

ATTACHMENT A

CONTRACT

FOR

KETS Enterprise Server Storage Hardware Services

BETWEEN

THE COMMONWEALTH OF KENTUCKY

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

AND

Dell Marketing, L.P.

MA 758 2000000720

VENDOR CONTACT INFORMATION:

Name Stephanie Storm

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

Phone 512-723-4512

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 will provide enterprise server and storage and hardware and services for KY Department of Education, KY’s Public School Districts, the KY School for the Blind (KSB), and the KY School for the Deaf (KSD).

II. Negotiated Items

1. Dell will comply with the Security and VPN procedures established by KDE when using any type of remote support.
2. Section 40.5 Type of Contract

Original Language

This Contract shall be on the basis of a **firm fixed unit price** for the elements listed.

Negotiated Language:

This Contract shall be on the basis of a **firm fixed** percentage discount off MSRP per section IV Pricing below.

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 the Vendor.

4. 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. Vendor 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 Vendor's opinion be likely to become, the subject of such a Claim, Vendor 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 Vendor to provide any greater indemnity.

B. Limitations. Vendor 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 Vendor 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 Vendor or its authorized representatives; (d) any modification made to the Product or Support Service performed by Vendor pursuant to instructions, designs, specifications or any other information provided to Vendor 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 Vendor 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 Vendor has the right to defend, or at its option, to settle and Vendor 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 Vendor to the Commonwealth under this agreement. Vendor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by Vendor. 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 Vendor without Vendor's written consent.

5. 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.

6. 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.

7. Section 30.04 – 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 an AT101 SOC 2 type 2 Report 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 an 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.

8. Acceptance. All Products and Third Party Products will be deemed to be accepted upon Delivery. Notwithstanding such acceptance, the Commonwealth retains all rights and remedies under the product warranty. The Commonwealth may only return Products to the Contractor that are permitted to be returned pursuant to the return policy posted on the Contractor's website.

9. Transfer of Risk and Title. Costs. 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.

10. 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.

11. 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.

III. Terms and Conditions

SECTION 30 – COMMONWEALTH OFFICE OF TECHNOLOGY (COT) REQUIREMENTS
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- 30.1 **Commonwealth Information Technology Policies and Standards**
The vendor and any subcontractors shall be required to adhere to applicable Commonwealth policies and standards related to technology use and security.

30.2 Compliance with Kentucky Information Technology Standards (KITS)

- A. The Kentucky Information Technology Standards (KITS) reflect a set of principles for information, technology, applications, and organization. These standards provide guidelines, policies, directional statements and sets of standards for information technology. It defines, for the Commonwealth, functional and information needs so that technology choices can be made based on business objectives and service delivery. The vendor shall stay knowledgeable and shall abide by these standards for all related work.
<http://technology.ky.gov/Governance/Pages/KITS.aspx>
- B. The vendor and any subcontractors shall 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 and 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 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 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 an 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 external 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, Confidentiality and Ownership of Information**

The Commonwealth Office of Technology (COT) is the designated owner of all data and shall approve all access to that data. The vendor shall not have ownership of Commonwealth data at any time. The vendor shall be in compliance with privacy policies established by governmental agencies or by state or federal law. Privacy policy 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 data, including backups and archives, must be maintained at all times within the contiguous United States. All sensitive data, as defined in Enterprise Standards, must be encrypted in-transit and at rest.**

30.7 **Software Development**

Source code for software developed or modified by the vendor specifically for the Commonwealth shall become property of the Commonwealth. This is not meant to include minor modifications to the vendor software to configure the software for Commonwealth use. This is meant to include software written to add functionality to the vendor product specifically to meet the requirements of the Commonwealth where the Commonwealth bears the entire cost of creating that functionality.

30.8 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.

30.9 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 dependencies such as Java, Adobe Flash, Internet Explorer, Mozilla Firefox, etc. at currently supported version, release, and patch levels. 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.

30.10 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) 1.0, conformance level Double-A or greater.

30.11 No Surreptitious Code Warranty

The contractor represents and warrants that no copy of licensed Software provided 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.

30.12 **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. These controls 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 to a need to know basis and provide clear separation of duties.
- *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 <http://finance.ky.gov/services/eprocurement/Pages/VendorServices.aspx> 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 2000000310, 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 2000000310;
4. The Solicitation RFP 758 2000000310 and all attachments
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor’s proposal in response to the Solicitation RFP 758 2000000310;
7. The Contractor’s proposal in response to the Solicitation RFP 758 2000000310.

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 off MSRP per section IV Pricing below.

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 the 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 this 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 obligations 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. Vendor 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 Vendor's opinion be likely to become, the subject of such a Claim, Vendor 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 Vendor to provide any greater indemnity.

B. Limitations. Vendor 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 Vendor 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 Vendor or its authorized representatives; (d) any modification made to the Product or Support Service performed by Vendor pursuant to instructions, designs, specifications or any other information provided to Vendor 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 Vendor 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 Vendor has the right to defend, or at its option, to settle and Vendor 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 Vendor to the Commonwealth under this agreement. Vendor agrees to pay any final judgment entered against the Commonwealth on such issue in any suit or proceeding defended by Vendor. 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 Vendor without Vendor'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 (Effective April 8, 2015)**

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** including **all KY Public School Districts, KY School for the Blind (KSB), KY**

School for the Deaf (KSD), and the Education and Workforce Development Cabinet which includes but is not limited to the **KY Department of Education (KDE), KY Educational Television (KET) and the Council on Postsecondary Education (CPE)**. 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 for a period of **four (4) years** from the effective date of the Award of Contract.

This Contract may be renewed at the completion of the initial contract period for **three (3) 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**

Susan.Noland@ky.gov

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. Categories

The following categories shall be established for Server and Storage Hardware and Services:

Eligible Basic Services-Server
Server Hardware
Server Hardware Installation/Initial Configuration
Maintenance (Server Hardware) Support
Maintenance (Sever Software) Support
Server Training (Technician/System Admin Training)
Training (Technician/System Admin Training)

Eligible Basic Services-Server
Server Hardware Accessories
Server Professional Services
Storage (iSCSI) – Optional
Storage (Optional)
Uninterruptible Power Supply (UPS) (Optional)
KDE Managed Statewide Enterprise Server Project

B. Qualified Vendors

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

After the award, the manufacturer may propose the usage of up to three (3) agents/resellers. KDE and the Finance Cabinet, Office of Procurement Services (OPS) reserves the right to review and give final approval to the proposed agents and/or any change in agents after the initial contract award. The manufacturer is responsible for ALL aspects of this Contract requirements regardless of the usage of an agent(s). A manufacturer SHALL NOT be allowed to have more than three (3) agents. For this Contract, an agent is defined as a company or individual that represents the manufacturer in marketing, quoting items from this Contract, purchase order review and acceptance, delivery and/or warranty and support services of the manufacturer's product(s).

Quotes for products and/or service and invoices must be on the contract holder's letterhead. Payments for invoices from contract purchases may be addressed to either the contract holder or an agent if the KETS customer is working directly with an approved agent.

C. 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 hardware.

Johnathan Gross
Johnathan_Gross@dell.com
502-341-3694

Ciara Butler
Ciara_Butler@dell.com
512-513-0799

KETS customers shall notify the OET Vendor Manager when vendors fail to meet the requirements of the 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.

D. 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 completion of installation, if required.

Customers purchasing from this Contracts 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.

E. Leasing:

Leasing agreements shall meet all legal requirements for the Commonwealth and KDE. KRS 65.944(1) (b) and 702 KAR 3:300 establish the requirement and procedures for school district leases in excess of \$100,000 to be approved by the Commissioner of Education. Information and guidance on public school district leases in excess of \$100,000 can be found here:

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

The Vendor shall quote hardware warranty coverage for the duration of the lease period.

F. Warranty:

Vendor shall be required to include three (3) years of maintenance/warranty in the initial purchase cost. After the initial three (3) 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 server 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 server 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 server 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 server equipment is located as required to fulfill customer service requests.

G. Sales Reporting

Vendor shall maintain accurate records indicating sales from this 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.

H. Uniform Administrative Requirements, Cost Principles and Audit Requirements

Vendors providing service under this Contract shall conform and otherwise comply with all Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards as applicable. Requirements are located on the Code of Federal Regulations web page at <https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=366afee6cb0855060cf7f2c5d3eae3e7&mc=tr ue&n=pt2.1.200&r=PART&ty=HTML>

IV. Pricing

Eligible Basic Services – Server	Discount off MSRP
Server Hardware	18%
Server Hardware Installation/Initial Configuration	0%
Maintenance (Server Hardware) Support	18%
Maintenance (Server Software) Support	18%
Server Training (Technician/System Admin Training)	15%
Training (Technician/System Admin Training)	15%
Server Hardware Accessories	18%
Server Professional Services	0%
Storage (iSCSI)-Optional	18%
Storage (Optional)	18%
Uninterruptible Power Supply (UPS) (Optional)	18%
KDE Managed Statewide Enterprise Server Project	18%

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”)

Karen Wirth Director
Printed name Title

Karen Wirth 9/8/2020
Signature Date

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

Alyssa Sayles Contract Administrator
Printed name Title

Alyssa Sayles 09/04/2020
Signature Date



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

Joan Graham Executive Director
Printed name Title

Joan Graham 9/8/2020
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 – File Server Specifications
ATTACHMENT H - Omitted Intentionally
ATTACHMENT I – Omitted Intentionally
ATTACHMENT J – Omitted Intentionally
ATTACHMENT K – Omitted Intentionally
ATTACHMENT L – Omitted Intentionally

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 G
KETS Enterprise Server Storage Hardware Services
File Server Specifications

	Tower	RackMount Ready	Blade Chassis	Blade Server
Processor	Current Generation Hexa-Core (6) 2.0 G or equivalent	Current Generation Hexa-Core (6) 2.0 G or equivalent		Current Generation Hexa-Core (6) 2.0 G or equivalent
RAM/Memory	Minimum 16GB	Minimum 16GB		Minimum 16GB
Integrated Storage	Minimum 600GB SAS Mirrored OR 400GB SATA SSD Mirrored	Minimum 600GB SAS Mirrored OR 400GB SATA SSD Mirrored		Minimum 600GB SAS Mirrored OR 400GB SATA SSD Mirrored
Hard Drive Controller	Minimum integrated RAID controller Can be PCIe not using one of the 2 PCIe available for customer expansion	Minimum integrated RAID controller Can be PCIe not using one of the 2 PCIe available for customer expansion		Minimum integrated RAID controller
Power Supplies	Redundant not required, but recommended	Redundant not required, but recommended	Redundant Required	
Physical Drive Storage	Minimum 2 drive Bays, hot-swap not required, but recommended	Minimum 2 drive Bays, hot-swap not required, but recommended		Minimum 2 drive Bays, hot-swap not required, but recommended
Optical Media Drive	Recommended, but not required	Recommended, but not required	Recommended, but not required	
Expansion BUS	Minimum 2 PCIe 4x or greater available for customer use	Minimum 2 PCIe 4x or greater available for customer use		

Rackmountable	Capable	Must come rackmount ready with all rack mount rails, etc., which are specific to server manufacturer.	Must come rackmount ready with all rack mount rails, etc., which are specific to server manufacturer.	
External Ports	Minimum 2 USB Minimum 1 Video	Minimum 2 USB Minimum 1 Video	Minimum 2 USB Minimum 1 Video	
Network	Configured with 2 onboard 100/1000 (or 10/100/1000) ethernet ports (Can be onboard or PCIe not using one of the 2 PCIe available for customer expansion	Configured with 2 onboard 100/1000 (or 10/100/1000) ethernet ports (Can be onboard or PCIe not using one of the 2 PCIe available for customer expansion		
	Must demonstrate visual property to show link integrity and activity	Must demonstrate visual property to show link integrity and activity		
	Must have automatic sensing & reconfiguration for the speed of the switch port	Must have automatic sensing & reconfiguration for the speed of the switch port		
Remote Management Access	Add-on PCIe or Built-in If PCIe not using one of the 2 available PCIe ports for customer use	Add-on PCIe or Built-in If PCIe not using one of the 2 available PCIe ports for customer use	Add-on PCIe, Built-in, or additional card	
	Must include licenses/activation for full use including console access	Must include licenses/activation for full use including console access	Must include licenses/activation for full use including console access	

Warranty	MINIMUM 3 year Professional level support for IT and Next Business Day on-site service/parts (8x5 warranty) ALL PARTS COVERED	MINIMUM 3 year Professional level support for IT and Next Business Day on-site service/parts (8x5 warranty) ALL PARTS COVERED	MINIMUM 3 year Professional level support for IT and Next Business Day on-site service/parts (8x5 warranty) ALL PARTS COVERED	MINIMUM 3 year Professional level support for IT and Next Business Day on-site service/parts (8x5 warranty) ALL PARTS COVERED
	MINIMUM 3 year Professional level support for IT MISSION CRITICAL 4 hour on-site service/parts (4hr, 24x7 warranty) ALL PARTS COVERED	MINIMUM 3 year Professional level support for IT MISSION CRITICAL 4 hour on-site service/parts (4hr, 24x7 warranty) ALL PARTS COVERED	MINIMUM 3 year Professional level support for IT MISSION CRITICAL 4 hour on-site service/parts (4hr, 24x7 warranty) ALL PARTS COVERED	MINIMUM 3 year Professional level support for IT MISSION CRITICAL 4 hour on-site service/parts (4hr, 24x7 warranty) ALL PARTS COVERED
	Option for longer than 3 year "8x5 Warranty"	Option for longer than 3 year "8x5 Warranty"	Option for longer than 3 year "8x5 Warranty"	Option for longer than 3 year "8x5 Warranty"
	Option for longer than 3 year "4hr, 24x7 Warranty"	Option for longer than 3 year "4hr, 24x7 Warranty"	Option for longer than 3 year "4hr, 24x7 Warranty"	Option for longer than 3 year "4hr, 24x7 Warranty"