

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**

(hereinafter referred to as "SBBC"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

**DELL MARKETING L.P.**

(hereinafter referred to as "DELL"),  
whose principal place of business is  
One Dell Way, Box RR8-06  
Round Rock, Texas 78682

**WHEREAS**, SBBC issued a Request for Proposal identified RFP 14-046E, Computer Servers (hereinafter referred to as "RFP"), dated September 25, 2013, and amended by Addendum No.1, dated October 18, 2013, and Addendum No. 2, dated October 22, 2013, each of which are incorporated by reference herein, for the purpose of receiving proposals for Computer Servers; and

**WHEREAS**, SBBC is desirous of purchasing computer servers from DELL; and

**WHEREAS**, DELL submitted a proposal and offer, including a Cost Proposal in response to the RFP, on October 28, 2013 (hereinafter collectively referred to as "PROPOSAL"), which is incorporated herein by reference.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

### **ARTICLE 1 - RECITALS**

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### **ARTICLE 2 – SPECIAL CONDITIONS**

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence upon execution by all parties and conclude on December 31, 2018. The term of the contract may, by mutual agreement between SBBC and DELL be extended for two additional one-year periods and, if needed, 180 days beyond the expiration date of the renewal period. Supply Management & Logistics Department, will, if considering renewing, request a letter to renew from DELL, prior to the end of the contract period. Any renewal period shall be approved by the Amendment of this Agreement.

## **ARTICLE 2 – SPECIAL CONDITIONS**

2.02 **Priority of Documents.** In the event of a conflict between documents, the following priority of documents shall govern.

- First: This Agreement; then
- Second: Addendum No. 2; then
- Third: Addendum No. 1; then
- Fourth: RFP 14-046E – Computer Servers; then
- Fifth: Proposal submitted by DELL in response to the RFP 14-046

2.03 **Pricing.** Pricing for items as specified in the RFP shall be based upon DELL's PROPOSAL. In the event that the configurations specified in the RFP are replaced by DELL, in accordance with the terms of this Agreement, then the pricing for the replacement items shall be based upon DELL's Retail Price List discounted by the percentages specified in DELL's PROPOSAL.

2.04 **Price Adjustment:** Prices offered shall remain firm through the term of the contract. Price adjustments requested for any contract extension periods will be evaluated at the inception of the extension of the initial contract, and on an annual basis thereafter. SBBC will accept a price reduction for any good or service at any time, provided there are not changes to related terms and conditions in the established contract. During the Contract term, if Dell offers better pricing to similarly situated customers outside the Contract, but upon the same or similar terms of the Contract, for substantially the same quantity of the same or substantially similar goods and services, then the price under the Contract shall be immediately reduced to the lower price.

2.05 **Delivery.** Delivery of order shall be inside delivery, to the various SBBC locations within Broward County, Florida. DELL shall retain title and control of goods and select the carrier. DELL will prepay all shipping costs and will bear risk to the products from the point of delivery to SBBC's receipt of the products at the specified delivery address. Title to the products offered will pass to SBBC at DELL's dock upon delivery of the products by DELL to the shipping agent. Notwithstanding the foregoing, in no case shall DELL be relieved of responsibility for damage or loss to the product during transit, provided that DELL has selected the carrier. SBBC shall, in no way, be liable for any product not received by SBBC at the specified delivery address. Reference Section 6.9, DELL acknowledges and agrees to fully comply with Section 6.9 of RFP.

2.06 **Warranty of Currency.** DELL acknowledges and agrees to fully comply with said Sections 6.8 and 6.8.1 of the RFP for DELL items within the scope of the RFP, with the exception of items purchased under the "Balance of Line" provision.

2.07 **Warranty.** The warranty period shall begin on the date of shipment (DELL invoice date) and shall extend for a period of sixty (60) months. However, any delay in delivery and/or installation, not caused by SBBC, exceeding thirty (30) days from the date of shipment to the date of final acceptance of installation, shall extend warranty period by the same number of days of delay between the date of shipment and the date of final acceptance of installation. Acceptance by SBBC shall not exceed 30 days after date of installation, and in no instance shall the DELL warranty exceed sixty-one (61) months after DELL's invoice date. This warranty

provision does not include non-DELL Branded products, or "Balance of Line: products. DELL's standard product warranties are incorporated by reference, to the extent that they do not conflict with this clause.

**Replacements:**

Should the same DELL-provided system require a fourth (4<sup>th</sup>) hardware repair requiring DELL-authorized on-site service within a twelve (12) month period, DELL will replace the system as originally shipped with an equivalent or better system. "Repair" shall be defined as follows:

- Must be a hardware item covered under DELL's proposed warranty (i.e. not due to software or operator error)
- Must be counted per single incident (i.e. Two or more repairs or component replacements occurring during the same on-site service dispatch shall be counted as one single "repair".)
- This replacement for 4<sup>th</sup> "repair" policy is only applicable to the systems purchased under a contract resulting from this response.
- SBBC is responsible for notifying DELL to request a replacement that meets the criteria above.

**2.08 RIGHT TO AUDIT:** DELL and Sub-Contractor's records shall include, but not be limited to, accounting records, payroll time sheets, audited and unaudited financial statements to substantiate payment rates and income, written policies and procedures, Sub-Contractor's files and any other supporting evidence necessary to substantiate payments and income related to this Agreement (all the foregoing herein after referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims submitted by DELL's or any of his/her payees pursuant to the execution of the Agreement. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify payments and any other matters or items associated with this Agreement.

- For the purpose of such audits, inspections, examinations and evaluations, SBBC's agent or authorized representative shall have access to said records from the effective date of this Agreement, for the duration of the work, and until five (5) years after the date of final payment by DELL's pursuant to this Agreement. All payments which cannot be documented as paid as required by the Agreement and found not to be in compliance with the provisions of this Agreement, shall be reimbursed to SBBC.
- SBBC's agent or its authorized representative shall have access to DELL's facilities, shall have access to all necessary records and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article. SBBC's agent or its authorized representative shall give audited firm reasonable advance notice of intended audits.
- DELL shall certify that payments are accurate and correct on each and every payment. If an audit reveals discrepancies, such as an over payment, DELL will be required to reimburse SBBC for the discrepancy with a minimum of eighteen percent (18%) per annum.
- If an audit inspection or examination in accordance with this article, discloses over payments (of any nature) to DELL(s) by SBBC in excess of ten (10%) percent of the total payments, the actual cost of SBBC's audit shall be paid by DELL as well as the over payments by SBBC.

2.09 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Chief Information Officer  
7720 West Oakland Park Blvd, Ste 323  
Sunrise, Fl. 33351

To DELL: Lauren Newberry, Senior Contract Manager  
Dell Marketing, LP  
One Dell Way, Box RR8-06  
Round Rock, Texas 78682

With a Copy to: Ashleigh Lane, Senior Contract Manager  
Dell Marketing, L.P.  
One Dell Way, Box RR8-07  
Round Rock, Texas 78682

2.09 **Background Screening:** DELL agrees to comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of DELL or its personnel providing any services under the conditions described in the previous sentence. DELL shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to DELL and its personnel. The parties agree that the failure of DELL to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. DELL agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in DELL's failure to comply with the requirements of this Section or with Sections 1012.32 and 1012.465, Florida Statutes.

2. **Indemnification.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By DELL: DELL agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by DELL, its agents, servants or employees; the equipment of DELL, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of DELL or the negligence of DELL's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by DELL, SBBC or otherwise.

### **ARTICLE 3 – GENERAL CONDITIONS**

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, and contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days written notice to DELL of its desire to terminate this Agreement. In the event of such termination, SBBC shall pay DELL for all goods and services provided through the effective date of termination.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof.

Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 **Student Records:** Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer,

employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.11 **Compliance with Laws.** Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.



3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein, regarding indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF,** the Parties hereto have made and executed this Agreement on the date first above written.

**FOR SBBC**

(Corporate Seal)

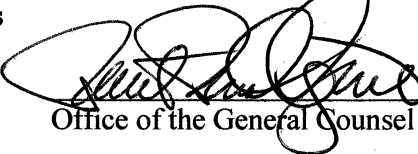
THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By \_\_\_\_\_  
Patricia Good, Chair

\_\_\_\_\_  
**Robert W. Runcie, Superintendent of Schools**

Approved as to Form and Legal Content:

 03/07/14  
\_\_\_\_\_  
Office of the General Counsel

**FOR DELL**

(Corporate Seal)

DELL MARKETING, L.P.

ATTEST:

By Lauren Newberry

\_\_\_\_\_, Secretary

-or-  
Charlotte Locklin  
Witness

Michelle Baskdall  
Witness

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF Texas

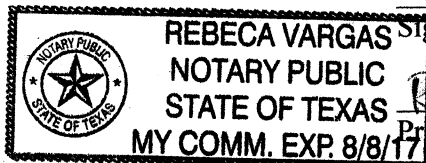
COUNTY OF Bell

The foregoing instrument was acknowledged before me this 27th day of February, 2014 by Lauren Newberry of Dell Marketing LP, on behalf of the corporation/agency.  
Name of Person  
Name of Corporation or Agency

He/She is personally known to me or produced TX DL Exp: 10/30/18 as identification and did/did not first take an oath. Type of Identification

My Commission Expires:

(SEAL)



Rebecca Vargas  
Signature - Notary Public

Rebecca Vargas  
Printed Name of Notary

12952007-1  
Notary's Commission No.