

**ATTACHMENT A**

**CONTRACT**

**FOR**

**KETS Instructional Devices**

**BETWEEN**

**THE COMMONWEALTH OF KENTUCKY**

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

**AND**

**Microsoft Corporation**

**MA 758 2100000422**

**VENDOR CONTACT INFORMATION:**

**Tim Cornett  
One Microsoft Way  
Redmond, WA 98052  
[tcornett@microsoft.com](mailto:tcornett@microsoft.com)  
(502) 320-3513**

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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 **Microsoft Corporation**, (“Contractor” or “Vendor” or “Microsoft”) as the Prime Vendor.

The Commonwealth and Contractor agree to the following:

**I. Scope of Contract**

This Contract will provide **KETS Instructional Devices and related services** for usage by KY Public School Districts, the KY School for the Blind (KSB), the KY School for the Deaf (KSD) and the KY Department of Education (KDE).

## **II. Negotiated Items**

### **1. 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. The Vendor's liability for damages to the Commonwealth should be limited to the greater of \$500,000 or the contract purchase price. The foregoing limitation of liability should not apply to claims covered by other specific provisions calling for liquidated damages or specifying a different limitation of liability, or to claims for injury to persons or damage to property caused by the Vendor's negligence or willful or wanton conduct. In no event should the Vendor be liable for any indirect, special, punitive or consequential damages unless otherwise specified in the Contract.

Notwithstanding anything to the contrary to which the parties may otherwise agree, except for those direct damages resulting from claims that are caused by the gross negligence or willful misconduct of Vendor (but not caused by acts of negligence), the parties agree that Vendor's, its principals' subcontractors', members', agents' and employees (collectively "Vendor Parties") maximum aggregate liability to the Commonwealth, as well as any and all parties claiming through the Commonwealth, for all direct damages resulting from, arising out of or relating to this Agreement and the Services performed under this Agreement however caused and whether arising under contract, warranty, tort (including negligence), strict liability, statute or any other theory of liability shall not exceed a maximum aggregate amount of five hundred thousand dollars (\$500,000). The limit set forth in this Section will apply whether or not a party has been advised to the possibility of such damages.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL VENDOR OR ANY OF VENDOR'S EMPLOYEES OR AGENTS BE LIABLE TO THE COMMONWEALTH FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR ANY OTHER THEORY OF LIABILITY.

THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL BE THE COMMONWEALTH'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIMS AGAINST VENDOR OR ANY OF VENDOR'S EMPLOYEES OR AGENTS UNDER OR RELATED TO THIS AGREEMENT. THE PARTIES FURTHER AGREE THAT THE LIABILITY CAP SET FORTH ABOVE SHALL NOT BE APPLIED CUMULATIVELY OR ON A PER CLAIM BASIS AND NOTHING SHALL BE CONSTRUED SO AS TO ENLARGE THAT AGGREGATE LIMIT.

THE PARTIES AGREE THAT THE FOREGOING SECTIONS REGARDING DEFENSE AND LIMITATIONS OF LIABILITY REPRESENT THE BASIS OF THE BARGAIN AND A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

### 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](http://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)**
- B. 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 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 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 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.

**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, 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.**

### 30.7 **EU GDPR Compliance**

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.

### 30.8 **Software Development**

If applicable, 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.

**30.9 License Agreements**

If applicable, 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. Any escrow agreement shall be negotiated by all parties. Any third party software licenses and cloud resources necessary for the proposed solution may be procured via the Commonwealth's existing contracts.

**30.10 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.

**30.11 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.

**30.12 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.

### 30.13 **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 <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 2000000368, 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 2000000368;
4. The Solicitation RFP 758 2000000368 and all attachments
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor’s proposal in response to the Solicitation RFP 758 2000000368;
7. The Contractor’s proposal in response to the Solicitation RFP 758 2000000368.

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 unit price** for the elements listed.

**40.6 Contract Usage**

The contractual agreement with the 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 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.

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 not commit or permit any act that will 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 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.

**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. 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.

**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**

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

**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 the 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 the 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. The Vendor's liability for damages to the Commonwealth should be limited to the greater of \$500,000 or the contract purchase price. The foregoing limitation of liability should not apply to claims covered by other specific provisions calling for liquidated damages or specifying a different limitation of liability, or to claims for injury to persons or damage to property caused by the Vendor's negligence or willful or wanton conduct. In no event should the Vendor be liable for any indirect, special, punitive or consequential damages unless otherwise specified in the Contract.

Notwithstanding anything to the contrary to which the parties may otherwise agree, except for those direct damages resulting from claims that are caused by the gross negligence or willful misconduct of Vendor (but not caused by acts of negligence), the parties agree that Vendor's, its principals' subcontractors', members', agents' and employees (collectively "Vendor Parties") maximum aggregate liability to the Commonwealth, as well as any and all parties claiming through the Commonwealth, for all direct damages resulting from, arising out of or relating to this Agreement and the Services performed under this Agreement however caused and whether arising under contract, warranty, tort (including negligence), strict liability, statute or any other theory of liability shall not exceed a maximum aggregate amount of five hundred thousand dollars (\$500,000). The limit set forth in this Section will apply whether or not a party has been advised to the possibility of such damages.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, TORT, STRICT



LIABILITY, STATUTE OR OTHERWISE, SHALL VENDOR OR ANY OF VENDOR'S EMPLOYEES OR AGENTS BE LIABLE TO THE COMMONWEALTH FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES HOWEVER CAUSED AND WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR ANY OTHER THEORY OF LIABILITY.

THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL BE THE COMMONWEALTH'S SOLE AND EXCLUSIVE REMEDIES FOR ANY CLAIMS AGAINST VENDOR OR ANY OF VENDOR'S EMPLOYEES OR AGENTS UNDER OR RELATED TO THIS AGREEMENT. THE PARTIES FURTHER AGREE THAT THE LIABILITY CAP SET FORTH ABOVE SHALL NOT BE APPLIED CUMULATIVELY OR ON A PER CLAIM BASIS AND NOTHING SHALL BE CONSTRUED SO AS TO ENLARGE THAT AGGREGATE LIMIT.

THE PARTIES AGREE THAT THE FOREGOING SECTIONS REGARDING DEFENSE AND LIMITATIONS OF LIABILITY REPRESENT THE BASIS OF THE BARGAIN AND A FAIR ALLOCATION OF RISK BETWEEN THE PARTIES WITHOUT WHICH THEY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

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 **two (2) additional two-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 the 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 this 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) identified during the negotiation phase of this procurement.

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

After the award of contract, 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](mailto: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. Enterprise Instructional Hardware and Services**

**1. Qualified Vendors**

A qualified vendor is an original equipment manufacturer (OEM) of enterprise level instructional devices and related services that meets or exceeds all technical specifications outlined in this Contract.

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

For this Contract, an agent is defined as a company or individual that represents the manufacturer in marketing, quoting items from contract, purchase order review & acceptance, delivery and/or warranty and support services of the manufacturer's product(s). Payment 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.

### **Vendor Single Point of Contact**

The vendor should name a person that will be the single point of contact (SPOC) for contract issues.

**Microsoft Single POC**  
**Tim Cornett**  
**104 Sugarwood Ln**  
**Frankfort, KY 40601**  
**502-320-3513**  
[tcornett@microsoft.com](mailto:tcornett@microsoft.com)

The SPOC should be aggressive in sharing contract information, including but not limited to solution roadmaps, pricing and other strategic information to KDE and KETS customers.

The contract holder should ensure this person and all salespersons of their product will be knowledgeable in:

- All the details of the KETS contract.
- The KY School, District Office and KDE customer base.
- The most current KETS Master Plan on our Web site and year round current events in KETS.

Upon contract award, the Vendor's SPOC should provide a description of a copy of procedures for requesting escalation, complaint resolution and identify the staff available for installations, billing problems, etc. Vendor should update this information annually at a minimum.

## **2. Categories**

The following categories should be established KETS Instructional Devices:

- Enterprise Desktops – **Microsoft is not providing**
- Enterprise Laptops
- Instructional Device Maintenance/Warranty Support
- Enterprise Tablets (Optional)
- Monitors (Optional)
- Instructional Device Accessories (Optional)

- Instructional Device Installation/Initial Configuration (Optional)
- Services (Optional)

Services should include but not be limited to: de-installation, training, migration, and optimization of products offered or supplied under the Master Agreement. These types of services may include, but are not limited to: de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied.

Consumer grade devices, which are defined as devices that are not included in the manufacturer's enterprise line of devices are not included in this contract.

**Minimum Technical Specifications** are included for enterprise desktops and laptops in **Attachment G**.

KETS Instructional Device Guidelines are included in **Attachment I**.

Categories including tablets, instructional device accessories and services are optional. Vendors may include these optional categories if available. KETS customers may purchase products or services included in the optional categories from either this KETS contract or other approved sources.

### **3. New/Revised Products**

Vendor(s) are encouraged to update their product lines and solutions as quickly as possible. As new models of products and/or updates to solutions within the scope and spirit of the contract become available the vendor will notify OET's Vendor Manager. OET reserves the right to approve all new and revised products and solutions, including pricing prior to the vendor being able to include it in the KETS contract. **OET reserves the right to ask for an evaluation unit for a three (3) month period.**

### **4. Pricing**

**Contract Pricing:** Equitable pricing shall be offered to all KETS customers. KY Public School Districts, KSB, and KSD may qualify for discounts including but not limited to operating system or other education discounts. KY's Public School Districts shall purchase from the KETS Master Agreements for the instructional device solutions and categories that have been approved by KDE. Vendor(s) shall be able to effectively handle this magnitude of sales, meet delivery deadlines with quality Enterprise (not Consumer) hardware and support equitably across every county in our state while meeting the

performance standards for the life of the contract. The Commonwealth requests hardware that has consistency in parts and has undergone testing of internal components to the Enterprise level versus the consumer level. It is mandatory that vendors have capacity to provide contract management and support across every county KY. Vendor shall provide on-site support to **every school** in **every county** with the same timelines and costs with no exceptions for location.

**Promotional Pricing:** KDE may identify set dates where promotional pricing is encouraged by contract holders to KETS customers. During the promotional period(s) deeper discounts which are available regardless of quantities purchased may be set by the contract holder. This promotional pricing must be submitted and approved by the OET Vendor Manager and be available to all KETS customers. At the close of a promotion period the discounts would return to the discount off MSRP approved prior to the promotional period. Any promotional discount must be equitable and offered to all KETS customers during that period.

**Operating System Pricing:** Vendors awarded a contract may offer the best operating system pricing available to the KETS customer. This may include but is not limited to Original Equipment Manufacturer (OEM) pricing.

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

## **5. Personal Purchases**

All staff of KETS customers, including public school staff and students, may purchase from this Contract for their personal use. This specifically includes certified teachers as mandated by KRS 156.690. On-site warranty service for personal purchases from this Contract will take place at the staff member's



school or district office. Applicable taxes and/or shipping charges may apply to personal purchases.

## **6. Contract Quotes and Invoicing**

Vendor quotes and invoices shall be submitted to the customer. Vendor shall submit invoices only for items ordered, delivered and accepted by the customer. Each quote and invoice should include at a minimum:

- State/KETS Master Agreement number
- Customer purchase order number
- Customer name and address
- Date of Order
- Date of Installation (if applicable)
- Detailed equipment charges
- Hourly rate, if applicable
- Grand total for the quote or invoice

### **B. 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 attached to this Contract as **Attachment J**. 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>

### **C. Web site**

Vendor shall maintain their own Web site where solutions and prices offered on the KETS contract may be easily/quickly viewed. The web site should allow

KETS customers to place and view orders. This information must be easily accessible and easily recognized as “KETS Master Agreement” pricing. The vendor Web site shall also clearly identify the contract number and vendor contact information. The vendor shall work with the OET Vendor Manager to satisfy the Web site requirements within (90) ninety days of a contract award.

#### **D. Warranty**

Vendor should be able to provide various levels of warranty service for all hardware offered on the contract. . Vendor shall include one (1) year of onsite warranty coverage with an optional three (3) year warranty in the initial purchase cost of desktops and one (1) year of depot warranty coverage with an optional three (3) year warranty in the initial purchase cost of laptops. Vendor may offer optional upgrades at an additional fee: four (4) or five (5) year on-site and depot warranty and faster repair times such as next business day no troubleshooting if available. 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.

Depot and on-site warranty shall meet the following criteria:

- The KETS Customer’s Primary Period of Service (PPS) falls between the hours of 8:00 am and 5:00 pm ET, Monday - Friday, excluding state observed holidays. The vendor shall be available to provide warranty service during the PPS;
- Vendor shall have a toll-free number for all calls and a call tracking system;
- Vendor shall call and/or email the customer back within one (1) hour of placing call to provide applicable information including ticket number;
- The one (1) warranty coverage included in the initial purchase shall be either Depot or on-site and is defined as:
  - Depot Warranty: Depot warranty means that upon determining the hardware requires service, the vendor will provide to the customer a shipping container by the close of the customer’s next business day for the customer to package and ship the hardware to the manufacturer’s authorized repair facility. Hardware being serviced through depot warranty must be fully operational and returned to the customer within forty (40) business hours upon receipt of the depot shipment from the customer. Depot warranty periods begin at the time of delivery of the equipment. The vendor shall be responsible for all shipping costs.
  - On-site Warranty: On-site warranty means that the vendor goes to the location of the equipment purchased, e.g. a school, district office, state agency, etc. On-site warranty shall be a full on-site service, parts and labor and warranty to begin at the time of delivery of equipment to the

customer's site. Hardware being serviced through on-site warranty must be fully operational within forty-eight (48) working hours.

- All technicians shall be properly certified and/or licensed to service the hardware;
- Vendor may perform diagnostics and repair remotely if applicable with the customer's prior approval;
- Vendor is not responsible for disaster recovery;
- Products that are delivered but defective "out of the box" shall be replaced with new replacements versus initiating warranty service.
- 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 or warranty services;
- Vendor shall be provided access to the customer's building where the equipment is located as required to fulfill customer service requests in the event of onsite service.
- Warranty does not extend to hardware that has been damaged or rendered defective due to:
  - a result of accident, misuse or abuse;
  - a result of an act of God;
  - Operation outside the usage parameters stated in the products user manual;
  - modification of the product
  - A result of service by anyone other than (manufacturer), contract agent who is authorized to provide service, or authorized service provider. Expendable parts, such as non-rechargeable batteries, carrying cases, etc. are not covered. Damage due to loss of any programs, data or removable storage media is not covered.

**Self-Maintainer:**

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

**Warranty Penalties**

There shall be a complaint desk at KDE site so customers can quickly document vendors that are failing to meet the service requirements of the contract. Quarterly reports will be prepared and submitted by the vendor to the OET Vendor Manager which will assist KDE in identifying vendors whom have not successfully met service response times. Vendor shall meet service specifications for a minimum of 97% of total annual service calls. Vendor is allowed this three percent (3%) failure rate based on total service calls they receive annually due to vehicle break down, parts that get lost, addresses being difficult to find, etc.

Vendors who exceed the three percent (3%) failure rate during the first quarter shall be required to meet with OET Vendor Manager to establish a corrective plan for warranty service. Vendors who exceed the three percent (3%) failure rate for two (2) consecutive quarters shall be required to meet with OET Vendor Manager to establish a corrective plan for warranty service and OET may recommend a two (2) week suspension of the vendor's contract to OPS. Vendors who exceed the three percent (3%) failure rate for three (3) consecutive quarters shall be required to meet with OET Vendor Manager to establish a corrective plan for warranty service and OET may recommend a three (3) week suspension of the vendor's contract to OPS. Vendors who exceed the three percent (3%) failure rate for four (4) consecutive quarters shall be required to meet with OET Vendor Manager to establish a corrective plan for warranty service and OET may recommend termination of the vendor's contract to OPS.

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

**E. Vendor's Contract Reporting**

In addition to the reporting requirement by OPS, the vendor shall submit the following reports quarterly to the OET Vendor Manager:

1. **Sales Report**, 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.

2.

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

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 to submit the quarterly sales reports. Neither 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.

## **F. Delivery, Delivery Penalties, Delivery Penalty Waiver**

### **1. Delivery**

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.

### **2. Delivery Penalties**

Vendor agrees when delivery is not made within the contracted due date, five percent (5%) per calendar week may be deducted from the Vendor's invoice for each calendar week vendor fails to meet the contracted delivery date.

Vendor agrees when delivery and/or installation is not made within the contracted timeframes, five percent (5%) per calendar week from the total invoice amount may be deducted from the vendor's invoice for each calendar week vendor fails to meet the contracted timeframe. Penalties may

continue to be charged to the vendor until the delivery and installation if applicable is complete.

### **3. Delivery 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 should have submitted the new model to OET for approval and evaluation testing unless the evaluation of that model is waived by OET. The new model should not be shipped to the customer until which time the model has been added to the KETS contract. The vendor should 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.

### III. Pricing

<b>Instructional Device Categories</b>	<b>Discount Off MSRP</b>
Enterprise Desktops	<b>N/A</b>
Enterprise Laptops	<b>3%</b>
Instructional Device Maintenance/Warranty Support	<b>0%</b>
Enterprise Tablets	<b>3%</b>
Monitors	<b>0%</b>
Instructional Device Accessories	<b>0%</b>
Instructional Device Installation/Initial Configuration	<b>0%</b>
Services	<b>0%</b>

**IV. 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.

**1<sup>st</sup> Party: Kentucky Department of Education, (“the Commonwealth” or “Customer” or “KDE”)**

Jason E. Glass, Ed.D.

Commissioner of Education

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

*Jason E. Glass*

09/17/2020

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**2<sup>nd</sup> Party: Microsoft Corporation, as Contracting Agent (“Contractor” or “Vendor” or “Microsoft”)**

Lydia Smyers

\_\_\_\_\_  
General Manager, US Education

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

*Lydia Smyers*

\_\_\_\_\_  
Sept 16, 2020

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

Joan Graham

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Printed name

\_\_\_\_\_  
Title

*Joan Graham*

9/21/2020

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**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 – Instructional Device Hardware Minimum Technical Specifications**  
**Attachment H – Omitted Intentionally**  
**Attachment I – KETS Instructional Device Guidelines**  
**Attachment J – Commonwealth Lease Agreement**  
**Attachment K – Omitted Intentionally**  
**Attachment L – Omitted Intentionally**  
**Attachment M – Omitted Intentionally**  
**Attachment N – 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**  
**Instructional Device Hardware Minimum Specifications**

<b>Category</b>	<b>Enterprise Desktop Solution</b>	<b>Enterprise Laptop or Windows Tablet Solution</b>
Processor	X86, X64 or ARM	X86, X64 or ARM
Installed Memory	4 GB (1x4 GB DIMM)	4 GB (1x4 GB DIMM)
Memory Expansion	16 GB	8 GB
Cache	2 MB, Integrated L2 Cache	2 MB, Integrated L2 Cache
Slots	2 PCI/PCI X/PCI Express Slots	
Hard Drive	Internal persistent storage	Internal persistent storage
Audio	Combo Audio Out/In or Audio out and microphone	Combo Audio Out/In or Audio out and microphone
Video	Integrated shared video	Integrated shared video
Graphics Support	Graphics support 1280 x 1024 @ 75Hz	
Ports	VGA graphics, 1 VGA video port	VGA and/or HDMI capable either with or without use of an adapter or "dongle"
Ports – Universal Serial Bus (USB)	4 USB (2.0 and 2 USB 3.0)	1USB Ports (powered or USB 3.0)
CD/Rom	<b>Does not come with an optical drive</b>	<b>Does not come with an optical drive</b>
Display	N/A	1366 x 768
Battery	N/A	4.5-hour usage without plug in
Input Device (Mouse)	101 Key Keyboard – USB	
Input Device (Keyboard)	2 button Optical Mouse	
Operating System	Licensed for latest Apple or Windows OS	Licensed for latest Apple or Windows OS
Drivers	Shall have all standard drivers installed on each unit	Shall have all standard drivers installed on each unit
Driver – Network Interface	Include, at a minimum, network interface, hard disk, video, etc.	Include, at a minimum, network interface, hard disk, video, etc.
Network	Configured with one (1) Ethernet network adapter (10/100/1000)	Configured Ethernet network adapter (10/100/1000) or Internal wireless (802.11 b/g/n)

Energy Star Certified	YES	YES
EPEAT Certified	YES	YES
Warranty	1 Year with a minimum 3 year option	1 Year with a minimum 3 years option

## Attachment I

### KETS Instructional Device Guidelines



The instructional device market continues to grow and expand. Having device product standards and contracts has been a foundational effort for the Kentucky Educational Technology System (KETS) program since its existence. KETS Instructional Device Standards are in place and have been established for enterprise class devices. Recent innovations in computing devices, however, have realized two issues with the KETS ID Standards, namely 1) a blurring of the lines between what makes up an "enterprise" device and what makes up a "non-enterprise" grade or class device, and 2) the rapid creation of whole new categories of instructional devices. With these facts in mind, the focus of this document is to provide guidelines to consider when selecting and purchasing new instructional devices. Additionally, these guidelines will assist in determining whether a device is an "enterprise" level device that must be purchased through the KETS Instructional Device Standards, or a "non-enterprise" class device, which may be purchased outside of the KETS contract mechanism, while continuing to adhere to [model procurement code](#) and local district policy.

#### Quick Steps:

1. First, determine what you want to do instructionally, and then match the device up with that.
2. Next determine operational, management, and support strategy in order to achieve success.
3. If the strategy dictates an enterprise class approach, refer to the KETS product standards and contract holders.
4. If the strategy dictates a non-enterprise class approach, then consider the following guidance for non-enterprise class devices (see below).

### Defining an Enterprise Class Device:

A device is determined enterprise grade if **all three** categories are achieved. \*Special note: contrary to general perception, this determination does not hinge on form factor, appearance, and/or price.

1. **Centralized Manageability** - The device can be managed through enterprise systems such as: Active Directory, Group Policy (GPO), WSUS, Antivirus (the ability to push policies, updates, patches, etc. from a central location or network system).
2. **Long or Extended Life Cycle** - The device is expected to be in use for 3 to 5 years. As an example question to ask, is the device issued to a student as a freshman, and expected to have a viable 4-year lifespan (through graduation)? Manufacturers sometimes determine this by limitations on the OEM Warranty (both Hardware and Operating System or OS Support), on-site repair, and availability of depot parts.
3. **100% supported interoperability with Enterprise Applications** - Full support from the KETS Service Desk can be expected with devices that can run enterprise applications such as CIITS, IC, Munis, KDE endorsed online assessments. Enterprise applications are often rich client/ client based, or compatible with full browser version (not mobile versions of a web browser). The OS and software that can be installed on the device also speaks to the level of enterprise support and management. \*\*\*KETS/ KDE backing of the contract terms and conditions.

**Note:** *Enterprise class devices shall be purchased from a KETS Contract. Devices that do not compete with KETS product or technical standards, and are not determined to be enterprise class devices, are not required to be purchased from a KETS contract. Therefore, a KETS contract waiver is not needed.*

### Non-Enterprise Class Device Guidance:

If the device is not enterprise grade, the following best practice concepts should be explored:

1. Intended Use
  - a. Determine what the devices will be used for. Example: Assessments, basic Internet access, content creation, digital textbook consumption, etc. This will help determine the form factor and Operating System (OS) that is most appropriate. It will

also help determine if accessories are needed.

- b. Will the device be assigned to a single user or shared?
- c. Leaders should think through and plan for the required management strategies, replacement/sustainment strategies, and operational support strategies in leveraging this device selection.

2. Warranty and Lifespan Expectations

- a. Set the correct expectations - There is no KDE/State leverage in terms of support with vendor issues for non-enterprise class devices. Non-enterprise devices have not undergone review or evaluation by the KDE, and have not been confirmed to meet the KDE standards or recommended guidelines.
- b. If purchasing and deploying devices that are not determined to be enterprise grade, district and school level leadership teams should be prepared for shorter refresh cycle expectations, resulting in different measures of sustainability.
- c. Determine the scope and duration of manufacturer warranty. If additional warranty can be purchased, weigh the additional cost and lifecycle expectations against the overall cost of the device.

3. Buy a Few & Test

- a. Prior to making purchases for a large quantity of a particular device, full end user usability and technical reviews should be a major part of the adoption plan. End user experiences and technical management experiences should meet the desired outcomes.
- b. Consider exploring if the device is agile and flexible enough to meet the changing instructional practices that meet the vision of school and district leadership.
- c. Is the device durable enough for the environment in which it will be used?
- d. Consider reviewing the following specifications: screen size and resolution, processor type and speed, RAM, available storage space, quality of camera(s), battery life, available inputs and outputs, touch responsiveness (touch or non-touch – if applicable).

4. Price/ Cost

- a. In general terms, the price of a device is relational to the expectations



on supportability, life span or life cycle, and manageability.

- b. Consider related costs, such as software and/or servers for managing devices and accessories. As well as device accessories such as keyboards, protective cases, etc.

5. OS & Software/ Apps

- a. Does the device run the full version of Software or only run individual apps from an app store?
- b. Is there a game plan on how to purchase from an app store and how install applications across multiple devices?
- c. What is your method of ensuring virus protection and software updates for non-enterprise class devices?

**ATTACHMENT J  
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.

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**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”)
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\_\_\_\_\_ 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: \_\_\_\_\_