provide network products and services for KY Department of Education, KY’s Public School Districts, the KY School of the Blind (KSB), and the KY School for the Deaf (KSD).

II. Negotiated Items

1) Section 30.4 Compliance with Industry Accepted Reporting Standards Based on Trust Service Principles and Criteria

Original Language:

The vendor must employ comprehensive risk and threat management controls based on defined industry standards for service organizations such as AICPA TSP section 100, Trust Services Principles and Criteria. The vendor must annually assert compliance and engage a third party to examine such assertions and, controls to provide a Report, such as AT101 SOC 2 type 2, on Controls at a Service Organization Relevant to Security, Availability, Processing, Integrity, Confidentiality, and Privacy, which contains an opinion on whether the operating controls effectively support the assertions. All such reports, including publicly available reports (i.e. AT 101 SOC 3) shall be made available to the Commonwealth for review.

Negotiated Language:

The vendor must employ comprehensive risk and threat management controls based on defined industry standards for service organizations such as ISO AICPA TSP section 100, Trust Services Principles and Criteria. The vendor must annually assert compliance and engage a third party certification registrar to examine such assertions and controls to provide a public Report, such as ISO 9001, ISO 14001, AT101 SOC 2 type 2 Report on Controls at a Service Organization Relevant to Security, Availability, Processing, Integrity, Confidentiality, and Privacy, etc. which contains an opinion on whether the operating controls effectively support the assertions. All such reports (i.e. AT 101 SOC 3) shall be made available to the Commonwealth for review.

2) Section 30.8 EU GDPR Compliance

Original Language:

The Commonwealth of Kentucky requires all vendor contracts to comply with the European Union's General Data Privacy Regulation [Regulation (EU) 2016/679] (the "GDPR") when the Commonwealth is a "controller" or "processor" of "personal data" from an individual "data subject" located in the European Union, as those terms are defined in the GDPR. The Contractor acknowledges and agrees that it is acting as a "processor" of "personal data" for the Commonwealth under this Agreement and that all applicable requirements of the GDPR are incorporated by reference as material terms of this Agreement. The Contractor represents and warrants that (1) it is aware of and understands its compliance obligations as a "processor" under GDPR; (2) it has adopted a GDPR compliance policy/program, a copy of which has been provided to the Commonwealth; (3) it will process "personal data" only in accordance with the Commonwealth's instructions; and (4) with regard to its obligations under this Agreement, it shall comply with all applicable requirements of the GDPR to the same extent as

adopted by the Commonwealth. Additionally, the Contractor shall indemnify and hold harmless the Commonwealth, and its employees from and against any claims, demands, suits, damages, penalties, fines, or costs arising from any violation of GDPR by the Contractor

Negotiated Language:

Dell implements corporate information security practices and standards (“Security Practices”) that are designed to safeguard Dell’s environment and to address: (a) information security; (b) system and asset management; (c) development and maintenance (such as SDLC, anti-malware, patch/vulnerability management and network security); (d) production/implementation (such as identification, authentication, authorization, passwords and remote access); (e) governance (including classification); (f) physical security of people and assets; and (g) information security practices and standards that are designed to protect the confidentiality, integrity and availability of Dell’s information and computing environment from a wide range of threats and in order to minimize business impacts. These practices and standards are approved by Dell’s Chief Security Officer (“CSO”) or his/her delegates and undergo a formal review on an annual basis.

Dell’s Security Practices are sensitive Dell confidential information and are not intended to be shared outside of Dell. However, Dell participates, from time to time and in its sole discretion, in industry-accepted information provisioning services, such as the Standardized Information Gathering lite (“SIG Lite”) questionnaire process. The SIG Lite document is reviewed annually, and is based on referenced industry regulations, guidelines and standards, including NIST, FFIEC, ISO, HIPAA and PCI. Dell’s responses to the SIG Lite questionnaire, or comparable forms of information gathering, are for informational purposes only and are intended to provide more detailed information regarding the controls outlined in this document. However, the SIG Lite, or its equivalent, are not intended to modify or amend the terms and conditions of the Contract. Dell makes no representations or warranties of any kind, written, oral, express, implied or otherwise, with respect to the responses contained therein. Dell reserves all rights to modify or amend its security policies and practices according to Dell standard business practices. Dell shall submit the SIG Lite to the Commonwealth Office of Technology (COT) in September of each year for annual review, provided a current Non-Disclosure Agreement (included as Exhibit A, Sample NDA) exists between Customer and Dell.

Dell’s security and resiliency, legal, privacy and ethics and compliance organizations have combined to create a comprehensive set of policies and standards to manage security and resiliency risks, and to comply with applicable laws and regulations. These requirements cover areas such as intellectual property of the company and our customers, software licenses, protection of

employee and customer personal information, data protection and data handling procedures, trans-border data transmission, financial and operational procedures, regulatory export controls around technology and forensic requirements.

Mechanisms such as the security and resiliency program (combined with or including the principles of information governance), the executive privacy council, internal and external audits/assessments, internal and external legal counsel consultation, internal controls assessment, internal penetration testing and vulnerability assessments, contract management, security awareness, security consulting, policy exception reviews and risk management combine to drive compliance with these requirements.

Dell's annual compliance training includes a requirement for employees to complete an online course and pass an assessment covering information security and data privacy. The security awareness program may also provide materials specific to certain job functions.

3) Section 40.9 Changes in Scope

Original Language:

The Commonwealth may, at any time by written order, make changes within the general scope of the contract. No changes in scope are to be conducted except at the approval of the Commonwealth.

Negotiated Language:

The Commonwealth may, at any time by written modification make changes within the general scope of the contract. No changes in scope are to be conducted except at the approval of the Commonwealth with the consent of Vendor.

4) Section 40.12 Payment

Original Language:

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the agency contact person or his representative.

Negotiated Language:

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the agency contact person or his representative.

5) Section 40.13 Contractor Cooperation in Related Efforts

Original Language:

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Commonwealth employees.

Negotiated Language:

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The contractor shall take commercially reasonable efforts to ensure that contractor will not commit or permit any act that will unreasonably interfere with the performance of work by any other contractor or by Commonwealth employees.

6) Section 40.15 Commonwealth Property:

Original Language:

The Contractor shall be responsible for the proper custody and care of any Commonwealth-owned property furnished for Contractor's use in connections with the performance of this Contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

Negotiated Language:

The contractor shall be responsible for the proper care of any Commonwealth-owned tangible property furnished for contractor's use in connections with the performance of this contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

7) Section 40.17 Confidential Information

Original Language:

The Contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the Contractor. All Federal and State Regulations and Statutes related to confidentiality shall be applicable to the Contractor. The Contractor shall have an appropriate agreement with its employees, and any subcontractor employees, to that effect, provided however, that the foregoing will not apply to:

- A. Information which the Commonwealth has released in writing from being maintained in confidence;
- B. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- C. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the contractor.

Negotiated Language:

The contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the contractor. The contractor will comply with Federal and State Regulations and Statutes related to confidentiality applicable to the contractor in its provision of the services or products provided under this contract. The contractor shall have an appropriate agreement with its employees, and any subcontractor employees, to that effect, provided however, that the foregoing will not apply to:

- A. Information which the Commonwealth has released in writing from being maintained in confidence;
- B. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected; or
- C. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the contractor.

8) Section 40.19 Patent or Copyright Infringement

Original Language:

The Contractor shall report to the Commonwealth promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.

The Commonwealth agrees to notify the Contractor promptly, in writing, of any such claim, suit or proceeding, and at the Contractor's expense give the Contractor proper and full information needed to settle and/or defend any such claim, suit or proceeding.

If, in the Contractor's opinion, the equipment, materials, or information mentioned in the paragraphs above is likely to or does become the subject of a claim or infringement of a United States patent or copyright, then without diminishing the Contractor's obligation to satisfy any final award, the Contractor may, with the Commonwealth's written consent, substitute other equally suitable equipment, materials, and information, or at the Contractor's options and expense, obtain the right for the Commonwealth to continue the use of such equipment, materials, and information.

The Commonwealth agrees that the Contractor has the right to defend, or at its option, to settle and the Contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the Contractor to the Commonwealth under this agreement. The Contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the contractor.

If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the Contractor without the contractor's written consent.

The Contractor shall have no liability for any infringement based upon:

- A. the combination of such product or part with any other product or part not furnished to the Commonwealth by the Contractor
- B. the modification of such product or part unless such modification was made by the Contractor
- C. the use of such product or part in a manner for which it was not designed

Negotiated Language:

A. Indemnification by contractor. Contractor will: (i) defend the Commonwealth against any third-party claim that Products or Support Services (but excluding

Third Party Products), any Product provided for evaluation or without charge, and open source software) infringe that party's patent, copyright, or trade secret enforceable in the country where the Commonwealth purchased the Product from the contractor ("Claim"); and (ii) indemnify the Commonwealth by paying: (a) the resulting costs and damages finally awarded against the Commonwealth by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (b) the amounts stated in a written settlement negotiated and approved by contractor. In addition, should any Product or Support Service become, or in the contractor's opinion be likely to become, the subject of such a Claim, the contractor may, at its expense and in its discretion: (1) obtain a right for the Commonwealth to continue using the affected Product or Support Service; (2) modify the affected Product or Support Service to make them non-infringing; (3) replace the affected Product or Support Service with non-infringing substitutes; (4) provide a reasonable depreciated or pro rata refund for the affected Product; or (5) discontinue the Support Services and refund the portion of any prepaid Support Service fees that corresponds to the period of Support Services discontinuance. Except as otherwise provided by law, this clause 40.19 states the Commonwealth's exclusive remedies for any third party intellectual property claim relating to the Products or Support Services, and nothing in this agreement or elsewhere will obligate the contractor to provide any greater indemnity.

B. Limitations. The contractor shall have no obligation under clause 40.19 A. above: (i) if the Commonwealth is in material breach of this agreement or the Order; or (ii) for any Claim resulting or arising from: (a) any combination, operation or use of a Product or Support Service with any other products, services, items, or technology, including Third-Party Products and open source software; (b) use for a purpose or in a manner for which the Product or Support Service was not designed, or use after the contractor notifies the Commonwealth to cease such use due to a possible or pending Claim; (c) any modification to the Product made or Support Service performed by any person other than the contractor or its authorized representatives; (d) any modification made to the Product or Support Service performed by the contractor pursuant to instructions, designs, specifications or any other information provided to the contractor by or on behalf of the Commonwealth; (e) use of any version of a Product when an upgrade or newer iteration of the Product or Support Service made available by the contractor would have avoided the infringement; (f) services provided by the Commonwealth (including Claims seeking damages based on any revenue or value the Commonwealth derives from the Commonwealth's services); or (g) any data or information that the Commonwealth or a third party records on or utilizes in connection with the Product or Support Service.

C. The Commonwealth agrees that the contractor has the right to defend, or at its option, to settle and the contractor agrees to defend at its own expense, or at its

option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the contractor to the Commonwealth under this agreement. The contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the contractor. If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the contractor without the contractor's written consent.

9) Section 40.31 Limitation of Liability

Original Language:

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245.

Negotiated Language:

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245.

A. Limitations on Damages. The limitations, exclusions and disclaimers stated below apply to all disputes, claims or controversies (whether in contract, tort (including negligence) or otherwise) related to or arising out of this agreement or any Quote or Order ("Dispute"). The terms of this clause are agreed allocations of risk constituting part of the consideration for the Contractors' and its Affiliates' sale of Products and Services to the Commonwealth and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities.

B. Limitation on Direct Damages. Except for the Commonwealth's obligations to pay for Offerings, the Commonwealth's violation of the restrictions on use of Products and Services or the Contractor's or its Affiliates' intellectual property rights, or a party's indemnity obligation stated in the clause above titled "Indemnity", the Contractor's (including its suppliers) and Commonwealths' total liability arising out of any Dispute or any matter under this agreement, is limited to the amount the Commonwealth paid to the Contractor during the 12 months before the date that the matter or Dispute arose for the Product, Services or both that are the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, The Contractor (and its suppliers) shall have no liability for any direct damages resulting from the Commonwealth's use or attempted use of Third-Party Software, Free Software or Development Tools, all defined in the EULA described in above, or Third Party Products.

C. Disclaimer of Certain Other Damages. Except for the Commonwealth's payment obligations and violation of the Contractors' or its Affiliates' intellectual property rights, neither the Contractor (and its suppliers) nor the Commonwealth has liability to the other for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services.

D. Prevention and Mitigation. The Commonwealth is solely responsible for its data. The Commonwealth shall implement IT architecture and processes enabling the Commonwealth to prevent and mitigate damages in line with the criticality of the systems and data for the Commonwealth's business and its data protection requirements, including a business recovery plan. In that regard, the Commonwealth shall: (i) provide for a backup process on a regular (at least daily) basis and backup relevant data before the Contractor performs any remedial, upgrade or other works on the Commonwealth's IT systems; (ii) monitor the availability and performance of its IT during the performance of Services; and (iii) promptly react to messages and alerts received from the Contractor or through notification features of the Products and immediately report any identified issue to the Contractor. To the extent that the Contractor has any liability for data loss, the Contractor shall only be liable for the cost of commercially reasonable and customary efforts to recover the lost data from the Commonwealth's last available backup.

E. Limitation Period. Except as stated in this clause, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

10) Section 50.6 E. Deliverables

Original Language:

Deliverables, Penalty and Penalty Waiver:

All deliveries of equipment shall be provided within thirty (30) calendar days of the vendor'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 vendor of any issues with the order (i.e. missing or damaged parts). Vendor may consider the order accepted by the customer after the close of the thirty (30) calendar day window.

Deliverables Penalties:

Vendor agrees 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 vendor's invoice for each day the Vendor fails to meet the contracted timeframe. Penalties will continue to be charged to the vendor until the delivery and installation if applicable is complete.

Deliverables Penalty Waiver:

Vendor shall not be penalized if within the thirty (30) day delivery period, they have supplied 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. In this case, the vendor must have submitted the new model to OET for evaluation testing. The new model shall not be shipped to the customer until which time the model has been added to 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 may result in termination of contract. Once the vendor receives notification, their new model is now available for sales; the thirty (30) day clock starts again.

Negotiated Language:

Deliverables, Penalty and Penalty Waiver:

All deliveries of equipment shall be provided within thirty (30) calendar days of the vendor'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 or completion of installation, if the parties have agreed to terms under which vendor will provide installation. Vendor will not be responsible for any delays in installation due to failure of customer to comply with agreed to obligations or other reasons beyond vendor's reasonable control.

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

Deliverables Penalties: Vendor agrees when delivery and/or installation is not made within the contracted timeframes, five percent (5%) per complete, 7-day calendar week from the total invoice amount may be deducted from the vendor's invoice for each day the Vendor fails to meet the contracted timeframe. Penalties will continue to be charged to the vendor until the delivery and installation if applicable is complete. **Deliverables Penalty Waiver:** Vendor shall not be penalized if within the thirty (30) day delivery period, they have supplied

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. In this case, the vendor must have submitted the new model to OET for evaluation testing. The new model shall not be shipped to the customer until which time the model has been added to 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 may result in termination of contract. Once the vendor receives notification, their new model is now available for sales; the thirty (30) day clock starts again.

11) Section 50.6 F. Leasing

Original Language:

Leasing should be made available as an option to KETS customers. Leasing agreements shall meet all legal requirements for the Commonwealth and KDE. Vendor shall quote hardware warranty coverage for the duration of the lease period. The Commonwealth Lease Agreement is included as See Attachment I. No changes or substitutions to the Commonwealth Lease Agreement may be made without the approval of KDE and the Finance Cabinet Office of Procurement Services (OPS). 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 Vendor 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 Vendor 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. If the lease exceeds threshold of \$100,000 then the lease has to be approved by KDE before the lease can be approved. Below is a link to the guidelines and regulations regarding leases;

<https://education.ky.gov/districts/tech/kpur/Pages/Leases.aspx>

Negotiated Language:

Leasing should be made available as an option to KETS customers. Leasing agreements shall meet all legal requirements for the Commonwealth and KDE. Vendor shall quote hardware warranty coverage for the duration of the lease period. The Commonwealth Lease Agreement is included as See Attachment I. No changes or substitutions to the Commonwealth Lease Agreement may be made without the approval of KDE and the Finance Cabinet Office of Procurement Services (OPS). 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 Vendor 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 Vendor 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. If the lease exceeds threshold of \$100,000 then the lease has to be approved by KDE before the lease can be approved. Below is a link to the guidelines and regulations regarding leases;

<https://education.ky.gov/districts/tech/kpur/Pages/Leases.aspx>

Dell acknowledges that use of Dells standard leasing terms or any changes to the Commonwealth Lease Agreement will require approval and enter into good faith negotiations for term that are mutually acceptable.

- 12) **Acceptance.** All Products will be deemed to be accepted upon Delivery. Notwithstanding such acceptance, the Commonwealth retains all rights and remedies under the warranty terms. The Commonwealth may only return Products to the vendor that are permitted to be returned pursuant to the return policy posted on the vendor's website.
- 13) **Shipment.** Unless otherwise agreed, the contractor shall arrange for shipment of the ordered Products to the ship-to address indicated in the Order, through a common carrier designated by the contractor. Delivery dates are indicative. Software may be provided by delivery of physical media or through electronic means. The Commonwealth shall notify the contractor within 21 days of the invoice date if the Commonwealth believes any Product included in its Order is missing, wrong, or damaged, and shall ensure that the intended installation site meets the specification as per the product documentation.
- 14) **Transfer of Risk and Title.** Risk of loss for Equipment and for physical media containing licensed Software transfers to the Commonwealth upon Delivery. Title to sold Equipment passes to the Commonwealth upon Delivery. "Delivery" for Software occurs either when the Contractor provides physical media (or the Equipment on which it is installed) to the Commonwealth or the date the Contractor notifies the Commonwealth that Software is available for electronic download.
- 15) **Professional Services.**
 - A. **Scope of Services.** The Contractor shall provide Professional services including any Deliverables in accordance with the applicable Service

Descriptions, SOW or other agreed documentation containing the specifics of such services (“service Specification”).

B. **Contractor Intellectual Property.** Contractor reserves for itself all Proprietary Rights that it has not expressly granted to the Commonwealth herein. Subject to the Commonwealth’s compliance with the terms of this agreement and the Contractor’s Proprietary Rights in any underlying intellectual property incorporated into any report, analyses, scripts, code or other work results delivered by Contractor (“Deliverables”) or used by the Contractor to perform Professional Services, the Contractor grants the Commonwealth a non-exclusive, non-transferable, revocable (in case of non-payment, or any breach of the agreement or any applicable Service Specification) license to use (without the right to sublicense) the Deliverables provided by the Contractor for the Commonwealth’s internal business purposes, only and solely in accordance with the applicable Service Specification and subject to this agreement.

C. **Commonwealth Furnished Materials.** The Commonwealth retains its Proprietary Rights in materials it furnishes to the Contractor for use in connection with the performance of Professional Services. The Commonwealth grants the Contractor a non-exclusive, non-transferable right, under the Commonwealth’s Proprietary Rights, to use the Commonwealth provided materials solely for the benefit of the Commonwealth in fulfilling the Contractor’s obligations under this agreement.

16) **Trade Compliance.** The Commonwealth’s purchase of Offerings and access to related technology (collectively, the “Materials”) are intended for its own use, not for resale, export, re-export, or transfer. The Commonwealth is subject to and responsible for compliance with the export control and economic sanctions laws of the United States, the European Union and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except in compliance with such laws, including, without limitation, export licensing requirements, end user, end-use, and end-destination restrictions, prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control’s Specially Designated Nationals and Blocked Persons List, or the U.S. Department of Commerce Denied Persons List. The Commonwealth represents and warrants that it is not the subject or target of, and that the Commonwealth is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States, European Union or other applicable jurisdictions.

17) **Software License.** The Commonwealth’s rights to use the Software delivered by the Contractor are governed by the terms of the applicable end user license

agreement to the extent it does not conflict with KY Law. Unless different terms have been agreed between the parties, the terms posted on the Contractors website (the "EULA") shall apply. The Contractor will provide a hard copy of the applicable terms upon request. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such Equipment item.

- 18) **Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any of its obligations caused by Force Majeure. If such delay or failure lasts longer than 30 days, then the other party may immediately terminate, in whole or in part, the relevant Order by giving written notice to the delayed party. "Force Majeure" refers to circumstances beyond a party's reasonable control including, without limitation, act of God, war, riot, civil commotion, terrorist acts, malicious damage, governmental or regulatory actions, accident, breakdown of plant or machinery, local or national emergency, explosions, fire, natural disasters, severe weather or other catastrophes, epidemics/pandemics, general import/export/customs process problems affecting supplies to Supplier or to Customer, shortages in materials, failure of a utility service or transport network, embargo, strike, lock out or other industrial dispute (whether involving Supplier's workforce or any other party), or default of suppliers or subcontractors due to any of the preceding events.

III. Terms and Conditions

SECTION 30 – COMMONWEALTH OFFICE OF TECHNOLOGY (COT) REQUIREMENTS

30.1 Commonwealth Information Technology Policies and Standards

- A. The vendor and any subcontractors shall be required to adhere to applicable Commonwealth policies and standards.

- B. The Commonwealth posts changes to COT Standards and Policies on its technology.ky.gov website. Vendors and subcontractors shall ensure their solution(s) comply with all posted changes. Vendors or subcontractors that cannot comply with changes must, within thirty (30) days of the posted change, request written relief with the justification for such relief. The Commonwealth may 1) deny the request, 2) approve an exception to the policy / standard, or 3) consider scope changes to the contract to accommodate required changes. Vendors or subcontractors that do not provide the response within the thirty (30) day period shall be required to comply within ninety (90) days of the change.

30.2 Compliance with Kentucky Information Technology Standards (KITS)

- A. The vendor and any subcontractors may be required to submit a Technology Roadmap for any offered solution. Additional roadmaps will be submitted upon request of the Commonwealth. The Roadmap shall include, but is not limited to, planned, scheduled and projected product lifecycle dates an historical

release/patch or maintenance dates for the technology. In addition, any guidance on projected release/revision/patch/maintenance schedules would be preferred.

30.3 Compliance with Commonwealth Security Standards

The software deployment and all vendor services shall abide by privacy and security standards as outlined in the Commonwealth's Enterprise Information Technology Policies.

Enterprise Security Policies

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

Enterprise IT Policies

<http://technology.ky.gov/policy/pages/policies.aspx>

Finance and Administration Cabinet Commonwealth Office of Technology
Enterprise IT Policies

<http://finance.ky.gov/services/policies/Pages/default.aspx>

30.4 Compliance with Industry Accepted Reporting Standards Based on Trust Service Principles and Criteria

The vendor must employ comprehensive risk and threat management controls based on defined industry standards for service organizations such as ISO AICPA TSP section 100, Trust Services Principles and Criteria. The vendor must annually assert compliance and engage a third party certification registrar to examine such assertions and controls to provide a public Report, such as ISO 9001, ISO 14001, AT101 SOC 2 type 2 Report on Controls at a Service Organization Relevant to Security, Availability, Processing, Integrity, Confidentiality, and Privacy, etc. which contains an opinion on whether the operating controls effectively support the assertions. All such reports (i.e. AT 101 SOC 3) shall be made available to the Commonwealth for review.

30.5 System Vulnerability and Security Assessments

The Commonwealth reserves the right to conduct, in collaboration with the vendor, non-invasive vulnerability and security assessments of the software and infrastructure used to provide services prior to implementation and periodically thereafter. Upon completion of these assessments, the Commonwealth will communicate any findings to the vendor for action. Any cost relating to the alleviation of the findings will be the responsibility of the vendor. Mitigations will be subject to re-evaluation after completion. In cases where direct mitigation cannot be achieved, the vendor shall communicate this and work closely with the Commonwealth to identify acceptable compensating controls that will reduce risk to an acceptable and agreed upon level. An accredited third party source may be

selected by the vendor to address findings, provided they will acknowledge all cost and provide valid documentation of mitigation strategies in an agreed upon timeframe.

30.6 Privacy Assessments

The Commonwealth reserves the right to conduct Privacy assessments of the collection, use, maintenance and sharing of Commonwealth data by any vendor services, software, and infrastructure used to provide services prior to implementation and periodically thereafter. Upon completion of this assessment, the Commonwealth will communicate any findings to the vendor for action. Any cost relating to the alleviation of the findings will be the responsibility of the vendor. Mitigations will be subject to re-evaluation after completion. In cases where direct mitigation cannot be achieved, the vendor shall communicate this and work closely with the Commonwealth to identify acceptable compensating controls or privacy practices that will reduce risk to an acceptable and agreed upon level. An accredited third party source may be selected by the vendor to address findings, provided they will acknowledge all cost and provide valid documentation of mitigation strategies in an agreed upon timeframe.

30.7 Privacy, Confidentiality and Ownership of Information

The Commonwealth is the designated owner of all Commonwealth data and shall approve all access to that data. The Vendor shall not have ownership of Commonwealth data at any time. The vendor shall not profit from or share Commonwealth data. The Vendor shall be in compliance with privacy policies established by governmental agencies or by state or federal law. Privacy notice statements may be developed and amended from time to time by the Commonwealth and will be appropriately displayed on the Commonwealth portal (Ky.gov). The Vendor should provide sufficient security to protect the Commonwealth and COT data in network transit, storage, and cache. All Commonwealth data, including backups and archives, must be maintained at all times within the contiguous United States. All Commonwealth data, classified as sensitive or higher, as defined in Enterprise Standards, must be encrypted in-transit and at rest.

30.8 EU GDPR Compliance

Dell implements corporate information security practices and standards (“Security Practices”) that are designed to safeguard Dell’s environment and to address: (a) information security; (b) system and asset management; (c) development and maintenance (such as SDLC, anti-malware, patch/vulnerability management and network security); (d) production/implementation (such as identification, authentication, authorization, passwords and remote access); (e) governance (including classification); (f) physical security of people and assets; and (g) information security practices and standards that are designed to protect the confidentiality, integrity and availability of Dell’s information and computing environment from a wide range of threats and in order to minimize business impacts. These practices and standards are approved by Dell’s Chief Security Officer (“CSO”) or his/her delegates and undergo a formal review on an annual basis.

Dell’s Security Practices are sensitive Dell confidential information and are not intended to be shared outside of Dell. However, Dell participates, from time to time and in its sole discretion, in industry-accepted information provisioning services, such as the Standardized Information Gathering lite (“SIG Lite”) questionnaire process. The SIG Lite document is reviewed annually, and is based on referenced industry regulations, guidelines and standards, including NIST, FFIEC, ISO, HIPAA and PCI. Dell’s responses to the SIG Lite questionnaire, or comparable forms of information gathering, are for informational purposes only and are intended to provide more detailed information regarding the controls outlined in this document. However, the SIG Lite, or its equivalent, are not intended to modify or amend the terms and conditions of the Contract. Dell makes no representations or warranties of any kind, written, oral, express, implied or otherwise, with respect to the responses contained therein. Dell reserves all rights to modify or amend its security policies and practices

according to Dell standard business practices. Dell shall submit the SIG Lite to the Commonwealth Office of Technology (COT) in September of each year for annual review, provided a current Non-Disclosure Agreement (included as Exhibit A, Sample NDA) exists between Customer and Dell.

Dell's security and resiliency, legal, privacy and ethics and compliance organizations have combined to create a comprehensive set of policies and standards to manage security and resiliency risks, and to comply with applicable laws and regulations. These requirements cover areas such as intellectual property of the company and our customers, software licenses, protection of employee and customer personal information, data protection and data handling procedures, trans-border data transmission, financial and operational procedures, regulatory export controls around technology and forensic requirements.

Mechanisms such as the security and resiliency program (combined with or including the principles of information governance), the executive privacy council, internal and external audits/assessments, internal and external legal counsel consultation, internal controls assessment, internal penetration testing and vulnerability assessments, contract management, security awareness, security consulting, policy exception reviews and risk management combine to drive compliance with these requirements.

Dell's annual compliance training includes a requirement for employees to complete an online course and pass an assessment covering information security and data privacy. The security awareness program may also provide materials specific to certain job functions.

30.9 X-as-a-Service Technical Definitions

Refer to NIST 800-14530.10 Data Quality

Vendors shall provide proposed levels of data quality per the following dimensions. Data Quality is the degree to which data is valid, accurate, complete, unique, timely, consistent with all requirements and business rules, and relevant for a given use. The vendor shall provide data quality definitions and metrics for any data elements. Data has to be of the appropriate quality to address the needs of the Commonwealth of Kentucky. The following dimensions can be used to assess data quality:

- Validity – The data values are in an acceptable format.
- Accuracy – The data attribute is accurate.
- Completeness – There are no null values in a data field.
- Uniqueness – There are no duplicate values in a data field.
- Timeliness – The data attribute represents information that is not out-of-date.
- Consistency – The data attribute is consistent with a business rule that may be

Based on that attribute itself, or on multiple attributes.

- Adherence to business rules – The data attribute or a combination of data Attributes adheres to specified business rules.

30.10 License Agreements

Software provided by the vendor to the Commonwealth should contain a provision for perpetual licensing with all upgrade options. License agreements should also contain a provision for the Commonwealth to maintain a version of the software in escrow in the event the vendor is unable to continue business for financial or other business reasons.

30.11 Software Version Requirements

All commercially supported and Commonwealth approved software components such as operating system (OS), Database software, Application software, Web Server software, Middle Tier software, and other ancillary software must be kept current. In the event that a patch interferes with the solution, the vendor must present a plan for compliance to the Commonwealth outlining the constraints and an appropriate plan of action to bring the solution in to compliance to allow this patch to be applied in the shortest timeframe possible, not to exceed three months, unless otherwise negotiated with the Commonwealth.

The Vendors shall keep software in compliance with industry standards to support third party products such as Java, Adobe Flash, Internet Explorer, Mozilla Firefox, etc. at latest supported version, release, and patch levels, when such dependencies exist. In the event that a third party dependency interferes with the solution, the vendor must present a plan for compliance to the Commonwealth outlining the constraints and an appropriate plan of action to bring the solution into compliance to allow this third party dependency to be updated in the shortest timeframe possible, not to exceed three months, unless otherwise negotiated with the Commonwealth.

30.13 Section 508 Compliance

All user interfaces to the solution(s) provided, shall be warranted by the vendor to Comply with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) and the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines (WCAG) 2.0, conformance level Double-A or greater.

30.14 No Surreptitious Code Warranty

The contractor represents and warrants that no copy of licensed Software provide to the Commonwealth contains or will contain any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this contract as the "No Surreptitious Code Warranty". As used in this contract, "Self-Help Code" means any back door, time bomb, drop-dead device, or other software routine designed to disable a computer program automatically with the passage

of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access) for purposes of maintenance or technical support. As used in this contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

In addition, contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the Commonwealth. The vendor shall defend the Commonwealth against any claim, and indemnify the Commonwealth against any loss or expense arising out of any breach of the No Surreptitious Code Warranty.

30.15 Network Connection Requirements

A. Vendor shall work with KDE and/or all Kentucky public schools to establish any network connections. If a secure site-to-site connection is required, the vendor shall employ a secure site-to-site connection procured by KDE

B. Vendor shall notify KDE and/or all Kentucky public schools of network bandwidth requirements and if caching is required for implementation vendor shall resolve caching requirements, in coordination with KDE.

C. Vendor shall, at KDE's discretion, provide appropriate access to enable the Commonwealth to perform additional security measures, such as decryption of the network traffic if required for inspection. If the proposed solution does not have the ability to meet this requirement, the vendor must provide an alternative such as audit reporting of this function.

D. Vendor shall provide notifications to the KDE Customer Service Center and/or applicable local school district service for unplanned outages within 5 minutes.

E. Vendor shall notify KDE Change Management and/or applicable local school district, through the KDE Customer Service Center and/or applicable local school district, a minimum of two (2) business days prior to any planned outage.

30.16 Application and Service Requirements

A. Current Enterprise Applications and Services

1. COT provides a number of Enterprise Shared Services to State agencies. Vendor shall use published IT Applications and Services provided on KITS for: Enterprise Service Bus, Enterprise Content

Management, Data Warehousing, Data Analytics and Reporting, Business Intelligence, Web Services, GIS, unless explicitly approved by COT.

2. Vendor provided dedicated application components (i.e., Application Servers, Databases, etc.) shall comply with KITS or if the technology is not included in KITS, the technology must be accepted by the Commonwealth for inclusion in KITS or granted a written exception to KITS according to COT Information Technology Standards Policy currently CIO-051.

3. Vendor applications must describe in detail all available features and functionality accessible via APIs.

B. Vendor shall comply with Commonwealth of Kentucky fingerprint requirements for PII/FTI/HIPAA data systems hosted outside Central Data Center.

30.17 Applicable Security Control Framework Compliance

The vendor must have an awareness and understanding of the NIST Special Publication 800-53 Security Control Framework and employ safeguards that meet or exceed the moderate level controls as defined within the standard. The respondent must provide sufficient safeguards to provide reasonable protections around the Commonwealth's data to ensure that the confidentiality, integrity, and availability is maintained at an appropriate level. These include but are not limited to:

- *Access Control*

The vendor must employ policy and process that provide for stringent control to limit physical and logical access to systems that house Commonwealth data, on a need to know basis, provide clear separation of duties, and adheres to least privilege principles.

- *Awareness and Training*

The vendor must provide the appropriate role specific training for staff to ensure that there is awareness and understanding of roles and responsibilities as they relate to the protections around the Commonwealth's data.

- *Audit and Accountability*

There must be sufficient auditing capability to ensure that actions are tracked and there is individual accountability for all actions taken by vendor staff.

- *Configuration Management*

The vendor must work within established baselines that provide minimal functionality needed to ensure service delivery without exposing unnecessary risk. The vendor must also employ structured change control processes that provide a level of coordination with the client agreed upon in a Service Level Agreement (SLA).

- *Contingency Planning*

The vendor must employ contingent planning policy and procedures that ensure service delivery based on agreed SLA levels while maintaining all Commonwealth data within the continental United States.

- *Identification and Authorization*

The vendor must employ appropriate identity and access management policies and procedures to ensure that access is appropriately authorized and managed at a level to ensure that access is provisioned and de-provisioned in a timely and efficient manner.

- *Incident Response*

The vendor must employ policy and procedures to ensure that an appropriate response to all identified security incidents are addressed in a timely manner and are reported to the appropriate parties in an agreed upon SLA timeframe. The vendor must also ensure that all staff are sufficiently trained to ensure that they can identify situations that are classified as security incidents.

- *Maintenance*

The vendor must employ policy and procedures that ensure that all maintenance activities are conducted only by authorized maintenance staff leveraging only authorized maintenance tools.

- *Media Protection*

The vendor must employ policy and procedure to ensure that sufficient protections exist to protect Commonwealth data on all storage media throughout the media lifecycle and maintain documentation from media creation through destruction.

- *Physical and Environmental Controls*

The vendor must employ physical and environmental policies and procedures that ensure that the service and delivery infrastructure are located in a physically secure and environmentally protected environment to ensure the confidentiality, integrity, and availability of Commonwealth data.

- *Personnel Security*

The vendor must employ policies and procedures to ensure that all staff that have access to systems that house, transmit, or process Commonwealth data have been appropriately vetted and have been through a background check at the time of hire and periodically thereafter.

- *System and Communications Protections*

The vendor must employ physical and logical protection that protect system communications and communication media from unauthorized access and to ensure adequate physical protections from damage.

SECTION 40 – PROCUREMENT REQUIREMENTS

40.1 Procurement Requirements

Procurement requirements are listed under “**Procurement Laws, Preference, Regulations and Policies**” and “**Response to Solicitation**” located on the eProcurement Web page at <https://finance.ky.gov/services/eprocurement/Pages/LawsPrefRegsPolicies.aspx> and <https://emars311.ky.gov/webapp/vssprdonline3111d/AltSelfService> respectively. The Vendor must comply with all applicable statutes, regulations and policies related to this procurement.

40.2 Contract Components and Order of Precedence

The Commonwealth’s acceptance of the contractor’s offer in response to the Solicitation RFP 758 2100000145, indicated by the issuance of a contract award by the Office of Procurement Services, shall create a valid contract between the Parties consisting of the following:

1. Procurement Statutes, Regulations and Policies
2. Any written Agreement between the Parties;
3. Any Addenda to the Solicitation RFP 758 2100000145;
4. The Solicitation RFP 758 2100000145 and all attachments
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor’s proposal in response to the Solicitation RFP 758 2100000145;
7. The Contractor’s proposal in response to the Solicitation RFP 758 2100000145.

In the event of any conflict between or among the provisions contained in the contract, the order of precedence shall be as enumerated above.

40.3 Final Agreement

This Contract represents the entire agreement between the parties with respect to the subject matter hereof. Prior negotiations, representations, or agreements, either written or oral, between the parties hereto relating to the subject matter hereof shall be of no effect upon this Contract.

40.4 Contract Provisions

If any provision of this Contract (including items incorporated by reference) is declared or found to be illegal, unenforceable, or void, then both the Commonwealth and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

40.5 Type of Contract

This Contract shall be on the basis of a firm fixed percentage discount for the elements listed in this Contract.

40.6 Contract Usage

The contractual agreement with the selected vendor will in no way obligate the Commonwealth of Kentucky to purchase any services or equipment under this Contract. The Commonwealth agrees, in entering into any contract, to purchase only such services in such quantities as necessary to meet the actual requirements as determined by the Commonwealth.

40.7 Addition or Deletion of Items or Services

The Office of Procurement Services reserves the right to add new and similar items, by issuing a contract modification, to this Contract with the consent of the vendor. Until such time as the Vendor receives a modification, the Vendor shall not accept delivery orders from any agency referencing such items or services.

40.8 Changes and Modifications to the Contract

Pursuant to KRS 45A.210 (1) and 200 KAR 5:311, no modification or change of any provision in the contract shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the Contractor and the Commonwealth, and incorporated as a written amendment to the contract and processed through the Office of Procurement Services and approved by the Finance and Administration Cabinet prior to the effective date of such modification or change pursuant to KRS 45A.210(1) and 200 KAR 5:311. Memorandum of understanding, written clarification, and/or correspondence shall not be construed as amendments to this Contract.

If the contractor finds at any time that existing conditions made modification of the contract necessary, it shall promptly report such matters to the Commonwealth Buyer for consideration and decision.

40.9 Changes in Scope

The Commonwealth may, at any time by written modification make changes within the general scope of the contract. No changes in scope are to be

conducted except at the approval of the Commonwealth with the consent of Vendor.

40.10 Contract Conformance

If the Commonwealth Buyer determines that deliverables due under this Contract are not in conformance with the terms and conditions of the Contract and the mutually agreed-upon project plan, the Buyer may request the Contractor to deliver assurances in the form of additional contractor resources and to demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.

40.11 Assignment

This Contract shall not be assigned in whole or in part without the prior written consent of the Commonwealth Buyer.

40.12 Payment

The Commonwealth will make payment within thirty (30) working days of receipt of Contractor's invoice or of acceptance of goods and/or services in accordance with KRS 45.453 and KRS 45.454.

Payments are predicated upon successful completion and acceptance of the described work, services, supplies, or commodities, and delivery of the required documentation. Invoices for payment shall be submitted to the agency contact person or his representative.

40.13 Contractor Cooperation in Related Efforts

The Commonwealth of Kentucky may undertake or award other contracts for additional or related work, services, supplies, or commodities, and the Contractor shall fully cooperate with such other contractors and Commonwealth employees. The contractor shall take commercially reasonable efforts to ensure that contractor will not commit or permit any act that will unreasonably interfere with the performance of work by any other contractor or by Commonwealth employees.

40.14 Contractor Affiliation

"Affiliate" shall mean a branch, division or subsidiary that is effectively controlled by another party. If any affiliate of the Contractor shall take any action that, if done by the Contractor, would constitute a breach of this agreement, the same shall be deemed a breach by such party with like legal effect.

40.15 **Commonwealth Property**

The contractor shall be responsible for the proper care of any Commonwealth-owned tangible property furnished for contractor's use in connections with the performance of this contract. The Contractor shall reimburse the Commonwealth for its loss or damage, normal wear and tear excepted.

40.16 **Confidentiality of Contract Terms**

The Contractor and the Commonwealth agree that all information communicated between them before the effective date of the contract shall be received in strict confidence and shall not be necessarily disclosed by the receiving party, its agents, or employees without prior written consent of the other party. Such material will be kept confidential subject to Commonwealth and Federal public information disclosure laws.

Upon signing of this Contract by all parties, terms of the contract become available to the public, pursuant to the provisions of the Kentucky Revised Statutes.

The Contractor shall have an appropriate agreement with its subcontractors extending these confidentiality requirements to all subcontractors' employees.

40.17 **Confidential Information**

The contractor shall comply with the provisions of the Privacy Act of 1974 and instruct its employees to use the same degree of care as it uses with its own data to keep confidential information concerning client data, the business of the Commonwealth, its financial affairs, its relations with its citizens and its employees, as well as any other information which may be specifically classified as confidential by the Commonwealth in writing to the contractor. The contractor will comply with Federal and State Regulations and Statutes related to confidentiality applicable to the contractor in its provision of the services or products provided under this contract. The contractor shall have an appropriate agreement with its employees, and any subcontractor employees, to that effect, provided however, that the foregoing will not apply to:

- A. Information which the Commonwealth has released in writing from being maintained in confidence;
- B. Information which at the time of disclosure is in the public domain by having been printed and published and available to the public in libraries or other public places where such data is usually collected;
- or
- C. Information, which, after disclosure, becomes part of the public domain as defined above, through no act of the contractor.

40.18 Advertising Award

The Contractor shall not refer to the award of contract in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the Commonwealth of Kentucky without the expressed written consent of the agency technical contact person. (see Section 50.4)

40.19 Patent or Copyright Infringement

A. Indemnification by contractor. Contractor will: (i) defend the Commonwealth against any third-party claim that Products or Support Services (but excluding Third Party Products), any Product provided for evaluation or without charge, and open source software) infringe that party's patent, copyright, or trade secret enforceable in the country where the Commonwealth purchased the Product from the contractor ("Claim"); and (ii) indemnify the Commonwealth by paying: (a) the resulting costs and damages finally awarded against the Commonwealth by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (b) the amounts stated in a written settlement negotiated and approved by contractor. In addition, should any Product or Support Service become, or in the contractor's opinion be likely to become, the subject of such a Claim, the contractor may, at its expense and in its discretion: (1) obtain a right for the Commonwealth to continue using the affected Product or Support Service; (2) modify the affected Product or Support Service to make them non-infringing; (3) replace the affected Product or Support Service with non-infringing substitutes; (4) provide a reasonable depreciated or pro rata refund for the affected Product; or (5) discontinue the Support Services and refund the portion of any prepaid Support Service fees that corresponds to the period of Support Services discontinuance. Except as otherwise provided by law, this clause 40.19 states the Commonwealth's exclusive remedies for any third party intellectual property claim relating to the Products or Support Services, and nothing in this agreement or elsewhere will obligate the contractor to provide any greater indemnity.

B. Limitations. The contractor shall have no obligation under clause 40.19 A. above: (i) if the Commonwealth is in material breach of this agreement or the Order; or (ii) for any Claim resulting or arising from: (a) any combination, operation or use of a Product or Support Service with any other products, services, items, or technology, including Third-Party Products and open source software; (b) use for a purpose or in a manner for which the Product or Support Service was not designed, or use after the contractor notifies the Commonwealth to cease such use due to a possible or pending Claim; (c) any modification to the Product made or Support Service performed by any person other than the contractor or its authorized representatives; (d) any modification made to the Product or Support Service performed by the contractor pursuant to instructions, designs, specifications or any other information provided to the contractor by or on behalf of the Commonwealth; (e) use of any version of a Product when an

upgrade or newer iteration of the Product or Support Service made available by the contractor would have avoided the infringement; (f) services provided by the Commonwealth (including Claims seeking damages based on any revenue or value the Commonwealth derives from the Commonwealth's services); or (g) any data or information that the Commonwealth or a third party records on or utilizes in connection with the Product or Support Service.

C. The Commonwealth agrees that the contractor has the right to defend, or at its option, to settle and the contractor agrees to defend at its own expense, or at its option to settle, any claim, suit or proceeding brought against the Commonwealth on the issue of infringement of any United States patent or copyright or any product, or any part thereof, supplied by the contractor to the Commonwealth under this agreement. The contractor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by the contractor. If principles of governmental or public law are involved, the Commonwealth may participate in the defense of any such action, but no costs or expenses shall be incurred for the account of the contractor without the contractor's written consent.

40.20 **Permits, Licenses, Taxes and Commonwealth Registration**

The Contractor shall procure all necessary permits and licenses and abide by all applicable laws, regulations, and ordinances of all Federal, State, and local governments in which work under this Contract is performed.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. Additional local registration or license may be required.

The Contractor shall pay any sales, use, and personal property taxes arising out of this Contract and the transaction contemplated hereby. Any other taxes levied upon this Contract, the transaction, or the equipment or services delivered pursuant hereto shall be borne by the Contractor.

40.21 **EEO Requirements**

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.

<http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx>

40.22 **Provisions for Termination of the Contract**

This Contract shall be subject to the termination provisions set forth in 200 KAR 5:312.

40.23 **Bankruptcy**

In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this Contract may be subject to the rights of a trustee in bankruptcy to assume or assign this Contract. The trustee shall not have the right to assume or assign this Contract unless the trustee (a) promptly cures all defaults under this Contract; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default, and (c) provides adequate assurance of future performance, as determined by the Commonwealth.

40.24 **Conformance with Commonwealth & Federal Laws/Regulations**

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on this Contract, including but not limited to actions either for breach of contract or for enforcement of this Contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

40.25 **Accessibility**

Vendor 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. Vendor 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 vendor's products or services may be covered by that act. Vendor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services which is brought to its attention.

40.26 **Access to Records**

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to Contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, 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 agreement for the purpose of financial audit or program review. 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. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

40.27 Prohibitions of Certain Conflicts of Interest

In accordance with KRS 45A.340, the Contractor represents and warrants, and the Commonwealth relies upon such representation and warranty, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services. The Contractor further represents and warrants that in the performance of this Contract, no person, including any subcontractor, having any such interest shall be employed.

In accordance with KRS 45A.340 and KRS 11A.040 (4), the Contractor agrees that it shall not knowingly allow any official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Contract to voluntarily acquire any ownership interest, direct or indirect, in the contract prior to the completion of the contract.

40.28 No Contingent Fees

No person or selling agency shall be employed or retained or given anything of monetary value to solicit or secure this Contract, excepting bona fide employees of the offeror or bona fide established commercial or selling agencies maintained by the offeror for the purpose of securing business. For breach or violation of this provision, the Commonwealth shall have the right to reject the proposal or cancel this Contract without liability.

40.29 Intentionally Left Blank

40.30 Contract Claims

The Parties acknowledge that KRS 45A.225 to 45A.290 governs contract claims.

40.31 Limitation of Liability

The liability of the Commonwealth related to contractual damages is set forth in KRS 45A.245.

A. Limitations on Damages. The limitations, exclusions and disclaimers stated below apply to all disputes, claims or controversies (whether in contract, tort (including negligence) or otherwise) related to or arising out of this agreement or any Quote or Order ("Dispute"). The terms of this clause are agreed allocations of risk constituting part of the consideration for the Contractors' and its Affiliates'

sale of Products and Services to the Commonwealth and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities.

B. Limitation on Direct Damages. Except for the Commonwealth's obligations to pay for Offerings, the Commonwealth's violation of the restrictions on use of Products and Services or the Contractor's or its Affiliates' intellectual property rights, or a party's indemnity obligation stated in the clause above titled "Indemnity", the Contractor's (including its suppliers) and Commonwealths' total liability arising out of any Dispute or any matter under this agreement, is limited to the amount the Commonwealth paid to the Contractor during the 12 months before the date that the matter or Dispute arose for the Product, Services or both that are the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes. Notwithstanding anything otherwise set forth above, The Contractor (and its suppliers) shall have no liability for any direct damages resulting from the Commonwealth's use or attempted use of Third-Party Software, Free Software or Development Tools, all defined in the EULA described in above, or Third Party Products.

C. Disclaimer of Certain Other Damages. Except for the Commonwealth's payment obligations and violation of the Contractors' or its Affiliates' intellectual property rights, neither the Contractor (and its suppliers) nor the Commonwealth has liability to the other for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services.

D. Prevention and Mitigation. The Commonwealth is solely responsible for its data. The Commonwealth shall implement IT architecture and processes enabling the Commonwealth to prevent and mitigate damages in line with the criticality of the systems and data for the Commonwealth's business and its data protection requirements, including a business recovery plan. In that regard, the Commonwealth shall: (i) provide for a backup process on a regular (at least daily) basis and backup relevant data before the Contractor performs any remedial, upgrade or other works on the Commonwealth's IT systems; (ii) monitor the availability and performance of its IT during the performance of Services; and (iii) promptly react to messages and alerts received from the Contractor or through notification features of the Products and immediately report any identified issue to the Contractor. To the extent that the Contractor has any liability for data loss, the Contractor shall only be liable for the cost of commercially reasonable and customary efforts to recover the lost data from the Commonwealth's last available backup.

E. Limitation Period. Except as stated in this clause, all claims must be made within the period specified by applicable law. If the law allows the parties to

specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

40.32 Discrimination

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
7. The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

SECTION 50 – SCOPE OF WORK

50.1 **Agencies to Be Served**

This Contract shall be for use by the **KY DEPARTMENT OF EDUCATION**. No shipments shall be made except upon receipt by vendor of an official delivery order from the using agency.

50.2 **Term of Contract and Renewal Options**

The initial term of this Contract shall be valid through June 30, 2023 from the effective date of the Award of Contract.

This Contract may be renewed at the completion of the initial contract period for **two (2) additional two (2) year** periods upon the mutual agreement of the Parties. Such mutual agreement shall take the form of a contract modification as described in Section 40.8.

At the end of this Contract, the Vendor shall provide all agency data in a form that can be converted to any subsequent system of the agency's choice. The Vendor shall cooperate to this end with the vendor of the agency's choice, in a timely and efficient manner.

The Commonwealth reserves the right not to exercise any or all renewal options. The Commonwealth reserves the right to extend this Contract for a period less than the length of the above-referenced renewal period if such an extension is determined by the Commonwealth Buyer to be in the best interest of the Commonwealth.

The Commonwealth reserves the right to renegotiate any terms and/or conditions as may be necessary to meet requirements for the extended period. 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.

50.3 **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 this Contract. A vendor may request a price increase after twelve (12) months of this 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 vendor 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.

50.4 Notices

All programmatic communications with regard to day-to-day performance under this Contract are to be made to the agency technical contact(s).

**Agency Technical Contact
Melissa Moore
KY Department of Education
300 Sower Boulevard, 4th Floor
Frankfort, KY 40601
(502) 564-2020 x 2438
Melissa.Moore@education.ky.gov**

All communications of a contractual or legal nature are to be made to the Commonwealth Buyer.

**Commonwealth Buyer
Susan S. Noland, KCPM
COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
Office of Procurement Services
New Capital Annex
702 Capitol Avenue, Room 096
Frankfort, KY 40601
(502) 564-5951**

50.5 Subcontractors

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.

50.6 Scope of Work/Technical Requirements:

A. Definition-Network Products and Services:

This Contract covers the purchasing or leasing of hardware and services for local and wide area networks. These include management software for ease of

operations, management of the performance of the network; warranties; services of installations; services for maintenance of ongoing programs and technical help.

B. Categories:

Vendor shall maintain an updated price list that clearly identifies ERATE eligible items. Vendor should identify e-rate and non-e-rate eligible items. This Contract will be the mechanism by which Kentucky public school districts and the Kentucky Department of Education purchase (or lease) and maintain network products and associated services. These products and services may be hardware or software-based and assure the effective delivery of network traffic across the customers' Local Area Network (LAN) and Wide Area Network (WAN). These offerings may be a combination of products and services that are on the customer premise or provider/cloud hosted. These offerings might also include subscription-based services. The type of products may include (but are not necessarily limited to): Switches, Routers, Wireless Access Points, Wireless Controllers (physical or virtual), security-related enhancements, Network Access Control, Network Security, traffic logging, traffic reporting, traffic analysis.

C. Qualified Vendors:

A qualified vendor is an original equipment manufacturer (OEM) of enterprise level network solutions that meet or exceed all technical specifications outlined in this Contract.

After the award, the manufacturer may propose the usage of up to **five (5) agents/resellers**. The Kentucky Department of Education reserves the right to review and give final approval to the proposed agents/resellers and/or any change in agents/resellers 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)/reseller(s). A manufacturer SHALL NOT be allowed to have more than **five (5) agents/resellers**.

An **agent/reseller** is defined as a company or individual that represents the manufacturer in quotes for products and/or services, purchase order review, delivery and/or warranty and support services of the manufacturer's product(s). Quotes for products and/or service may be on the agents/resellers letterhead. Billing and payment for invoices from contract purchases may be addressed to the agent/reseller.

D. Single Point of Contact:

It is crucial to have a dedicated account team with which to form a partnership. This working partnership affords the vendor insight into how KDE and K-12 public school districts operate. Vendor should provide an account team that includes,

but is not limited to, a sales account representative that is also the Single Point of Contact (SPOC), pre-sales engineer, and a post-sales support level staff to serve the needs of the K-12 customers. Vendor shall name a person that will be the single point of contact (SPOC) for contract issues. Vendor shall ensure that this person and all salespersons of their product will be knowledgeable in:

- All the details of the KETS contract;
- The KY public school, district office, and KDE customer base and
- The most current KETS Master Plan on our KDE web site and year round current events in KETS

The SPOC must be proactive in sharing information or presenting a point of view with the selling staff and the manufacturer(s) of the KETS products.

Vendor SPOC:
Johnathan Gross, Account Executive
502.341.3694
Johnathan_Gross@dell.com

Ciara Butler, Inside Sales Representative
512.513.0799
Ciara_Butler@dell.com

KETS customers shall notify the OET Vendor Manager when vendors fail to meet the requirements of this Contract. The OET Vendor Manager will work directly with the SPOC to remedy the issue and work with KDE staff and Vendor escalation points of contact to escalate issues as needed.

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

E. Deliverables:

Deliverables, Penalty and Penalty Waiver:

All deliveries of equipment shall be provided within thirty (30) calendar days of the vendor'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 or completion of installation, if the parties have agreed to terms under which vendor will provide installation. Vendor will not be responsible for any delays in installation due to failure of customer to comply with agreed to obligations or other reasons beyond vendor's reasonable control.

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

Deliverables Penalties: Vendor agrees when delivery and/or installation is not made within the contracted timeframes, five percent (5%) per complete, 7-day calendar week from the total invoice amount may be deducted from the vendor's invoice for each day the Vendor fails to meet the contracted timeframe. Penalties will continue to be charged to the vendor until the delivery and installation if applicable is complete. **Deliverables Penalty Waiver:** Vendor shall not be penalized if within the thirty (30) day delivery period, they have supplied 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. In this case, the vendor must have submitted the new model to OET for evaluation testing. The new model shall not be shipped to the customer until which time the model has been added to 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 may result in termination of contract. Once the vendor receives notification, their new model is now available for sales; the thirty (30) day clock starts again.

F. Leasing:

Leasing should be made available as an option to KETS customers. Leasing agreements shall meet all legal requirements for the Commonwealth and KDE. Vendor shall quote hardware warranty coverage for the duration of the lease period. The Commonwealth Lease Agreement is included as See Attachment I. No changes or substitutions to the Commonwealth Lease Agreement may be made without the approval of KDE and the Finance Cabinet Office of Procurement Services (OPS). 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 Vendor 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 Vendor 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. If the lease exceeds threshold of \$100,000 then the lease has to be approved by KDE before the lease can be approved. Below is a link to the guidelines and regulations regarding leases;

<https://education.ky.gov/districts/tech/kpur/Pages/Leases.aspx>

Dell acknowledges that use of Dells standard leasing terms or any changes to the Commonwealth Lease Agreement will require approval and enter into good faith negotiations for term that are mutually acceptable.

G. Warranty:

Vendor shall be required to 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 KETS customer's primary period of service (PPS) falls between the hours of 7:30am and 5:00pm customer's local time, Monday -Friday, excluding state observed holidays;
- The vendor shall be available to provide warranty service during the PPS;
Extended warranty coverage up to (24 x 7) shall be available if needed;
- Vendor shall call and/or email customer back within one (1) hour of placing call to provide applicable information including ticket number;
- The three (3) year warranty coverage included in the initial networking hardware purchase shall include:
 - Vendor response within four (4) business hours to begin the diagnostics/fault determination. Vendor should perform all fault determination.

- Next business day onsite response. Onsite is defined that the vendor goes to the location of the equipment purchased, e.g. a school district office, state agency, etc. Vendor shall come on-site to install any replacement parts or perform repair work so the networking hardware is operational within 24 business hours (three (3) business days) of the initial call.
- All technicians shall be properly certified and or licensed to service networking hardware;
- Vendor may perform diagnostics and repair remotely if applicable versus onsite response with the customer's prior approval.
- Vendor is not responsible for disaster recovery;
- 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;
- Vendor shall ensure the cost is the same throughout the state for installation;
- Vendor shall perform a backup on all devices that have backup capability prior to making hardware or software changes;
- Vendor shall be provided access to the customer's building where the networking equipment is located as required to fulfill customer service requests.

H. Sales Reporting:

Vendor 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.

Vendor shall prepare and submit electronically this information no later than ten (10) business days after the end of each quarter to the OET Vendor Manager. It will be the responsibility of the Vendor SPOC to submit the quarterly sales reports. The OET Vendor Manager nor KDE shall be responsible for reminders to submit reports. OET shall report any failure to submit and/or late submissions of sales reports on the annual contract review.

IV. Pricing

Product Category Discounts

E-Rate Eligible Basic Services - Network	Discount off MSRP
Wired Switch (L2)	30%
Wired Switch (L3)	30%
Routers	30%
Wireless – Access Points	0%
Wireless – Controllers	0%
Cables/Accessories	15%
Installation / Initial Configuration	0%
Training (Technician/System Admin Training)	0%
Maintenance (Hardware) Support	0%
Maintenance (Software) Support	0%

NON- E-Rate Eligible Basic Services - Network	Discount off MSRP
NAC - Network Access Control	0%
Network Software (Mgmt., Security, Analytics)	0%
Network Professional Services	0%
Network Accessories	30%
Wireless – Configuration Software	0%

V. Approvals This Contract is subject to the terms and conditions as stated. By executing this Contract, the parties verify that they are authorized to bind this agreement and that they accept the terms of this agreement.

This Contract may be executed electronically in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Contract.

This Contract is invalid until properly approved and executed by the Finance and Administration Cabinet.

1st Party: Kentucky Department of Education, (“the Commonwealth” or “Customer” or “KDE”)

	Director
_____	_____
Printed name	Title
<i>Karen Wirth</i>	3/9/2021
_____	_____
Signature	Date

2nd Party: Dell Marketing, L.P., as Contracting Agent (“Contractor” or “Vendor” or “Dell”)



	Contract Administrator
_____	_____
Printed name	Title
<i>Alyssa Sayles</i>	March 9, 2021
_____	_____
Signature	Date

**Approved by the Finance and Administration Cabinet
Office of Procurement Services**

	Executive Director
_____	_____
Printed name	Title
<i>Joan Graham</i>	3/9/2021
_____	_____
Signature	Date

Attachments

ATTACHMENT A – This Document
ATTACHMENT B – Omitted Intentionally
ATTACHMENT C – Omitted Intentionally
ATTACHMENT D – Omitted Intentionally
ATTACHMENT E – The Protection of Personal Information Security and Breach Investigation Procedures and Practice Act (KRS 61.931) IF APPLICABLE
ATTACHMENT F – Omitted Intentionally
ATTACHMENT G – Omitted Intentionally
ATTACHMENT H - Network Product and Services – Network Minimum Service Level Agreement
ATTACHMENT I – Commonwealth Lease Agreement
ATTACHMENT J – Omitted Intentionally
ATTACHMENT K – Omitted Intentionally
ATTACHMENT L – Omitted Intentionally
Exhibit A – Sample NDA

ATTACHMENT E
Protection of Personal Information Security and Breach
Investigation Procedures and Practices Act

Vendors that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

The vendor hereby agrees to cooperate with the Commonwealth in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall immediately notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Office of Procurement Services, the Commonwealth Office of Technology and the NG-KIH Program Office of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the vendor abides by the requirements set forth in that exception.

The vendor hereby agrees that the Commonwealth may withhold payment(s) owed to the vendor for any violation of the Identity Theft Prevention Reporting Requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a) the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

Attachment H - Network Minimum Service Levels

Service Level	Definition and Illustration of Typical use	Technician Onsite	Vendor Escalation	Vendor Acknowledgement Escalation Updates	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	Vendor shall provide a (30 min) initial escalation update and hourly updates until hardware failure and/or performance issues of the customer's service request until it has been fulfilled	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	Vendor shall provide a (60 min) initial escalation update and twice - daily updates until limited hardware failure and/or performance issues impacting mission critical application and/or services of the customer's service request until it has been fulfilled	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	Vendor shall provide a (90 min) initial escalation update and daily updates Non critical performance issues and outages of the customer's service request until it has been fulfilled	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)

ATTACHMENT I

**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

LESSEE

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

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
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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: _____

EXHIBIT A – SAMPLE NDA

Outgoing Non-Disclosure Agreement

NDA # ____

In order to protect certain Confidential Information (as defined below) that may be disclosed by Dell Inc., for itself, Dell Inc. and Dell Inc.'s direct and indirect subsidiaries (collectively "Dell" or "Discloser") to KY Dept of Ed for itself and its subsidiaries (collectively "Participant" or "Recipient"), the Participant agree(s) as follows.

1. Effective Date. The effective date of this Agreement is (MM.DD.YYYY).
2. The Sole Disclosing Party. Dell is the sole disclosing party under this Agreement.
3. Confidential Information. "Confidential Information" disclosed under this Agreement is defined as any information, technical data or know how furnished, whether in written, oral, electronic, website-based, or other form by the Discloser to the Recipient that (a) is marked, accompanied or supported by documents clearly and conspicuously designating such documents as "confidential", "internal use" or the equivalent; (b) is identified by the Discloser as confidential before, during or promptly after the presentation or communication; or (c) should reasonably be known by Recipient to be confidential.
4. No Use of Name. Each Party agrees not to issue or release any articles, advertising, publicity or other material relating to any other Party's Confidential Information or mentioning or implying the name of any other Party without the prior written consent of such other Party.
5. Term and Termination. This Agreement shall remain in effect until it is terminated by a Party with thirty (30) days prior written notice; provided, however, that no Party shall terminate this Agreement if the Parties have a direct agreement still in effect. Subject to Section 7 below, the terms and conditions of this Agreement shall survive any such termination with respect to Confidential Information that is disclosed prior to the effective date of termination.
6. Permitted Use and Disclosure. Recipient will use Confidential Information only for the purpose of and in connection with the evaluation of a potential, or continuation of a business transaction or relationship between the Parties. Recipient may disclose Confidential Information to any of its related organizations that are identified above in this Agreement, and to its directors, officers, employees, contractors, advisors, and agents, so long as such organizations and/or individuals have a need to know in their work for Recipient

in furtherance of the potential or continued business transaction or relationship,

and are bound by obligations of confidentiality at least as restrictive as those imposed on Recipient in this Agreement (collectively, "Representatives"). Recipient is fully liable for any breach of this Agreement by its Representatives. Recipient will use the same degree of care, but no less than a reasonable degree of care, as the Recipient uses with respect to its own similar information to protect the Confidential Information. Recipient may only disclose Confidential Information as authorized by this Agreement. Notwithstanding anything herein to the contrary, the restrictions on disclosure and use set forth in this Agreement do not restrict the right of Recipient to independently design, develop, acquire, market, service or otherwise deal in, directly or indirectly, products or services competitive with those of the Discloser; provided that the Recipient does not use any of the Discloser's Confidential Information for such activities. Further, Recipient retains sole discretion to assign or reassign the job responsibilities of its employees.

7. **Protection Period and Return of Information.** Unless the Parties otherwise agree in writing, a Recipient's duty to protect Confidential Information expires 3 years from the date of disclosure. Notwithstanding anything to the contrary herein and subject to Section 8, protection of technical information about a Discloser's current products and services and all information about possible unreleased products or services shall never expire. Upon the Discloser's written request, Recipient will promptly return or destroy all Confidential Information received from the Discloser, together with all copies. Notwithstanding the foregoing, Recipient's professional advisors (e.g., lawyers and accountants) may retain in confidence one file copy of their respective work papers and final reports in accordance with their professional and ethical obligations.
8. **Exclusions.** This Agreement imposes no obligation upon a Recipient with respect to Confidential Information which (a) the Recipient can demonstrate was already in its possession before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient or its Representatives; (c) is rightfully received by the Recipient from a third party who has no duty of confidentiality; (d) is disclosed by the Discloser to a third party without a duty of confidentiality on the third party; or (e) is independently developed by the Recipient without a breach of this Agreement. If a Recipient is required by a government body or court of law to disclose Confidential Information, to the extent permitted by law, the Recipient agrees to give the Discloser reasonable advance notice so that the Discloser may contest the disclosure or seek a protective order.
9. **WARRANTY & DISCLAIMERS.** DISCLOSER WARRANTS THAT IT HAS THE RIGHT TO DISCLOSE ITS CONFIDENTIAL INFORMATION, NO OTHER

WARRANTIES ARE MADE UNDER THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. DISCLOSER HAS NO RESPONSIBILITY OR LIABILITY UNDER THIS AGREEMENT AS TO THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION. EXCEPT AS OTHERWISE PROVIDED HEREIN, ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS".

10. No Obligation. This Agreement is intended to provide only for the use, handling and protection of Confidential Information. It does not create a joint venture, partnership or other similar arrangement or relationship. This Agreement imposes no obligation on any Party to exchange Confidential Information, to purchase, sell, license, transfer, or otherwise make use of any technology, services or products, or to enter into or negotiate toward, any transaction, relationship or other agreement with any Party.
11. Export Compliance. Recipient will adhere to all applicable United States and foreign export control laws and will not export or re-export any technical data or products, to any proscribed country listed in the U.S. Export Administration regulations, unless properly authorized by the U.S. Government.
12. Ownership. All Confidential Information disclosed hereunder will remain property of the Discloser. No Party grants to the other any rights under any patent, copyright, trade secret, trademark or any other intellectual property right except the limited rights set forth in Section 6 above.
13. Remedies. The obligations and duties imposed by this Agreement with respect to any Confidential Information may be enforced by Discloser against any and all Recipients. Each Party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured Party may be entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies available at law or in equity.
14. GOVERNING LAW. THIS AGREEMENT IS MADE UNDER, AND WILL BE CONSTRUED ACCORDING TO, THE LAWS OF THE COMMONWEALTH OF KENTUCKY, EXCLUDING THE CONFLICTS OF LAW RULES.
15. Severability; Waiver. If any provision of this Agreement is found to be invalid or unenforceable in whole or in part, the Parties agree the remaining provisions of this Agreement shall remain valid and enforceable to the maximum extent compatible with existing law. Discloser's failure to enforce Recipient's performance of any term herein will not constitute a waiver or Discloser's right to subsequently enforce such term or any other term of this Agreement.

16. Miscellaneous. This Agreement is binding upon the Parties and upon their respective successors. All additions or modifications to this Agreement must be made in writing and must be signed by the Parties. This Agreement may be signed in separate counterparts.

KY Dept of Ed

By:

Name:

Title:

Address: 702 Capital Ave
Frankfort, KY 40601

Date: ____/____/____