

**AMENDMENT #1
BETWEEN
MIDWESTERN HIGHER EDUCATION COMMISSION
AND
EMC CORPORATION
CONTRACT NUMBER: MHEC-01312021**

Whereas, this Amendment #1 is entered into by and between EMC Corporation and the Midwestern Higher Education Commission (MHEC), contract number MHEC-01312021,

Whereas, the parties entered into the Master Price Agreement dated February 15, 2021 (the "Agreement") and the parties now desire to amend the terms of the Agreement.

Now, therefore:

Section 5. Master Agreement Term shall be deleted in its entirety and replaced with the following:

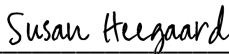
"5. Master Agreement Term

This Agreement shall be effective on February 15, 2021 and shall remain in effect until January 31, 2028 (Term Ending Date) unless otherwise terminated pursuant to the terms of the Agreement. Eligible Participants may procure products and services from Supplier under the terms of the MHEC Master Agreement at any time during the duration of the Agreement or any renewal thereof."

Except as set forth above, the Agreement shall remain as stated. In the event of a conflict between the terms found elsewhere in the Agreement and this Amendment #1, this Amendment #1 shall control.

This Amendment #1 is hereby executed by the parties' authorized representatives set forth below, and effective upon the later date of signatures hereto ("Effective Date").

Midwestern Higher Education Commission

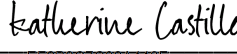
DocuSigned by:

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Signature

Susan Heegaard
Printed Name

President
Title

January 3, 2024 | 2:24 PM PST
Date

EMC Corporation

DocuSigned by:

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Signature

Katherine Castillo
Printed Name

Paralegal Advisor
Title

January 3, 2024 | 1:35 PM CST
Date

MASTER PRICE AGREEMENT
BETWEEN
MIDWESTERN HIGHER EDUCATION COMMISSION
AND
EMC CORPORATION
EFFECTIVE FEBRUARY 15, 2021 through FEBRUARY 15, 2024

THIS AGREEMENT, and amendments and supplements thereto, is made between the Midwestern Higher Education Commission (hereinafter MHEC) located at 105 Fifth Avenue South, Suite 450 Minneapolis, MN 55401, for the benefit of the Eligible Organizations located in the MHEC member states, and EMC Corporation, (hereinafter Dell EMC or Supplier) One Dell EMC Way, Round Rock TX, 78682. For purposes of this Master Agreement MHEC and Dell EMC are referred to collectively as the "Parties" or individually as "Party".

Whereas, the Midwestern Higher Education Compact (Compact) is an interstate compact of twelve Midwestern states, such states being Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Member States); and MHEC, a nonprofit 501(c) (3), is a statutorily created governing body of the Compact established for the purposes, in part, of determining, negotiating and providing quality and affordable services for the Member States, the entities in those Member States, and the citizens residing in those Member States; and

Whereas, MHEC has established a Technology Initiative for the purpose of which is to determine, negotiate and make available quality and affordable technology products and services to the not-for-profit and public education related entities in the MHEC Member States; and

Whereas, MHEC has entered into separate agreements with the New England Board of Higher Education (NEBHE) and the Southern Regional Education Board (SREB) and the Western Interstate Commission for Higher Education (WICHE) respectively to allow entities in the NEBHE Member States, SREB Member States, and the WICHE Member States access MHEC's Technology Initiative contracts, including this Master Agreement; and

Whereas, NEBHE Member States refers to any state that is a member, or affiliate member of NEBHE. Current NEBHE Member States are: Connecticut, New Hampshire, Maine, Massachusetts, Rhode Island, and Vermont.

Whereas, SREB Member States refers to any state that is a member or an affiliate member of SREB. Current SREB Member States are: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia; and

Whereas, WICHE Member States refers to any state that is a member or an affiliate member of WICHE. Current WICHE Member States are: Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and U.S. Pacific Territories and Freely Associated States; and

Whereas, Dell EMC offers certain quality technology related products and services; and

Whereas, MHEC conducted a competitive sourcing event for Virtualization and Data Center Modernization MHEC-RFP-03092020 dated March 9, 2020 and upon completion of the competitive process Dell EMC received an award; and

Therefore, in consideration of mutual covenants, conditions, and promises contained herein, MHEC and Dell EMC agree as follows:

1. Definitions

Resellers: refers to marketing agents, agents or order fulfillers authorized by Dell EMC to provide Products and Services under this Master Agreement. Dell EMC will list Resellers on an internet site accessible to MHEC, its Member States and Eligible Organizations. Dell EMC will provide to MHEC the general criteria used to authorize agents. At any time during the term of this Master Agreement should MHEC protest the inclusion of a firm on this list pursuant to commercially justifiable cause, Dell EMC may require that firm to undergo re-approval.

Dell EMC-branded Products: refers to any information technology Products that are made available under this agreement and are marked with the "Dell EMC" brand, including all Standard Configurations thereof, but does not include any of the following items: (i) accessories or parts added to the Dell EMC-branded hardware products (ii) accessories or parts that are not installed in the Dell EMC factory; or (iv) Third Party Software and Peripheral products.

Documentation: refers to the any documentation made available by Dell EMC to Procuring Eligible Organization relating to any Equipment or Software purchased as well as any manuals relating to the Equipment or Software.

Deliverables: refers to the tangible materials, including reports, studies, base cases, drawings, findings, software, manuals, procedures, and recommendations that Dell EMC delivers to Procuring Eligible Organization under a Statement of Work.

Eligible Organizations: This Master Agreement shall be the framework under which Eligible Organizations can acquire solution offerings consisting as defined in section Products and acquire Services as defined in section Services from Dell EMC. Eligible Organizations shall include:

1. All not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions);
2. All K-12 schools and school districts;
3. All city, county, and other local governments; and
4. All state governments and their departments.

Eligible Organizations shall also include all not-for-profit private and public institutions and/or systems of higher education; K-12 schools and districts; city, county, and other local governments; and state governments and their departments located within the following other education Compacts in the country; the New England Board of Higher Education (NEBHE), the Southern Regional Education Board (SREB), and the Western Interstate Commission for Higher Education (WICHE).

Equipment: refers to Dell EMC's full line of a) network and related hardware and components, b) wireless and related hardware and components, c) server and storage and related hardware and components (d) and applicable software made available for sale by Dell EMC to Eligible Organizations under this Master Agreement.

Large Order Negotiated Pricing: refers to the prices or additional discounts that may be offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated pricing shall be by mutual agreement of the Eligible Organization and Supplier. Large Order

Negotiated Pricing shall apply only to those items that meet the applicable additional terms and conditions negotiated by Supplier and the Eligible Organization.

Promotional Prices: refers to special prices that may be offered nationally or regionally under this Master Agreement to a specific category of customers intended to include similarly situated public entity and institutional Eligible Organizations for defined time periods and in similar quantities under defined terms and conditions.

Order: refers to an Eligible Organization's purchase order or other ordering document evidencing its intent to procure Products or Services from Supplier under the terms and conditions of this Master Agreement.

Procuring Eligible Organization: refers to an Eligible Organization which desires to purchase under this Master Agreement and has executed an Order.

Products: refers to the full line of information technology Equipment, Software and Documentation Dell EMC makes available under this Master Agreement.

Retail Price List: refers to the Dell EMC's retail price list and is a complete list of Products and Services with the corresponding retail prices for those Products and Services made available for purchase by Eligible Organizations under this Master Agreement. The Retail Price List contains an item number, item description and the retail price for each Product. Retail Price List is set forth online at <http://ftpbox.us.DellEMC.com/slg/weekly/DellEMCpricereport.pdf> and may be modified at any time.

Services: refers to the Services offered by Dell EMC under this Master Agreement for a) networks, b) wireless, and c) server and storage including but not limited to: pre-implementation design, installation/de-installation, migration, optimization, maintenance, technical support, training and IT as a Service (services accessible over the internet). Dell EMC may incorporate changes to their service offering; however, any changes must be within the scope of the Virtualization and Data Center Modernization MHEC-RFP-03092020 award. Examples of these services include but are not limited to the following:

1. Support Services: such as warranty services, maintenance, installation, de-installation, factory integration, (software or equipment components), and recycling/disposal.
2. Training and certification.
3. Professional Services: such as assessments, disaster recovery planning and support, services desk/help desk, software and any other directly related technical support and/or IT related service required for the effective operation of a product offered or supplied.
4. IT-as-a-Service and Cloud related Services: refers to the delivery of a variety of hybrid services and applications accessible on demand over the internet whereby the end user pays fees based upon consumption or subscription including:
 - A. Software-as-a-Service (SaaS): refers to a software delivery method that provides access to software and its functions remotely as a web-based service
 - B. Infrastructure-as-a-Service (IaaS): refers to computer infrastructure, such as virtualization, being delivered as a service.
 - C. Platform-as-a-Service (PaaS): refers to a computing platform being delivered as a service.
 - D. Storage-as-a-Service: refers to a storage model where an entity rents or leases storage space.
 - E. Disaster Recovery-as-a-Service (DRaaS) refers to backup and restore data services.

5. Managed Services refers to ongoing monitoring, management, provisioning, and optimization of hyper-converged infrastructure systems.

Some Services may require additional contract terms and conditions. Eligible Organizations purchasing on-site Support, on-site Training, Professional, or IT-as-a-Service shall negotiate the terms and conditions of such purchase with the Supplier, including, as applicable, service level agreements and/or statements of work.

Software: refers to Dell EMC's full offerings of a) network and related software, b) wireless and related software, and c) server and storage and related software made available under this Master Agreement. Software shall mean software, library, utility, tool, or other computer or program code, each in object (binary) code form, as well as the related media, printed materials, online and electronic documentation and any copies thereof. Software shall include updates, upgrades, maintenance releases, revisions, and enhancements to the licensed software. Software may include Software accessed by Eligible Organization through the Internet or other remote means (such as websites, portals, "hosted" and "cloud-based" solutions). Dell EMC may incorporate changes to their Software offering; however, any changes must be within the scope of the Virtualization and Data Center Modernization MHEC-RFP-03092020 award.

System Software: means Software that provides basic hardware functionality and provides a platform for applications to run (e.g., firmware and BIOS software), and any Software specifically designated by Dell EMC as System Software the purpose of which is to operate and manage the Products in which it is embedded.

Application Software: means computer programs that are designed to perform specialized data processing tasks for the user and any Software specifically designated by Dell EMC as Application Software.

Supplier: refers to Dell EMC or a Reseller.

Third Party Products: refers to any Equipment ("Third Party Equipment") or Software ("Third Party Software") other than parts that are Dell EMC branded or originally listed as components of Dell EMC-branded Products. Third Party Software is not considered components of Dell EMC-branded Products.

Third Party Services: refers to any Services performed by someone other than Dell EMC or its subcontractors.

2. Scope of Work

Procuring Eligible Organizations shall purchase from Supplier, and Supplier shall distribute to Procuring Eligible Organizations Products and Services in accordance with the terms of this Master Agreement. All Eligible Organizations are qualified to purchase under this Master Agreement, including those Eligible Organizations currently under a separate agreement with Supplier. Accordingly, Supplier shall provide Products or Services only upon the issuance and acceptance by Supplier of a valid Order. Orders may be issued to purchase any Products or any Services listed on the Retail Price List. A Procuring Eligible Organization may purchase any quantity of Products or Services listed in Dell EMC's Retail Price List at the prices stated herein. For Large Order Negotiated Pricing, Supplier and Eligible Organization may negotiate quantity discounts below the Products and Services Pricing for a given purchase order. As it sees fit, Supplier may offer under this Master Agreement discounts that result in prices below those listed in the Product and Services Price List. Dell EMC is solely responsible for fulfillment of the responsibilities under the terms and conditions of this Master Agreement. Notwithstanding anything to the contrary contained in this Master Agreement or Order under the Master Agreement, MHEC shall not be liable for any Eligible

Organization that executes an Order under this Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under this Master Agreement.

3. Purchasing Under Master Agreement

- A. **Products:** Procuring Eligible Organization shall purchase from Supplier the Products listed on the Retail Price List under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity, and description of the Product that Procuring Eligible Organization desires to purchase or license; (iii) the price of the Product in accordance with this Master Agreement; (iv) the "bill-to" address; (v) the "ship-to" address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference to this Master Agreement. Supplier must notify Procuring Eligible Organization if it intends to substitute any item(s) that has been ordered by the Procuring Eligible Organization using this contract; the Procuring Eligible Organization will then have the option to cancel the order if such substitute item is not acceptable.
- B. **Services:** Procuring Eligible Organization shall purchase Services from Supplier under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service (s) that Procuring Eligible Organization desires Supplier to perform; (iii) the price of the Service in accordance with this Master Agreement; (iv) the "bill-to" address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Master Agreement. Eligible Organizations purchasing on-site Support, on-site Training, Professional, or IT as a Service shall negotiate the terms and conditions of such purchase with the Vendor, including, as applicable, service level agreements and/or statements of work.
- C. Each Order that is accepted by Supplier will become a part of the Agreement as to the Products and/or Services listed on the Order only; no additional terms or conditions will be added to this Agreement as a result of the acceptance of the Order, nor will such terms affect any purchase. An Order from an Eligible Organization accepted by Supplier is binding.
- D. Purchases of Boomi Products and Services will be subject to the Boomi Master Services Agreement, at www.boomi.com/MSA as of the date Eligible Organization's order is accepted. Eligible Organization may negotiate the terms and conditions of such purchase with the Supplier, including, as applicable the Boomi Master Services Agreement, service level agreements and/or statements of work. In the event of a conflict between this Master Agreement and the Boomi Master Services Agreement, the terms of the Boomi Master Services Agreement shall control for Boomi purchases only.
- E. Procuring Eligible Organization may request in writing a change or cancellation of an Order that Supplier has previously accepted up until the time Dell EMC has begun manufacturing the Products or performing the Services.
- F. Supplier will accept a purchasing card for order placement in addition to accepting a purchase order.
- G. When Equipment purchased under this Master Agreement requires installation, the Supplier must provide the cost of installation as a separate line item on their quotation unless installation is included in the price. The installation cost must include all packing, freight, insurance, set-up, instruction, and operation manual charges. Equipment must be set in place in an area designated by Procuring Eligible Organization personnel, demonstrated to be in operating condition, and approved by Procuring Eligible Organization personnel. Upon request, Dell EMC will provide a Services quote with a Statement of Work to remove any and all debris from the Procuring Eligible Organization's site. Upon

installation, all operating instructions will be provided either physically or electronically to Procuring Eligible Organization's personnel identified on the purchase order.

4. Due Diligence

Notwithstanding MHEC's role in entering into this Agreement and any additional efforts by MHEC, Eligible Organization acknowledges and agrees that:

- a) Eligible Organization is solely responsible for its own due diligence regarding the Agreement;
- b) MHEC is not responsible for, and makes no representation or warranty, regarding the appropriateness of the Agreement for the Eligible Organization specifically; MHEC has not made any legally binding representations regarding Contractor and that MHEC does not guarantee or warrant the products or services of Dell EMC; and
- c) MHEC is not responsible for the actions or omissions of Supplier.

Issues of interpretation and eligibility for participation are solely within the authority of the procurement and statutory rules and regulations applicable to the Eligible Organization. The Eligible Organization is responsible for assuring it has the authority to place Orders under this Agreement.

5. Quantity Guarantee

This Master Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. This Master Agreement is not an exclusive agreement. MHEC and Eligible Organizations may obtain information technology products and services from other sources during the term of the Master Agreement.

6. Master Agreement Term

This Agreement shall be effective on February 15, 2021 and shall remain in effect until January 31, 2024 (Term Ending Date) unless otherwise terminated pursuant to the terms of the Agreement. The Agreement may be mutually renewed for four (4) additional years, unless one party terminates in writing ninety (90) days prior to the Term Ending Date anniversary. Eligible Participants may procure products and services from Supplier under the terms of the MHEC Master Agreement at any time during the duration of the Agreement or any renewal thereof.

7. Order of Precedence

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and Dell EMC may enter into an addendum to amend the terms and conditions of the Master Agreement to conform to the Eligible Organization's state and/or institutional laws or regulations. Likewise, a Procuring Eligible Organization and Dell EMC may enter into an addendum to supplement or modify this Agreement for specific Products or Services. The terms and conditions of the addendum shall only be applicable between the Eligible Organization that entered into the addendum and Dell EMC.

In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Mutually agreed upon Statement of Work ("SOW") or Service Level Agreement ("SLA")
- B. License terms applicable to the software license or software service purchased hereunder
- C. Executed addendum, not to include Purchase Orders, between Eligible Organization and Dell EMC
- D. The terms and conditions of this Master Agreement or any MHEC-Dell EMC addenda to this Master Agreement and its Exhibits
- E. The list of Products and Services contained in the Order

8. Payment Provisions

- A. **Acceptance.** A Procuring Eligible Organization shall determine whether all Products and Services delivered meet the Dell EMC's published specifications. No payment shall be made for any Products or Services until the Eligible Organization has accepted the Products or Services. Unless otherwise agreed upon between the Eligible Organization and Dell EMC, the Eligible Organization shall within fifteen (15) calendar days from the date of delivery, issue a written notice of partial acceptance or rejection of the Products or Services; otherwise the Products or Services shall be deemed accepted.
- B. **Return Policy.** Subject to Section 8A. of this Master Agreement, all Products and Third Party Products will be deemed to be accepted upon delivery. Procuring Eligible Organization may only return Products to Dell EMC that are permitted to be returned pursuant to the return policy at <https://www.dell.com/en-us/work/shop/us-return-policy/cp/us-return-policy>.
- C. **Payment of Invoice.** Payments shall be delivered to Supplier at the address shown on the invoice. Payments shall be made within thirty (30) days from the date of invoice. In the event that Supplier is required to pursue the collection of past due amounts not subject to a good faith dispute between Supplier and the Procuring Eligible Organization, Supplier will be entitled to recover interest accrued at the lesser of 1.5% per month or in accordance with the applicable state laws of the Procuring Eligible Organization.
- D. **Dispute Notice.** Procuring Eligible Organization shall make a good faith effort to notify Supplier of any billing discrepancies or disputes about an invoice within fifteen (15) business days after receiving it, specifying with particularity the basis of any such dispute ("Dispute Notice") or in accordance with the applicable state laws of the Procuring Eligible Organization. Tender of a Dispute Notice does not relieve Procuring Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of Supplier will be subject to interest charges accruing from the original due date.
- E. **Partial Shipment.** In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by Supplier unless the Procuring Eligible Organization has clearly specified "No Partial Shipment" on each purchase order.
- F. **Payment of Taxes.** The prices listed under this Master Agreement do not include, and Procuring Eligible Organization shall reimburse Supplier for, any and all taxes and/or duties assessed against or payable by Supplier in connection with the sale of Equipment, licensing of Software or Documentation, or performance of Services except for taxes imposed upon Suppliers net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

9. Shipping

Dell EMC shall ship the Products F.O.B. destination. Title to Products shall pass to Procuring Eligible Organization upon delivery to Procuring Eligible Organization's destination point. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. Dell EMC shall bear the risk of loss with respect to returned Products except for loss or damage directly attributable to the negligence of the Eligible Organization. Standard 3-5 day ground shipping will be included in the price of the equipment. All equipment must be shipped fully configured with the required components unless as otherwise noted.

10. Product Delivery

- A. Unless otherwise agreed to by Procuring Eligible Organization and Supplier, Supplier agrees to deliver Products to Procuring Eligible Organization within thirty (30) days after receipt of a valid Order. If delivery cannot be made within thirty (30) calendar days, Supplier will notify Procuring Eligible Organization within five (5) business days following Order placement, and Procuring Eligible Organization, as its exclusive remedy, can cancel the order by written, electronic, or facsimile notification. Failure of the Supplier to adhere to delivery schedules as specified or to promptly replace defective product shall render the Supplier liable for all costs in excess of the contract price when alternate procurement is necessary. Suppliers acknowledge that all locations of any particular Eligible Organization may not be within the MHEC region.
- B. If deliveries prove to be unsatisfactory, or other problems arise, MHEC reserves the right to delete Product or Services from the Master Agreement and/or cancel Master Agreement. Similarly, if deliveries prove to be unsatisfactory or other problems arise under the agreement for a Procuring Eligible Organization, the Procuring Eligible Organization retains all of its remedies for a default. Failure of MHEC or the Procuring Eligible Organization to exercise its rights of termination for cause or other remedies for default due to a Supplier's failure to perform as required in any instance shall not constitute a waiver of termination rights or other default remedies in any other instance.
- C. Suppliers may choose to deliver products electronically where practicable. This option must be under the independent control of each Procuring Eligible Organization.

11. Price Guarantees

The Procuring Eligible Organization shall pay the lower of the prices contained in the Master Agreement, or Large Order Negotiated Pricing at the time of Order (provided that, with respect to the applicability of Large Order Negotiated Pricing, such Procuring Eligible Organization is a party to the Large Order Negotiated Pricing negotiations and the purchase is part of the project for which the Large Order Negotiated Pricing was negotiated). When Eligible Organizations purchase under this Master Agreement, Dell EMC shall not sell Products or Services to Eligible Organizations at prices higher than those awarded via this Master Agreement and in instances where this Provision is applied, this Master Agreement contract number shall be referenced in the Supplier's quote.

12. Product Pricing

Dell EMC agrees to maintain Product Pricing in accordance with the following provisions:

- A. Retail Price List for all Equipment, Software and Documentation will be set forth at <http://ftpbox.us.Dell EMC.com/slg/weekly/Dell EMCpricereport.pdf> Changes to retail prices generally take effect immediately, and Dell EMC reserves the right to change retail prices at any time.
- B. Discount Percentage Pricing: The prices for Products are the Retail Price List less applicable discount as specified in Exhibit A. Except as set forth in Section 10 "Price Guarantees" or Section 37 "Administrative Reporting and Fees," the discount percentages set forth in Exhibit A shall remain firm during the term of this Master Agreement. Dell EMC shall add new Product(s) to Retail Price List as new Product(s) become available for sale. The pricing for all new Products shall be at the price discount levels provided herein, or as agreed to by the Parties.
- C. Dell EMC may revise or discontinue Product offerings at any time without prior notice to MHEC. A change in a Product may occur between the time that Procuring Eligible Organization orders a Product and the time that Dell EMC ships the Product. As a result, Products shipped may display minor

differences from the Products Procuring Eligible Organization ordered, but they will meet or exceed all material specifications of the Products Procuring Eligible Organization ordered.

- D. Products purchased shall be new, current models manufactured with 100% new OEM parts. All Products should be offered in current production as of the date of the award. For purpose of this contract, "current production" shall mean that the equipment model is being manufactured as new equipment for the United States market. Dell EMC will delete obsolete and discontinued Products from the Retail Price List on a timely basis.
- E. Prices will be F.O.B. destination (interior/ground floor or inside dock), and freight pre-paid and allowed, to any and all locations of the Procuring Eligible Organization. Prices must include all packing, freight, insurance charges and installation/operation manuals.

13. Services Pricing

Dell EMC agrees to maintain the Service Pricing in accordance with the following provisions:

- A. For any standard Services, in which the Services and corresponding SKU are on Retail Price List, the pricing will be as described in the Products Section for Discount Percentage Pricing, and the applicable discount percentage as noted in Exhibit A will apply. Except as set forth in Section 10, "Price Guarantees" or Section 37 "Administrative Reporting and Fees," the discount percentage set forth in Exhibit A shall remain firm for the term of the Master Agreement.
- B. For any custom Services that are not included on the Retail Price List, the prices for such Services purchased under this Master Agreement will be as mutually agreed upon by both Dell EMC and Procuring Eligible Organization and as set forth in a Dell EMC quote or an applicable SOW or negotiated agreement.
- C. Specific geographic restrictions on the availability of Services must be conveyed to the Procuring Eligible Organization.
- D. Dell EMC may offer a direct or indirect leasing program through Dell Financial Services L.L.C. ("DFS") as a separate lease financing offering under a separate Master Lease Agreement ("MLA") executed with DFS. Any Products that are leased through DFS are subject to the terms and conditions of the MLA only, a copy of which is attached hereto as Exhibit B. Eligible Organizations shall negotiate the terms and conditions of such lease purchase with DFS directly, including, but not limited to, the MLA, any lease schedule ("Schedule"), and any other lease documentation as applicable. DFS offers state and local governments a variety of leasing options under its MLA. The Parties recognize that the MLA and any corresponding Schedule(s) entered into by the Parties thereunder are separate and independent agreements between the Eligible Organization and DFS, with the terms thereof constituting the entire agreement for leasing. To the extent of any conflict or inconsistency between the terms of the MLA and the terms of this Agreement, the terms and conditions of the MLA will prevail for lease purchases only. For the purposes of this Agreement, it is noted that DFS is its own separate and distinct entity. The DFS MLA, Schedules, and other leasing documentation as applicable are attached as Exhibits B and C.
- E. Dell EMC may offer a direct or indirect flexible consumption-based models as an alternative flexible payment solution under a separate Master Flexible Consumption Agreement ("MFCA") with Dell EMC. Any flexible payment solutions will be subject to the terms and conditions of the MFCA only, a copy of which is attached hereto as Exhibit C. Eligible Organizations shall negotiate the terms and conditions of such flexible payment-solution with Dell Financial Services L.L.C. ("DFS") directly, including, but not limited to, the MFCA, any flexible consumption schedule ("Schedule"), and any other documentation that may be required for such transaction. Dell EMC offers state and local governments a variety of consumption-based payment solutions under the MFCA that are designed

to help optimize IT spend and solve business challenges. The Parties recognize that the MFCA and any Schedule entered into by the Parties thereunder are separate and independent agreements between the Eligible Organization and Dell EMC, with the terms thereof constituting the entire agreement for such flexible consumption. To the extent of any conflict or inconsistency between the terms of the MFCA and the terms of this Agreement, the terms and conditions of the MFCA will prevail for consumption-based offerings only. The MFCA, sample Schedules, and any other documentation that may be applicable are attached as Exhibit C.

- F. Any purchase by Procuring Eligible Organizations of IT-as-a-Service is pursuant to the terms of the Dell EMC Services Description accompanying the Services and the Services Acceptable Use Policy, which is available for review at www.DellEMC.com/termsandconditions or any other negotiated agreement between Eligible Organization and Dell EMC.

14. License and Proprietary Rights

The terms applicable to any software are in its license agreement, included with the Software media packaging, or presented to Procuring Eligible Organization during the installation or use of the Software. For Dell EMC-branded System Software, Procuring Eligible Organization's rights to use the Software delivered by Supplier are governed by the terms of the applicable end-user license agreement. Unless different terms have been agreed between the parties, the terms posted on www.dell.com/eula (the "EULA") shall apply. Notwithstanding anything to the contrary in the EULA, as between Eligible Organization and Supplier, this EULA shall be governed and construed in accordance with the laws of the state where the Eligible Organization resides. Dell EMC will provide a hard copy of the applicable terms upon request. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such Equipment. If a separate license agreement exists between Procuring Eligible Organization and the manufacturer or the owner of the Software, that license agreement will control and will apply according to its terms and conditions.

15. Proprietary Rights

All right, title, and interest in and to the intellectual property (including all copyrights, patents, trademarks, trade secrets, and trade dress) embodied in the Software, Products, Deliverables and all content and other items included with or as part of the Products, Services, Software, or Deliverables, such as text, graphics, logos, button icons, images, audio clips, information, data, feedback, photographs, graphs, videos, typefaces, music, sounds, and software, as well as the methods by which any Services are performed and the processes that make up the Services, shall belong solely and exclusively to Supplier or its suppliers or licensors, and Procuring Eligible Organization shall have no rights whatsoever in any of the above, except as expressly granted in this this Master Agreement.

16. Warranties

- A. **Equipment:** Dell EMC warrants that any Dell EMC branded Products shall be free from defects in material and workmanship under normal use, will conform to the specifications within the Product documentation accompanying the product, and that the Equipment shall remain in good working order for the applicable warranty period from the date of Invoice. The applicable warranty period will be determined by such factors as the type of Warranty or Product purchased. If any Equipment is not as warranted in this Section, then Dell EMC shall repair or replace the Equipment in accordance with the applicable warranty. In repairing or replacing any Equipment or part of any Equipment under this warranty, Dell EMC may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Equipment or parts of Equipment. For any Equipment or parts thereof

repaired, replaced or corrected under this Section, the warranty period applicable to the Equipment will continue for the remainder of the original warranty period. If, Dell EMC determines that it cannot, in a commercially reasonable manner repair or replace any Equipment, then Dell EMC may, in its sole discretion, refund to Procuring Eligible Organization the price of the Equipment.

- B. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR IN THE APPLICABLE PRODUCT OR SERVICE DOCUMENTATION, DELL EMC (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS (COLLECTIVELY, THE "DELL EMC PARTIES") MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS, SOFTWARE, DELIVERABLES OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (a) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (b) RELATING TO THIRD-PARTY PRODUCTS; OR (c) RELATING TO THE RESULTS OR PERFORMANCE OF THE SOLUTION, INCLUDING THAT THE SOLUTION WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR.
- C. WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY DELL EMC (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH THE DOCUMENTATION, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE SOLUTION. WARRANTIES DO NOT APPLY TO THIRD-PARTY PRODUCTS. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER.
- D. NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT DELL EMC'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO PROCURING ELIGIBLE ORGANIZATION IN PROCURING ELGIBILE ORGANIZATIONS'S JURISDICTION WILL APPLY TO PROCURING ELIGIBLE ORGANIZATION, AND DELL EMC'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
- E. **HIGH-RISK DISCLAIMER:** DELL EMC SHALL NOT BE LIABLE TO THE PROCURING ELIGIBLE ORGANIZATION FOR USE OF THE SOLUTION IN HAZARDOUS OR HIGH-RISK ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, IN WHICH THE FAILURE OR MALFUNCTION OF THE SOLUTION COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE. SUCH USE IS AT PROCURING ELIGIBLE ORGANIZATION'S OWN RISK, EVEN IF DELL EMC KNOWS OF SUCH USE, AND DELL EMC EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH HIGH-RISK ACTIVITIES.
- F. **Services:** Dell EMC represents and warrants that the Services provided under this Master Agreement will be performed in a skillful, competent, timely, professional and workmanlike manner, and that the Dell EMC employees, agents and contractors assigned to perform Services under this Master Agreement have the proper skill, training and background so as to be able to perform in a skillful, competent, timely, professional and workmanlike manner. Any additional warranty for Services will be decided on a case by case basis and be mutually agreed upon in a SOW.

- G. **Third-Party Products and Services Warranties:** Dell EMC does not warrant Third-Party Products or Services. Any warranty provided on Third-Party Product(s) or Service(s) is provided by the publisher, original manufacturer, or service provider and may vary from product to product or service to service. Such warranties shall be provided to the Procuring Eligible Organization with the Third Party Products and Services.
- H. **Transfer of Title.** Dell EMC warrants that Procuring Eligible Organization shall acquire good and clear title to Dell EMC-branded Products being purchased under this Master Agreement, free and clear of all liens and encumbrances. For any non-Dell EMC branded Products, Dell EMC warrants that it has the right to provide such Products to the Procuring Eligible Organization.

17. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving Dell EMC ninety (90) days written notice; provided however, neither MHEC nor Eligible Organization has the right to terminate a specific Order for convenience after the Product has begun production or been shipped for such Products that don't require production. At any time, Dell EMC may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve Dell EMC of any warranty or other service obligations incurred under the terms of this Master Agreement.
- B. Either Party may terminate this Master Agreement for cause based upon material breach of the Master Agreement by the other Party, provided that the non-breaching Party shall give the breaching Party written notice specifying the breach and shall afford the breaching Party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching Party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching Party may declare the breaching Party in default and terminate the agreement effective immediately. The non-breaching party shall retain any and all remedies available to it under the law.
- C. In the event that either Party be adjudged insolvent or bankrupt by a court of competent jurisdiction, or upon the institution of any proceedings by or against it seeking relief, reorganization or arrangement under any laws relating to insolvency, or upon any assignment for the benefit of creditors, or upon the appointment of a receiver or trustee of any of its property or assets, or upon the liquidation, dissolution or winding up of its business, then and in any such event this Master Agreement may immediately be terminated or cancelled by the other Party hereto.
- D. In the event this Master Agreement expires or is terminated for any reason, a Procuring Eligible Organization shall retain its rights in all Product and Services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.
- E. Procuring Eligible Organization or Dell EMC may terminate an Order under this Master Agreement for cause based upon material breach of the Order or Master Agreement by the other, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within 30 days after receipt of a written notice the breaching party has not corrected the breach, or in the case of a breach that cannot be corrected in 30 days, begun and proceeded in good faith to correct the breach, the non-breaching party may terminate the Order effective immediately. The non-breaching party shall retain any and all remedies available to it under the law. A breach and any resulting termination of an Order under this Section 17 E shall have no effect on any other Order made by any other Eligible Organization.

18. Non-Appropriation

This provision applies only to publicly funded Eligible Organizations. The terms of this Master Agreement and any Order issued for multiple years under this Master Agreement is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Master Agreement or in any purchase order or other document, Procuring Eligible Organization may terminate its obligations under this Master Agreement if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Procuring Eligible Organization's decision as to whether sufficient appropriations are available shall be accepted by Dell EMC and shall be final and binding. A Procuring Eligible Organization shall provide sixty (60) days' notice, if possible, of its intent to terminate this contract for non-appropriation. The Procuring Eligible Organization shall send to Dell EMC a notice of its Governing Body's decision not to appropriate funds for the installment sale payments for the subsequent fiscal year. Such termination shall relieve the Procuring Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future Orders. However, all outstanding invoices from Dell EMC will be paid by the Procuring Eligible Organization.

19. Records and Audit

Dell EMC agrees to maintain records directly related to the Invoices and Purchase Orders under this Master Agreement for a period of three (3) years or such term as required by applicable law from the date of receipt of final payment after termination of the Master Agreement. These records shall be subject to inspection, which maybe initiated no more than twice annually, at an agreed upon time and location, with reasonable advance notice, by Procuring Eligible Organization and appropriate governmental authorities within Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to request copies of invoices either before or after payment. Payment under this Master Agreement shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.

20. Background Checks. Supplier will perform background investigations within the scope of the Suppliers current standard policies and practices for any Supplier employees or subcontractors entering upon a Procuring Eligible Organizations premises, where legally acceptable and culturally permissible.

21. Insurance

Insurance. Supplier will maintain the following insurance limits while performing any services under this Agreement: (a) Workers' Compensation Insurance for Contractor employees, including coverage required under the State's and Federal Laws; (b) Employer's Liability Insurance with limits of a minimum of: (i) \$1,000,000 for each accident for bodily injury by accident, (ii) \$1,000,000 for bodily injury by disease, and (iii) \$1,000,000 for each employee for bodily injury by disease; (c) General Liability Insurance with limits of: (i) \$1,000,000 per occurrence for bodily injury and property damage and shall provide proof of insurance to Eligible Organizations if requested. Eligible Organizations may require additional coverage consistent with applicable law, regulation or policy. Supplier shall give MHEC and the procuring Eligible Organization a minimum of ten (10) days' notice prior to cancellation of policies.

22. Independent Contractor

Dell EMC, its agents, and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Dell EMC has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Master Agreement is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the Parties.

23. Patent, Copyright, Trademark and Trade Secret Indemnification

Dell EMC will indemnify, defend and hold MHEC and Eligible Organization harmless from any third party claim that any Dell EMC-branded Product or Service provided to Eligible Organization pursuant to this Master Agreement infringes on another person's or entity's United States patent, copyright, trade secret or any other proprietary right of a third party. Dell EMC will have no obligation under this section with respect to any Claim of infringement resulting from (a) Services performed, or Product provided, pursuant to Eligible Organization's specification or design; (b) an Eligible Organization's unauthorized modification of a Product; or (c) any combination, operation, or use of the Product with systems other than those provided by Dell EMC to the extent that such a Claim is caused by such modification, combination, operation, or use of the Product. Following notice of a Claim or a threat of actual suit, Dell EMC will, at its own expense and option, (1) resolve the claim in a way that permits continued ownership and use of the affected Product or Service; (2) provide a comparable replacement at no cost; or (3) in the case of a Product accept return of the Product, freight collect, and provide a reasonable depreciated refund and in the case of a Service, provide a refund less a reasonable adjustment for beneficial use, but in no event shall refund of Product or Service relieve Dell EMC from its obligations to defend and indemnify MHEC and Eligible Organizations.

24. Indemnification

Dell EMC will indemnify, protect, save and hold harmless MHEC and Eligible Organizations, as well as the representatives, agents and employees of MHEC and Eligible Organizations, from any and all third party claims or causes of action related to a claim of personal injury or damage to tangible property, including all reasonable attorneys' fees incurred by MHEC and/or Eligible Organizations, directly arising from intentionally wrongful actions or omissions or the negligent performance of the Master Agreement by Dell EMC, Dell EMC's agents, employees, or subcontractors. MHEC and/or Eligible Organization shall give Dell EMC written notice, by registered mail, promptly after it becomes aware of any claim to be indemnified hereunder. For state entities, Dell EMC will coordinate with state's attorney general as required by state law. Dell EMC will control the defense of any such claim or action at Dell EMC's own expense. MHEC and/or Eligible Organization agree that Dell EMC may employ attorneys of its own choice to appear and defend the claim or action and that MHEC and/or Eligible Organization shall do nothing to compromise the defense of such claim or action or any settlement thereof and shall provide Dell EMC with all reasonable assistance that Dell EMC may require.

25. Limitation of Liability

Dell EMC shall not be liable to MHEC or any individual Eligible Organization for any direct damages in excess of \$500,000 or the price of the Product(s) or Service(s) purchased per Order subject to such claim, whichever is greater. The foregoing limitation does not apply to any indemnification obligations under this Master Agreement or to damages resulting from personal injury or tangible property damage caused by Dell EMC's negligence or willful misconduct. NEITHER DELL EMC, MHEC NOR ANY ELIGIBLE ORGANIZATION SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS MASTER AGREEMENT, WHETHER THE CLAIM ALLEGES TORTUOUS CONDUCT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY. DELL EMC IS NOT RESPONSIBLE FOR LOSS OF OR RECOVERY OF DATA, PROGRAMS, OR LOSS OF USE OF SYSTEM(S) OR NETWORK OR EXCEPT AS SET FORTH IN THIS AGREEMENT, THE PROCUREMENT OF SUBSTITUTE PRODUCTS, SOFTWARE OR SERVICES.

THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE, TO THE EXTENT PERMITTED BY APPLICABLE LAW. INSOFAR AS APPLICABLE LAW PROHIBITS ANY LIMITATION

ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR DELL EMC PROVIDING PRODUCTS, SOFTWARE, OR SERVICES TO PROCURING ELIGIBLE ORGANIZATION, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.

26. Confidentiality

- A. While Dell EMC is providing Services hereunder, Eligible Organization or Dell EMC may disclose to the other certain business information identified as confidential ("Confidential Information"). All such information shall be marked or otherwise designated as "Confidential" or "Proprietary". In order for such information to be considered Confidential Information pursuant to this Section 26 of the Master Agreement, it must conform to the data practices laws or similar type laws of the State in which the Eligible Organization is located or was founded. Information of a proprietary nature which is disclosed orally to the other party shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the recipient. Both Eligible Organization and Dell EMC agree that, with respect to Confidential Information it receives (as "Recipient") from the other (as a "Discloser") in connection with this Master Agreement or an Order pursuant to this Master Agreement, that it (i) will use such Confidential Information solely for the purposes contemplated by the Master Agreement or an Order placed under this Master Agreement, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not so use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.
- B. Each Party will make reasonable efforts not to disclose the other Party's Confidential Information to any third party, except as may be required by law or court order, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidential Information shall remain the property of and be returned to the Discloser (along with all copies or other embodiments thereof) within fifteen (15) days of (a) a written request from the Discloser, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Organization or Dell EMC of this Master Agreement or an Order under this Master Agreement directing that Confidential Information described generally or specifically in such demand be returned to the Discloser.
- C. In such cases where Confidential Information is required to be disclosed to a third party for purposes of providing Services, all disclosure of Confidential Information will be in accordance with the separate non-disclosure agreement between Dell EMC and the third party.
- D. If a separate, written nondisclosure agreement exists between Eligible Organization and Dell EMC, that agreement will control and will apply according to its terms and conditions to all Confidential Information the parties exchange with each other.
- E. Notwithstanding anything to the contrary in this Agreement or amendment to this Master Agreement, both Eligible Organization and Dell EMC agree to comply with the data practices or similar type laws

of the State in which Eligible Participant is located or founded, to the extent applicable to the scope of services performed by Supplier.

27. FERPA (and Other Privacy Laws)

Where applicable to the scope of services Dell EMC is providing, and only to the extent directly applicable to Dell EMC and its Services, Dell EMC agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach Bliley Act (GLBA) and all other applicable state and federal privacy laws. To the extent an Eligible Organization discloses any information to Dell EMC subject to aforementioned privacy laws, Eligible Organization agrees to advise Dell EMC of the disclosure of such information; and Eligible Organization represents and warrants to Dell EMC that it has obtained any required consents to disclose such information. In addition, to the extent that Dell EMC is or becomes a Business Associate as defined in HIPAA, both Parties acknowledge that a separate mutually agreeable Business Associate Agreement may be required and will govern according to its terms.

With regard to FERPA, for purposes of this Agreement, Dell EMC is a contractor or outside service provider with whom the Procuring Eligible Organization has outsourced institutional services or functions that it would otherwise use employees to perform. For purposes of FERPA, the Procuring Eligible Organization has determined that Supplier, and its employees acting in the course of their employment under this Agreement, is a school official with a legitimate educational interest in obtaining access to education records and will only provide Dell EMC with access to those particular education records in which Dell EMC has a legitimate educational interest. Further, the Procuring Eligible Organization represents and warrants that it has obtained any required consents to disclose such records to Supplier and the Procuring Eligible Organization represents and warrants that it has or will make all required notifications required to disclose such records to Supplier. Supplier shall be under the direct control of the Procuring Eligible Organization with respect to its maintenance and use of personally identifiable information from education records provided under this Agreement. Supplier shall not further disclose any personally identifiable information from education records to any third party unless that third party likewise has a legitimate educational interest in obtaining access to education records and unless authorized to so further disclose by the Procuring Eligible Organization. For purposes of this Agreement, the Procuring Eligible Organization has determined that those Supplier contractors performing institutional services or functions that the Procuring Eligible Organization would otherwise use employees to perform shall have such legitimate educational interest in instances where contractor requires access to education records in order to fulfill its responsibilities under this Agreement. Such access shall be limited to the specific educational records necessary for the performance of services and in such instances contractor shall have the same obligations pursuant to this section as Supplier and Supplier shall inform said contractors of its obligations. Supplier agrees to hold non-public information that is subject to FERPA requirements, which may include personally identifiable information, in strict confidence and agrees to implement and maintain safeguards to protect the security, confidentiality and integrity of any such non-public personal information it receives from Procuring Eligible Organizations. Suppliers shall not disclose such non-public personal information received from or on behalf of Procuring Eligible Organization except as permitted or required by this Agreement or addendum, as required by law, or otherwise authorized in writing by Procuring Eligible Organization.

28. Accessibility

Supplier agrees to comply with all applicable requirements of the Rehabilitation Act of 1973, as amended, 29 USC 794, including Sections 504 and 508, which prohibits discrimination on the basis of disabilities, and with the Americans with Disabilities Act of 1990 ("ADA"), as amended, 42 USC 12101 et seq., which requires the provision of accessible facilities and services. Goods and services provided by provider shall

be accessible to individuals with disabilities to the greatest extent practical, but in no event less than the standards set forth by the state in which the Eligible Participant resides and federal accessibility laws. For web-based environments, services and content must conform to the Web Content Accessibility Guidelines ("WCAG") 2.0 AA (available at <http://www.w3.org/WAI/intro/wcag.php>). The parties agree this Section 28 shall not apply to Boomi purchases or Services.

29. Amendments

Except as provided for in Section 6 "Order of Preference"; Section 12 "Product Pricing"; and Section 13 "Service Pricing"; this Master Agreement shall only be amended by written instrument executed by the Parties.

30. Scope of Agreement

This Master Agreement incorporates all of the agreements of the Parties concerning the subject matter of this Agreement, except for MHEC DELL Contract MHEC-07012015 dated July 1, 2015, and all prior agreements have been merged into this Master Agreement. No prior agreements, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Master Agreement.

31. Invalid Term or Condition

If any term or condition of this Master Agreement shall be held invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall be valid and enforceable.

32. Enforcement of Agreement

A Party's failure to require strict performance of any provision of this Master Agreement shall not waive or diminish that Party's right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Master Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.

33. Web Site Maintenance

Dell EMC agrees to maintain and support Internet website(s) for access to the Retail Price List, Product descriptions, Product specifications, Service descriptions, Service specifications and other aids in accordance with instructions provided by MHEC. In addition, Dell EMC will provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting. Dell EMC shall notify MHEC when there are additions and/or deletions made to the list of Resellers.

34. Equal Opportunity Compliance

Dell EMC agrees to abide by all applicable Federal and state laws, regulations, and executive orders pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, Dell EMC agrees that it does not discriminate, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap. If Dell EMC is found to be not in compliance with applicable Federal or state requirements during the life of this Master Agreement, Dell EMC agrees to take appropriate steps to correct these deficiencies.

35. Compliance with Law

Dell EMC shall comply with all applicable laws and governmental regulations, which by their terms, apply to Dell EMC's performance under an Order pursuant to this Master Agreement. Eligible Organization agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement. MHEC agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement.

36. Applicable Law

- A. As between Eligible Organization and Dell EMC, this Master Agreement will be construed in accordance with, and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.
- B. As between MHEC and Dell EMC this Master Agreement will be construed in accordance with, and its performance governed by, the laws of the state of Minnesota. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.
- C. As between Eligible Organization, MHEC, and Dell EMC this Master Agreement will be construed in accordance with and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.

37. Conflict of Interest

Dell EMC warrants to the best of its knowledge and belief that it presently has no interest direct or indirect, which would give rise to organizational conflicts of interest. Dell EMC agrees that if an organizational conflict of interest is discovered during the term of this Master Agreement, it will provide disclosure to MHEC that shall include a description of the action Dell EMC has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist and is not timely resolved by Dell EMC MHEC may, at its sole discretion, cancel this Master Agreement.

38. Assignment

Neither Party shall sell, transfer, assign or otherwise dispose of the Master Agreement or any portion thereof or of any right, title, or interest herein without the prior written consent of the other Party. This consent requirement includes reassignment of this Master Agreement due to change in ownership, merger, or acquisition of a Party or its subsidiary or affiliated corporations. Nothing in this Section shall preclude Dell EMC from employing a subcontractor in carrying out its obligations under this Master Agreement. Dell EMC's use of such subcontractors will not release Dell EMC from its obligations under this Master Agreement.

39. Survival

Certain paragraphs of this Master Agreement including but not limited to Indemnification; and Limitation of Liability shall survive the expiration of this Master Agreement. Software licenses, warranty and service agreements, and non-disclosure agreements that were entered into under terms and conditions of this Master Agreement shall survive this Master Agreement.

40. Notification

- A. **Between the Parties:** Whenever under the terms of this Master Agreement any notice is required or permitted to be given by one Party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage prepaid, to the Parties at the addresses set forth below, or at such other address as the Parties may direct in writing from time to time:

To MHEC:	To Dell EMC:
MHEC	EMC Corporation
105 Fifth Avenue South	One Dell EMC Way
Suite 450	Contract Department
Minneapolis, Minnesota 55401	Round Rock, Texas 78682
Attn: Nathan Sorensen	Attn: Contract Manager
Facsimile: 612-767-3353	Fax: 512-283-9092

Changes in the above information will be given to the other Party in a timely fashion.

- B. **To Eligible Organization:** Notices shall be sent to Eligible Organization's business address. The term "business address" shall mean the "Bill to" address set forth in an invoice submitted to Eligible Organization.

41. Administrative Reporting and Fees

On a calendar-quarterly basis (where quarter one is January 1 – March 31 and the quarter one report is due by April 30), Dell EMC will, in a timely manner, make available to MHEC utilization reports and information generated by this Master Agreement, reflecting net Product and Service sales to Eligible Organizations. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to one and a half percent (1.50%) of the net Product and Service sales for that quarter period (the "Fee"). MHEC, from time to time may provide a written request to Dell EMC to change the percentage of the Fee it will receive as a result of this Master Agreement. Any change in the Fee may also require a change in the Product or Service pricing.

42. MHEC Not Liable For Eligible Organizations

MHEC is not liable to Dell EMC for the failure of any Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of an Order and/or the Master Agreement. Dell EMC, in its sole discretion, may discontinue selling Products or Services to any Eligible Organization who fails to make payments or otherwise fully perform pursuant to the terms and conditions of the Master Agreement.

43. Announcements and Publicity

Any announcements and publicity given to MHEC (or an Eligible Organization) resulting from this Master Agreement must receive the prior approval of MHEC (or Eligible Organization). Such approval shall not be unreasonably withheld. Dell EMC will not make any representations of MHEC's (or an Eligible Organization's) opinion or position as to the quality of effectiveness of the Products, supplies and/or Services that are the subject of this Master Agreement without the prior written consent of MHEC (or Eligible Organization), which shall not be unreasonably withheld.

44. Marketing

Dell EMC will assist MHEC in developing and implementing appropriate marketing strategies including seminars, printed materials and a full service, on-line MHEC-specific web site to receive information on products, supplies, services and prices and to place Orders.

45. Oversight Committee

An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Dell EMC in developing and refining the implementation of this Master Agreement. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services, web presence; and to advise Dell EMC on the effectiveness of its implementation progression. At the very least there will be an annual meeting between Dell EMC and MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; including items such as those above.

46. Force Majeure.

Neither Dell EMC nor MHEC nor Procuring Eligible Organization shall be liable to each other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; pandemic; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party unable to perform shall undertake reasonable action to notify the other Parties of the same.

47. Sovereign Immunity.

Notwithstanding anything to the contrary in this Master Agreement or Order under this Master Agreement, this Master Agreement shall not be construed to deprive a Eligible Organization of its applicable sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Master Agreement or afforded by Eligible Organization's State law applicable to the Eligible Organization. Nothing herein will be construed to prevent any breach of contract claim under this Master Agreement.

48. Compliance with Laws and Export.

A. **Compliance with Laws.** Procuring Eligible Organization and Dell EMC agree to comply with all laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Procuring Eligible Organization acknowledges that the Products, Software and Services provided under this Agreement, which may include technology, authentication and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."); may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which Procuring Eligible Organization or its systems are located; and may also be subject to the customs and export laws and regulations of the country in which the Products, Software and Services is rendered or received. Each party agrees to abide by those laws and regulations applicable to such party in the course of performance of its obligations under this Agreement. Procuring Eligible Organization also may be subject to import or re-export restrictions in the event Procuring Eligible Organization transfers the Products, Software or Deliverables from the country of delivery and Procuring Eligible Organization is responsible for complying with applicable restrictions. If any software provided by Procuring Eligible Organization and used as part of the Products, Software and/or Services contains encryption, then Procuring Eligible Organization agrees to provide Dell EMC with all of the information needed for Dell EMC to obtain export licenses from the U.S. Government or any other applicable national government and to provide Dell EMC with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Procuring Eligible Organization is solely responsible for obtaining any necessary permissions relating to software that it exports. Dell EMC also may require export certifications from Procuring Eligible

Organization for Procuring Eligible Organization-provided software. Dell EMC's acceptance of any order for Products, Software and Services is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government. Dell EMC is not liable for delays or failure to deliver Products, Software or Services resulting from Procuring Eligible Organization's failure to obtain such license or to provide such certification.

- B. **Regulatory Requirements.** Dell EMC is not responsible for determining whether any Third-Party Product to be used in the Products, Software and Services satisfies the local regulatory requirements of the country to which such Products, Software and Services are to be delivered or performed, and Dell EMC shall not be obligated to provide any Products, Software and Services where the resulting Products, Software and Services is prohibited by law or does not satisfy the local regulatory requirements.
- C. **Excluded Data.** Procuring Eligible Organization acknowledges that no part of the Products, Software and Services is designed with security and access management for the processing and/or storage of the following categories of data: (1) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) except for personally identifiable information referenced in to Section 26 and Section 27, personally identifiable information that is subject to heightened security requirements as a result of Procuring Eligible Organization's internal policies or practices, industry-specific standards or by law (collectively referred to as "Excluded Data"). Procuring Eligible Organization hereby agrees that Procuring Eligible Organization is solely responsible for reviewing data that it will provide to Dell EMC (or to which Dell EMC will have access) to ensure that it does not contain Excluded Data.

49. Miscellaneous.

All Parties to this Master Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Master Agreement that shall be considered an original and shall be admissible in any action to enforce this Master Agreement. Dell EMC may accept this Master Agreement either by its authorized signature or a signed Order. Except as provided for in this Master Agreement, all changes to this Master Agreement must be made in writing signed by both Parties; accordingly any additional terms on the Procuring Eligible Organization's ordering documents shall be of no force or effect.

The Parties, by their representatives signing below, agree with the terms of this Master Agreement and further certify that their respective signatories are duly authorized to execute this Agreement.

Midwestern Higher Education Commission

Susan Heegaard
Signature:

Susan Heegaard

Printed Name:
President

Position:
2/25/21
Date:

EMC Corporation

Charlyne Greenup
Signature:

Charlyne Greenup

Printed Name:
Contract Administrator

Position:
Feb 24, 2021
Date:

SR

Exhibit A – Discount Category Pricing

Dell EMC is offering the following discounts on the Discount matrix below. This pricing is a minimum discount off list price and includes Dell EMC's standard shipping with F.O.B. destination.

Discount Class	Discount Class Description	Discount
A	Hardware - Enterprise	54%
B	Hardware - Mid-Tier	33%
C	Hardware – Connectrix	44%
CL-E	Native Cloud Data Protection	10%
D1	Software - Enterprise Platform	33%
D2	Software - Mid-Tier Platform	33%
D3	Software - Multi-platform/Open	33%
DC1	Dell Components HW, SW, Maint	20%
DD-1	Data Domain Flash Enabled HW, SW & Mainte	15%
DE	Entry Software (BRS: Data Domain)	15%
DH	High-End Software (BRS: Data Domain, Avamar, Disk Library, Networker)	23%
DM	Midrange Software (BRS: Data Domain, Avamar, Atmos, Disk Library)	23%
E	EMC 3rd Party SW & HW,Switches	15%
EN-H	Hardware - VMAX 10K/20K/40K	33%
EN-HM	HW Maintenance - VMAX 10K/20K/40K	15%
EN-S	Software - VMAX 10K/20K/40K	33%
EN-SM	SW Maintenance - VMAX 10K/20K/40K	15%
ES-1	VMAX3 HW & SW, HW & SW	33%
ES-AF	VMAX All Flash Array	10%
ES-P1	Powermax	15%
F1	Services	10%
F2	Custom Residency Services, EMC Select Services	10%
I	Training / Education Services	10%
IS	Isilon HW/SW/Maintenance	21%
IS2	Isilon Infinity Gen 6 HW/SW/Maint	21%
J	HCI, AX/NX, Insignia, VxRail	10%
K-1	Select / Mozy Offerings, Excluding VMWare & Virtustream & Boomi	15%
K-2	VMWare & Virtustream & Boomi	5%
P	Pivotal	5%
PE	Entry Systems (BRS: Data Domain)	15%

Discount Class	Discount Class Description	Discount
PH	High-End Systems (BRS: Data Domain, Disk Library)	23%
PM	Midrange Systems (BRS: Data Domain, Avamar, Atmos, Disk Library)	23%
R-3P	RSA Hardware, Security Analytics/Netwitness, Professional Services, Training, Maintenance	15%
R-MT	RSA Maintenance	10%
R-PS	RSA Professional Services	10%
R-SA	RSA Hardware, Professional Services, Training, Maintenance	15%
R-SW	RSA Software, Professional Services, Training, Maintenance	27%
UE	Unified Entry - Level Offerings	10%
UM	VNX Hardware/Software/Maintenance	23%
UM-1	Unity Hardware/Software	10%
UM-F1	Unity All Flash Hardware/Software	10%
UM-H	Hardware - Unified Mid-Tier	23%
UM-S	Software - Unified Mid-Tier	23%
V	Vipr	15%
VPLEX	VPLEX HW, SW, and Maintenance	33%
X2	XtremIO 2 HW/SW/Maint	21%
XT	XtremIO	21%

Dell EMC is offering additional volume tier pricing discounts for per transaction multiple unit solutions.

\$500,000 - \$1,000,000	1%
\$1,000,001 and above	1%



Exhibit B: Dell Financial Services Master Lease Agreement



**EFFECTIVE DATE:
MASTER LEASE AGREEMENT NO.**

<p>LESSOR: DELL FINANCIAL SERVICES L.L.C. <u>Payment Address:</u> Payment Processing Center 4319 Collection Center Dr. Chicago, IL 60693</p>	<p>LESSEE: <u>Principal Address:</u> _____ _____ _____ Fax: _____ Attention: _____</p>
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This Master Lease Agreement (this "Agreement"), effective as of the Effective Date set forth above, is between the Lessor and Lessee named above. Capitalized terms have the meaning set forth in this Agreement.

"Commencement Date"). The period beginning on the Acceptance Date and ending on the last day of the Primary Term, together with any renewals or extensions thereof, is defined as the "Lease Term. The Lease is non-cancelable by Lessee, except as expressly provided in Section 5.

1. LEASE.

(a) Lessor hereby leases to Lessee and Lessee hereby leases the equipment ("Products"), Software (defined below), and services or fees, where applicable, as described in any lease schedule ("Schedule"). Each Schedule shall incorporate by reference the terms and conditions of this Agreement and contain such other terms as are agreed to by Lessee and Lessor. Each Schedule shall constitute a separate lease of Products ("Lease"). In the event of any conflict between the terms of a Schedule and the terms of this Agreement, the terms of the Schedule shall prevail. Lessor reserves all rights to the Products not specifically granted to Lessee in this Agreement or in a Schedule. Execution of this Agreement does not create an obligation of either party to lease to or from the other.

4. RENT; TAXES; PAYMENT OBLIGATION.

(a) The rental payment amount ("Rent"), and the payment period for each installment of Rent ("Payment Period") shall be stated in the Schedule. A prorated portion of Rent calculated based on a 30-day month, 90-day quarter or 360-day year (as appropriate) for the period from the Acceptance Date to the Commencement Date shall be added to the first payment of Rent. All Rent and other amounts due and payable under this Agreement or any Schedule shall be paid to Lessor in lawful funds of the United States of America at the payment address for Lessor set forth above or at such other address as Lessor may designate in writing from time to time. Whenever Rent and other amounts payable under a Lease are not paid when due, Lessee shall pay interest on such amounts at a rate equal to the lesser of 1% per month or the highest such rate permitted by applicable law ("Overdue Rate"). Rent shall be due and payable whether or not Lessee has received an invoice showing such Rent is due. Late charges and reasonable attorney's fees necessary to recover Rent and other amounts owed hereunder are considered an integral part of this Agreement.

2. ACCEPTANCE DATE; SCHEDULE.

(a) Subject to any right of return provided by the Product seller ("Seller") named on the Schedule, Products are deemed to have been irrevocably accepted by Lessee upon delivery to Lessee's ship to location ("Acceptance Date"). Lessee shall be solely responsible for unpacking, inspecting and installing the Products.

(b) EACH LEASE SHALL BE A NET LEASE. In addition to Rent, Lessee shall pay sales, use, excise, purchase, property, added value or other taxes, fees, levies or assessments lawfully assessed or levied against Lessor or with respect to the Products and the Lease ("collectively "Taxes"), and customs, duties or surcharges on imports or exports (collectively, "Duties"), plus all expenses incurred in connection with Lessor's purchase and Lessee's use of the Products, including but not limited to shipment, delivery, installation, and insurance. Unless Lessee provides Lessor with a tax exemption certificate acceptable to the relevant taxing authority prior to Lessor's payment of such Taxes, Lessee shall pay to Lessor all Taxes and Duties upon demand by Lessor. Lessor may, at its option, invoice Lessee for estimated personal property tax with the Rent Payment. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Products.

(b) Lessor shall deliver to Lessee a Schedule for Products. Lessee agrees to sign or otherwise authenticate (as defined under the Uniform Commercial Code, "UCC") and return each Schedule by the later of the Acceptance Date or five (5) days after Lessee receives a Schedule from Lessor. If the Schedule is not signed or otherwise authenticated by Lessee within the time provided in the prior sentence, then upon written notice from Lessor and Lessee's failure to cure within five (5) days of such notice, Lessor may require the Lessee to purchase the Products by paying the Product Cost charged by the Seller, plus any shipping charges, Taxes or Duties (defined below) and interest at the Overdue Rate accruing from the date the Products are shipped through the date of payment. If Lessee returns any leased Products in accordance with the Seller's return policy, it will notify Lessor. When Lessor receives a credit from the Seller for the returned Product, the Schedule will be deemed amended to reflect the return of the Product and Lessor will adjust its billing records and Lessee's invoice for the applicable Lease. In addition, Lessee and Lessor agree that a signed Schedule may be amended by written notice from Lessor to Lessee provided such notice is (i) to correct the serial (or service tag) number of Products or (ii) to adjust the related Rent (defined below) on the Schedule (any increase up to 15% or any decrease) caused by any change made by Lessee in Lessee's order with the Seller.

(c) EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5, LESSEE'S OBLIGATION TO PAY ALL RENT AND OTHER AMOUNTS WHEN DUE AND TO OTHERWISE PERFORM AS REQUIRED UNDER THIS AGREEMENT AND EACH SCHEDULE SHALL BE ABSOLUTE AND UNCONDITIONAL, AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM, INTERRUPTION, DEFERMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER WHETHER ARISING OUT OF ANY CLAIMS BY LESSEE AGAINST LESSOR, LESSOR'S ASSIGNS, THE SELLER, OR THE SUPPLIER OR MANUFACTURER OF THE PRODUCTS, TOTAL OR PARTIAL LOSS OF THE PRODUCTS OR THEIR USE OR POSSESSION, OR OTHERWISE. If any Product is unsatisfactory for any reason, Lessee shall make its claim solely against the Seller of such Product (or the Licensor in the case of Software, as defined

3. TERM.

The initial term (the "Primary Term") for each Lease shall begin on the date set forth on the Schedule as the Commencement Date (the

below) and shall nevertheless pay Lessor or its assignee all amounts due and payable under the Lease.

5. APPROPRIATION OF FUNDS.

(a) Lessee intends to continue each Schedule for the Primary Term and to pay the Rent and other amounts due thereunder. Lessee reasonably believes that legally available funds in an amount sufficient to pay all Rent during the Primary Term can be obtained and agrees to do all things lawfully within its power to obtain and maintain funds from which the Rent and other amounts due may be paid.

(b) Lessee may terminate a Schedule in whole, but not in part by giving at least sixty (60) days notice prior to the end of the then current Fiscal Period (as defined in the Lessee's Secretary/Clerk's Certificate provided to Lessor) certifying that: (1) sufficient funds were not appropriated and budgeted by Lessee's governing body or will not otherwise be available to continue the Lease beyond the current Fiscal Period; and (2) that the Lessee has exhausted all funds legally available for payment of the Rent beyond the current Fiscal Period. Upon termination of the Schedule, Lessee's obligations under the Schedule (except those that expressly survive the end of the Lease Term) and any interest in the Products shall cease and Lessee shall surrender the Products in accordance with Section 8. Notwithstanding the foregoing, Lessee agrees that, without creating a pledge, lien or encumbrance upon funds available to Lessee in other than its current Fiscal Period, it will use its best efforts to take all action necessary to avoid termination of a Schedule, including making budget requests for each Fiscal Period during each applicable Lease Term for adequate funds to meet its Lease obligations and to continue the Schedule in force.

(c) Lessor and Lessee intend that the obligation of Lessee to pay Rent and other amounts due under a Lease constitutes a current expense of Lessee and is not to be construed to be a debt in contravention of any applicable constitutional or statutory limitation on the creation of indebtedness or as a pledge of funds beyond Lessee's current Fiscal Period.

6. LICENSED MATERIALS.

Software means any operating system software or computer programs included with the Products (collectively, "Software"). "Licensed Materials" are any manuals and documents, end user license agreements, evidence of licenses, including without limitation, any certificate of authenticity and other media provided in connection with such Software, all as delivered with or affixed as a label to the Products. Lessee agrees that this Agreement and any Lease (including the sale of any Product pursuant to any purchase option) does not grant any title or interest in Software or Licensed Materials. Any use of the terms "sell," "purchase," "license," "lease," and the like in this Agreement or any Schedule with respect to Licensed Materials shall be interpreted in accordance with this Section 6.

7. USE; LOCATION; INSPECTION.

Lessee shall (a) comply with all terms and conditions of any Licensed Materials and (b) possess and operate the Products only (i) in accordance with the Seller's supply contract and any service provider maintenance and operating manuals, documentation and applicable laws; and (ii) for the business purposes of Lessee. Lessee agrees not to move Products from the location(s) specified in the Schedule without providing Lessor with at least 30 days prior written notice, and then only to a location within the continental United States and at Lessee's expense. Without notice to Lessor, Lessee may temporarily use laptop computers at other locations, including outside the United States, provided Lessee complies with the United States Export Control Administration Act of 1979 and the Export Administration Act of 1985, as those Acts are amended from time to time (or any successor or similar legislation). Provided Lessor complies with Lessee's reasonable security requirements, Lessee shall allow Lessor to inspect the premises where the Products are located from time to time during reasonable hours after reasonable notice in order to confirm Lessee's compliance with its obligations under this Agreement.

8. RETURN.

At the expiration or earlier termination of any Schedule, and except for Products purchased pursuant to any purchase option under the Lease, if any, Lessee will (a) remove all proprietary data from the Products; and (b) return

them to Lessor at a place within the contiguous United States designated by Lessor. Upon return of the Products, Lessee's right to the operating system Software in returned Products will terminate and Lessee will return the Products with the original certificate of authenticity (attached and unaltered) for the original operating system Software. Lessee agrees to deinstall and package the Products for return in a manner which will protect them from damage. Lessee shall pay all costs associated with the packaging and return of the Products and shall promptly reimburse Lessor for all costs and expenses for missing or damaged Products or operating system Software. If Lessee fails to return all of the Products at the expiration of the Lease Term or earlier termination (other than for non-appropriation) in accordance with this Section, the Lease Term with respect to the Products that are not returned shall continue to be renewed as described in the Schedule.

9. RISK OF LOSS; MAINTENANCE; INSURANCE.

(a) From the time the Products are delivered to Lessee's ship to location until the Products are returned to Lessor's designated return location or purchased by Lessee, Lessee agrees: (i) to assume the risk of loss or damage to the Products; (ii) to maintain the Products in good operating condition and appearance, ordinary wear and tear excepted, (iii) to comply with all requirements necessary to enforce all warranty rights; and (iv) to promptly repair any repairable damage to the Products. For the Lease Term, Lessee shall ensure that the Products are covered by a manufacturer approved maintenance agreement or, with Lessor's prior consent, are self-maintained in accordance with the standards set forth herein. At all times, Lessee shall provide the following insurance: (x) casualty loss insurance for the Products for no less than the Stipulated Loss Value (defined below) naming Lessor as a loss payee; (y) liability insurance with respect to the Products for no less than an amount as required by Lessor, with Lessor named as an additional insured; and (z) such other insurance as may be required by law which names Lessee as an insured and Lessor as an additional insured. Upon Lessor's prior written consent, Lessee may provide this insurance pursuant to Lessee's existing self insurance policy or as provided for under state law. Lessee shall provide Lessor with either an annual certificate of third party insurance or a written description of its self insurance policy or relevant law, as applicable. The certificate of insurance will provide that Lessor shall receive at least ten (10) days prior written notice of any material change to or cancellation of the insurance policy or Lessee's self-insurance program, if previously approved by Lessor. If Lessee does not give Lessor evidence of insurance in accordance with the standards herein, Lessor has the right, but not the obligation, to obtain such insurance covering Lessor's interest in the Products for the Lease Term, including renewals. If Lessor obtains such insurance, Lessor will add a monthly, quarterly or annual charge (as appropriate) to the Rent to reimburse Lessor for the insurance premium and Lessor's then current insurance administrative fee.

(b) If the Products are lost, stolen, destroyed, damaged beyond repair or in the event of any condemnation, confiscation, seizure or expropriation of such Products ("Casualty Products"), Lessee shall promptly (i) notify Lessor of the same and (ii) pay to Lessor the Stipulated Loss Value for the Casualty Products. The Stipulated Loss Value is an amount equal to the sum of (a) all Rent and other amounts then due and owing (including interest at the Overdue Rate from the due date until payment is received) under the Lease, plus (b) the present value of all future Rent to become due under the Lease during the remainder of the Lease Term, plus (c) the present value of the estimated in place Fair Market Value of the Product at the end of the Primary Term as determined by Lessor; plus (d) all other amounts to become due and owing during the remaining Lease Term. Unless priced as a tax-exempt Schedule, each of (b) and (c) shall be calculated using the federal funds rate target reported in the Wall Street Journal on the Commencement Date of the applicable Schedule. The discount rate applicable to tax-exempt Schedules shall be federal funds rate target reported in the Wall Street Journal on the Commencement Date of the applicable Schedule less 100 basis points.

10. ALTERATIONS.

Lessee shall, at its expense, make such alterations to the Products during the Lease Term as are legally required or provided at no charge by Seller. Lessee may make other alterations, additions or improvements to the Products provided that any alteration, addition or improvement shall be readily removable and shall not materially impair the value or utility of the Products. Upon the return of any Product to Lessor, any alteration, addition or improvement that is not removed by Lessee shall become the property of

Lessor free and clear of all liens and encumbrances.

11. REPRESENTATIONS AND WARRANTIES OF LESSEE.

Lessee represents, warrants and covenants to Lessor and will provide to Lessor at Lessor's request all documents deemed necessary or appropriate by Lessor, including Certificates of Insurance, financial statements, Secretary or Clerk Certificates, essential use information or documents (such as affidavits, notices and similar instruments in a form satisfactory to Lessor) and Opinions of Counsel (in substantially such form as provided to Lessee by Lessor and otherwise satisfactory to Lessor) to the effect that, as of the time Lessee enters into this Agreement and each Schedule that:

(a) Lessee is an entity duly organized and existing under and by virtue of the authorizing statute or constitutional provisions of its state and is a state or political subdivision thereof as described in Section 103(a) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder as in effect and applicable to the Agreement or any Schedule, with full power and authority to enter into this Agreement and any Schedules and perform all of its obligations under the Leases;

(b) This Agreement and each Schedule have been duly authorized, authenticated and delivered by Lessee by proper action of its governing board at a regularly convened meeting and attended by the requisite majority of board members, or by other appropriate official authentication, as applicable, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement against Lessee;

(c) This Agreement and each Schedule constitute the valid, legal and binding obligations of Lessee, enforceable in accordance with their terms;

(d) No other approval, consent or withholding of objection is required from any federal, state or local governmental authority or instrumentality with respect to the entering into or performance by Lessee of the Agreement or any Schedule and the transactions contemplated thereby;

(e) Lessee has complied with such public bidding requirements and other state and federal laws as may be applicable to the Agreement and any Schedule and the acquisition by Lessee of the Products;

(f) The entering into and performance of the Agreement or any Schedule will not (i) violate any judgment, order, law or regulation applicable to Lessee; (ii) result in any breach of, or constitute a default under, any instrument to which the Lessee is a party or by which it or its assets may be bound; or (iii) result in the creation of any lien, charge, security interest or other encumbrance upon any assets of the Lessee or on the Products, other than those created pursuant to this Agreement;

(g) There are no actions, suits, proceedings, inquiries or investigations, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Lessee, nor to the best of Lessee's knowledge and belief is there any basis therefor, which if determined adversely to Lessee will have a material adverse effect on the ability of Lessee to fulfill its obligations under the Agreement or any Schedule;

(h) The Products are essential to the proper, efficient and economic operation of Lessee or to the services which Lessee provides to its citizens. Lessee expects to make immediate use of the Products, for which it has an immediate need that is neither temporary nor expected to diminish during the applicable Lease Term. The Products will be used for the sole purpose of performing one or more of Lessee's governmental or proprietary functions consistent within the permissible scope of Lessee's authority; and

(i) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds to make all Rent payments and other obligations under this Agreement and any Schedule during the current Fiscal Period, and such funds have not been expended for other purposes.

12. WARRANTY ASSIGNMENT; EXCLUSION OF WARRANTIES; LIMITATIONS ON LIABILITY; FINANCE LEASE.

(a) Provided no Event of Default has occurred and is continuing, Lessor assigns to Lessee for the Lease Term the benefit of any Product warranty and right of return provided by any Seller.

(b) LESSEE ACKNOWLEDGES THAT LESSOR DID NOT SELECT,

MANUFACTURE, SUPPLY OR LICENSE ANY PRODUCT AND THAT LESSEE HAS MADE THE SELECTION OF PRODUCTS BASED UPON ITS OWN JUDGMENT AND EXPRESSLY DISCLAIMS ANY RELIANCE ON STATEMENTS MADE BY LESSOR OR ITS AGENTS. LESSOR LEASES THE PRODUCTS AS-IS AND MAKES NO WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF DESIGN, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. LESSEE HEREBY WAIVES ANY CLAIM IT MIGHT HAVE AGAINST LESSOR OR ITS ASSIGNEE FOR ANY LOSS, DAMAGE OR EXPENSE CAUSED BY OR WITH RESPECT TO ANY PRODUCTS.

(c) IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY SCHEDULE OR THE SALE, LEASE OR USE OF ANY PRODUCTS EVEN IF LESSOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES AND EVEN IF LESSEE ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT.

(d) Lessee agrees that it is the intent of both parties that each lease qualify as a statutory finance lease under Article 2A of the UCC. Lessee acknowledges either (i) that Lessee has reviewed and approved any written supply contract covering the Products purchased from the Seller for lease to Lessee or (ii) that Lessor has informed or advised Lessee, in writing, either previously or by this Agreement, that Lessee may have rights under the supply contract evidencing the purchase of the Products and that Lessee should contact the Seller for a description of any such rights. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LESSEE HEREBY WAIVES ALL RIGHTS AND REMEDIES CONFERRED UPON A LESSEE BY ARTICLE 2A OF THE UCC.

13. EVENTS OF DEFAULT.

It shall be an event of default hereunder and under any Schedule ("Event of Default") if:

(a) Lessee fails to pay any Rent or other amounts payable under this Agreement or any Schedule within 15 days after the date such payment is due;

(b) Any representation or warranty made by Lessee to Lessor in connection with this Agreement, any Schedule or any other Documents is at the time made materially untrue or incorrect;

(c) Lessee fails to comply with any other obligation or provision of this Agreement or any Schedule and such failure shall have continued for 30 days after notice from Lessor;

(d) Lessee (i) is generally not paying its debts as they become due or (ii) takes action for the purpose of invoking the protection of any bankruptcy or insolvency law, or any such law is invoked against or with respect to Lessee or its property and such petition is not dismissed within 60 days;

(e) Any provision of this Agreement ceases to be valid and binding on Lessee, is declared null and void, or its validity or enforceability is contested by Lessee or any governmental agency or authority whereby the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee denies any further liability or obligation under this Agreement; or

(f) Lessee is in default under any other lease, contract, or obligation now existing or hereafter entered into with Lessor or Seller or any assignee of Lessor.

14. REMEDIES; TERMINATION.

(a) Upon an Event of Default under any Schedule, all of Lessee's rights (including its rights to the Products), but not its obligations thereunder, shall automatically be canceled without notice and Lessor may exercise one or more of the following remedies in its sole discretion:

(i) require Lessee to return any and all such Products in accordance with Section 8, or if requested by Lessor, to assemble the Products in a single location designated by Lessor and to grant Lessor the right to enter the premises where such Products are located (regardless of where assembled) for the purpose of repossession;

(ii) sell, lease or otherwise dispose of any or all Products (as agent and attorney-in-fact for Lessee to the extent necessary) upon such terms and in such manner (at public or private sale) as Lessor deems advisable in its sole discretion ("Disposition");

(iii) declare immediately due and payable as a pre-estimate of liquidated damages for loss of bargain and not as a penalty, the Stipulated Loss Value of the Products in lieu of any further Rent, in which event Lessee shall pay such amount to Lessor within 10 days after the date of Lessor's demand; or

(iv) proceed by appropriate court action either at law or in equity (including action for specific performance) to enforce the performance by Lessee or recover damages associated with such Event of Default or exercise any other remedy available to lessor in law or in equity.

(b) Lessee shall pay all costs and expenses arising or incurred by Lessor, including reasonable attorney fees, in connection with or related to an Event of Default or the repossession, transportation, re-furbishing, storage and Disposition of any or all Products ("Default Expenses"). In the event Lessor recovers proceeds (net of Default Expenses) from its Disposition of the Products, Lessor shall credit such proceeds against the owed Stipulated Loss Value. Lessee shall remain liable to Lessor for any deficiency. With respect to this Section, to the extent the proceeds of the Disposition (net of Default Expenses) exceed the Stipulated Loss Value owed under the Lease, or Lessee has paid Lessor the Stipulated Loss Value, the Default Expenses and all other amounts owing under the Lease, Lessee shall be entitled to such excess and shall have no further obligations with respect to such Lease. All rights of Lessor are cumulative and not alternative and may be exercised by Lessor separately or together.

15. QUIET ENJOYMENT.

Lessor shall not interfere with Lessee's right to possession and quiet enjoyment of Products during the relevant Lease Term, provided no Event of Default has occurred or is continuing. Lessor represents and warrants that as of the Commencement Date of the applicable Schedule, Lessor has the right to lease the Products to Lessee.

16. INDEMNIFICATION.

Without waiving the doctrines of sovereign immunity and immunity from suit, and to the extent allowed by the laws and Constitution of the State of Texas, Lessee assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to any Products and for injury to or death of any person, or damage to any property, whether such injury or death be with respect to agents or employees of Lessee or of third parties, and whether such property damage be to Lessee's property or the property of others, which is proximately caused by the negligent conduct of Lessee, its officers or employees.

17. OWNERSHIP; LIENS AND ENCUMBRANCES; LABELS.

As between Lessor and Lessee, title to the Products (other than the Licensed Materials) is and shall remain with Lessor. Products are considered personal property and Lessee shall, at Lessee's expense, keep the Products free and clear of liens and encumbrances of any kind (except those arising through the acts of Lessor) and shall immediately notify Lessor if Lessor's interest is subject to compromise. Lessee shall not remove, cover, or alter plates, labels, or other markings upon Products by Lessor, Seller or any other supplier.

18. NON-PERFORMANCE BY LESSEE.

If Lessee shall fail to perform any of its obligations hereunder or under any Schedule, Lessor shall have the right but not the obligation to effect such performance and Lessee shall promptly reimburse Lessor for all out of pocket and other reasonable expenses incurred in connection with such performance, with interest at the Overdue Rate.

19. NOTICES.

All notices shall be given in writing and, except for billings and communications in the ordinary course of business, shall be delivered by overnight courier service, delivered personally or sent by certified mail, return receipt requested, and shall be effective on the date of receipt unless mailed, in which case the effective date will be four (4) Business Days after the date of mailing. Notices

to Lessor by Lessee shall be sent to: Dell Financial Services L.P., Legal Department, One Dell Way, Round Rock, TX 78682, or such other mailing address designated in writing by Lessor. Notice to Lessee shall be to the address on the first page of this Agreement or such other mailing address designated in writing by Lessee.

20. ASSIGNMENT.

(a) LESSEE MAY ASSIGN THIS AGREEMENT OR ANY SCHEDULE, OR SUBLEASE ANY PRODUCT(S) WITH THE PRIOR WRITTEN CONSENT OF LESSOR (SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD). LESSOR, AT ITS SOLE DISCRETION, MAY ASSESS AN ADMINISTRATIVE FEE FOR ANY APPROVED ASSIGNMENT OR SUBLEASE. No assignment or sublease shall in any way discharge Lessee's obligations to Lessor under this Agreement or Schedule.

(b) Lessor may at any time without notice to Lessee, but subject to the rights of Lessee, transfer, assign, or grant a security interest in any Product, this Agreement, any Schedule, or any rights and obligations hereunder or thereunder in whole or in part. Lessee hereby consents to such assignments, agrees to comply fully with the terms thereof, and agrees to execute and deliver promptly such acknowledgments, opinions of counsel and other instruments reasonably requested to effect such assignment.

(c) Subject to the foregoing, this Agreement and each Schedule shall be binding upon and inure to the benefit of Lessor, Lessee and their successors and assigns.

21. GOVERNING LAW; JURISDICTION AND VENUE; WAIVER OF JURY TRIAL; STATE CLAIMS PROCESS.

(a) THIS AGREEMENT AND EACH SCHEDULE SHALL BE GOVERNED BY TEXAS LAW WITHOUT REGARD TO ITS CONFLICTS OF LAW PRINCIPLES AND, TO THE EXTENT APPLICABLE, THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. EXCEPT FOR LESSEES TO WHOM SECTION 21(b) HEREIN APPLIES, LESSEE CONSENTS TO THE JURISDICTION OF ANY FEDERAL COURT LOCATED IN DALLAS COUNTY, TEXAS AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURT, AND FURTHER WAIVES ANY RIGHT TO A TRIAL BY JURY.

(b) This sub-section applies only to Lessees designated a State, agency, department, commission, bureau, board, office, council, court, or other entity that is in any branch of state government and that is created by the constitution or a statute of the State of Texas, including a university system or institution of higher education.

(1) To the extent that Chapter 2260 of the *Texas Government Code*, as it may be amended from time to time ("Chapter 2260"), is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by the Lessee and Lessor to attempt to resolve any claim for breach of contract made by Lessor:

(A) Lessor's claims for breach of this Agreement that the parties cannot resolve pursuant to other provisions of this Agreement or in the ordinary course of business shall be submitted to the negotiation process provided in subchapter B of Chapter 2260. To initiate the process, Lessor shall submit written notice, as required by subchapter B of Chapter 2260, to Lessee in accordance with the notice provisions in this Agreement. Lessor's notice shall specifically state that the provisions of subchapter B of Chapter 2260 are being invoked, the date and nature of the event giving rise to the claim, the specific contract provision that Lessee allegedly breached, the amount of damages Lessor seeks, and the method used to calculate the damages. Compliance by Lessor with subchapter B of Chapter 2260 is a required prerequisite to Lessor's filing of a contested case proceeding under subchapter C of Chapter 2260. The chief business officer of Lessee, or such other officer of Lessee as may be designated from time to time by Lessee by written notice thereof to Lessor in accordance with the notice provisions in this Agreement, shall examine Lessor's claim and any counterclaim and negotiate with Lessor in an effort to resolve such claims.

(B) If the parties are unable to resolve their disputes under subparagraph (A) of this subsection, the contested case process provided in subchapter C of Chapter 2260 is Lessor's sole and exclusive

process for seeking a remedy for any and all of Lessor's claims for breach of this Agreement by Lessee.

(C) Compliance with the contested case process provided in subchapter C of Chapter 2260 is a required prerequisite to seeking consent to sue from the Legislature under Chapter 107 of the Texas Civil Practices and Remedies Code. The parties hereto specifically agree that (i) neither the execution of this Agreement by Lessee nor any other conduct, action or inaction of any representative of Lessee relating to this Agreement constitutes or is intended to constitute a waiver of Lessee's or the State's sovereign immunity to suit and (ii) Lessee has not waived its right to seek redress in the courts.

(2) (A) If the Lessee against whom Lessor makes a claim does not have rulemaking authority, the submission, processing and resolution of Lessor's claim is governed by the published rules adopted by the Office of the Attorney General pursuant to Chapter 2260, Government Code as currently effective, hereafter enacted or subsequently amended.

(B) If the Lessee against whom Lessor makes a claim has rulemaking authority, and has adopted rules governing the alternative dispute resolution process, the submission, processing and resolution of Lessor's claim shall be governed by such rules, as such rules are then effective, hereafter enacted or subsequently amended. If the Lessee against whom Lessor makes a claim has rulemaking authority, but has not yet adopted rules governing the alternative dispute resolution process, Lessee's claim shall be governed by the rules adopted by the Office of the Attorney General pursuant to Subsection 2260.052 (c), Subchapter B, Government Code.

(3) Neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Lessor, in whole or in part. Lessee and Lessor agree that any periods set forth in this Agreement for notice and cure of defaults are not waived, delayed, or suspended by Chapter 2260 or this subsection.

22. MISCELLANEOUS .

(a) The headings used in this Agreement are for convenience only and shall have no legal effect. This Agreement shall be interpreted without any strict construction in favor of or against either party.

(b) The provisions of Sections 6, 8, 11, 12(b), 12(c), 12(d), 16, 21 and 22 shall continue in full force and effect even after the termination or expiration of this Agreement or any Schedule.

(c) Failure of Lessor at any time to require Lessee's performance of any obligation shall not affect the right to require performance of that obligation. No term, condition or provision of this Agreement or any Schedule shall be waived or deemed to have been waived by Lessor unless it is in writing and signed by a duly authorized representative of Lessor. A valid waiver is limited to the specific situation for which it was given.

(d) Lessee shall furnish such financial statements of Lessee (prepared in accordance with generally accepted accounting principles) and other information as Lessor may from time to time reasonably request.

(e) If any provision(s) of this Agreement is deemed invalid or unenforceable to any extent (other than provisions going to the essence of this Agreement) the same shall not in any respect affect the validity, legality or enforceability (to the fullest extent permitted by law) of the remainder of this Agreement and the parties shall use their best efforts to replace such illegal, invalid or unenforceable provision with an enforceable provision approximating, to the extent possible, the original intent of the parties.

(f) Unless otherwise provided, all obligations hereunder shall be performed or observed at the respective party's expense.

(g) Lessee shall take any action reasonably requested by Lessor for the purpose of fully effectuating the intent and purposes of this Agreement or any Schedule. If any Lease is determined to be other than a true lease, Lessee hereby grants to Lessor a first priority security interest in the Products and all proceeds thereof. Lessee acknowledges that by signing this Agreement,

Lessee has authorized Lessor to file any financing statements or related filings as Lessor may reasonably deem necessary or appropriate. Lessor may file a copy of this Agreement or any Schedule in lieu of a financing statement.

(h) This Agreement and any Schedule may be signed in any number of counterparts each of which when so executed or otherwise authenticated and delivered shall be an original but all counterparts shall together constitute one and the same instrument. To the extent each Schedule would constitute chattel paper as that term is defined in the UCC, no security interest may be created through the transfer or control or possession, as applicable, of a counterpart of a Schedule other than the original in Lessor's possession marked by Lessor as either "original" or "Counterpart Number 1".

(i) This Agreement and the Schedules hereto between Lessor and Lessee set forth all of the understandings and agreements between the parties and supersede and merge all prior written or oral communications, understandings, or agreements between the parties relating to the subject matter contained herein. Except as permitted herein, this Agreement and any Schedule may be amended only by a writing duly signed or otherwise authenticated by Lessor and Lessee.

(j) If Lessee delivers this Agreement, a signed Schedule, amendment or other document related to the Master Lease or a Schedule (each a "Document") to Lessor by facsimile transmission, and Lessor does not receive all of the pages of that Document, Lessee agrees that, except for any pages which require a signature, Lessor may supply the missing pages to the Document from Lessor's database which conforms to the version number at the bottom of the page. If Lessee delivers a signed Document to Lessor as an e-mail attachment, facsimile transmission or by U.S. mail, Lessee acknowledges that Lessor is relying on Lessee's representation that the Document has not been altered. Lessee further agrees that, notwithstanding any rule of evidence to the contrary, in any hearing, trial or proceeding of any kind with respect to a Document, Lessor may produce a tangible copy of the Document transmitted by Lessee to Lessor by facsimile or as an e-mail attachment and such signed copy shall be deemed to be the original of the Document. To the extent (if any) that the Document constitutes chattel paper under the Uniform Commercial Code, the authoritative copy of the Document shall be the copy designated by Lessor or its assignee, from time to time, as the copy available for access and review by Lessee, Lessor or its assignee. All other copies are deemed identified as copies of the authoritative copy. In the event of inadvertent destruction of the authoritative copy, or corruption of the authoritative copy for any reason or as the result of any cause, the authoritative copy may be restored from a backup or archive copy, and the restored copy shall become the authoritative copy. At Lessor's option, this electronic record may be converted into paper form. At such time, such paper copy will be designated or marked as the authoritative copy of the Document.

EXECUTED by the undersigned on the dates set forth below, to be effective as of the Effective Date.

"Lessee"
BY: _____
NAME: _____
TITLE: _____
DELL FINANCIAL SERVICES L.L.C.
"Lessor"
BY: _____
NAME: _____
TITLE: _____



Lease Schedules:

Fair Market Value Lease

\$1 Out Purchase Option Lease

Tax Exempt Lease Purchase Lease



**TRUE LEASE SCHEDULE NO.
MASTER LEASE AGREEMENT SCHEDULE NO.**

THIS SCHEDULE IS SUBJECT TO AND INCORPORATES THE TERMS AND CONDITIONS OF MASTER LEASE AGREEMENT NO. _____ ("Agreement") DATED _____ BETWEEN DELL FINANCIAL SERVICES L.L.C. ("Lessor") AND _____ ("Lessee").

Lessor hereby agrees to lease and/or make available to Lessee subject to the terms, conditions and provisions set forth in this Schedule and in the Agreement, the Products described below. Any capitalized term used herein and not defined herein shall have the meaning ascribed to it in the Agreement.

PRODUCT DESCRIPTION AND LOCATION: See below or Exhibit "A" attached to and made a part hereof.

PRODUCT SELLER:

<u>Product Description</u>	<u>Product Location</u>	<u>Lessee Purchase Order No.</u>	<u>Rent*</u>	<u>Primary Term (Mos.)</u>	<u>Commencement Date**</u>
See Exhibit 'A'	See Exhibit 'A'				

Total Product Acquisition Cost:

Rent is payable: in

Payment Period:

*Lessee is responsible for applicable taxes, shipping and other amounts as described in the Agreement, and, with the first payment of Rent, any prorated Rent if applicable. Such amounts are further described in Exhibit "A".

**The Commencement Date may be extended for one Payment Period until the Schedule is returned in accordance with the terms in the Agreement. Lessor may charge Lessee prorated Rent accruing from the Acceptance Date to the Commencement Date, as such date is finally determined.

TRUE LEASE PROVISIONS

The following provisions shall apply with respect to this Schedule in addition to those provisions in the Agreement:

1. **TRUE LEASE:** The parties intend for this lease to constitute a true lease of Products under the UCC and all applicable laws. If this Lease is determined to be a lease intended as security, in no event shall Lessee be obligated to pay any time price balance differential in excess of the maximum amount permitted by applicable law (as specified herein or the state where the Products are located, whichever law permits the greater amount). In the event Lessor shall receive anything of value under a Lease that is deemed interest which would exceed the maximum amount of interest allowed under the law, the excess amount shall be applied to the reduction of the unpaid time price balance or shall be refunded to Lessee. In order to reduce the unpaid time price balance, any amount deemed interest shall, to the fullest extent permitted by applicable law, be amortized and spread uniformly throughout the Lease Term."

2. **END OF LEASE OPTIONS.**

(a) Provided that no Event of Default has occurred and is continuing, and at least 90 days but no more than 180 days prior to the expiration of the Primary Term (the "Expiration Date"), Lessee will give irrevocable written notice to Lessor of its intention to either:

- (i) purchase all of the Products at the Fair Market Value (as defined below);
- (ii) renew the Lease Term for a minimum of six (6) months at a rate and for a term agreed upon by both parties; or
- (iii) return all of the Products in accordance with the Agreement.

(b) If Lessee exercises the option to purchase the Products then, upon receipt of payment of the "Fair Market Value" (defined below), plus applicable taxes, Lessor will sell the Products to Lessee AS IS-WHERE IS, WITHOUT

WARRANTY OR RECOURSE, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING ANY WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT. The Fair Market Value purchase price shall be paid on or before the last day of the Primary Term. "Fair Market Value" means the price of the Products, installed, in use and in the condition required by the Agreement as determined by Lessor in its reasonable judgment. If Lessee disagrees with the Fair Market Value, Lessee shall notify Lessor in writing within 60 days prior to the Expiration Date and, upon Lessee's request, and within ten (10) days after receipt of Lessee's notice, Lessor shall appoint a qualified appraiser reasonably acceptable to Lessee to appraise the retail value of the Products. The amount determined by such appraiser shall be the final Fair Market Value. Lessor and Lessee shall share the expense of such appraisal equally.

(c) If Lessee desires to renew a lease, Lessee and Lessor shall enter into a supplement to this Schedule describing the length of the renewal Lease Term and the renewal Rent provided, however, all other terms of this Schedule and the Agreement shall remain in full force and effect.

(d) Whether or not Lessee has given Lessor notice of its intent as described above, if Lessee does not return or purchase the Products or renew the Lease as required above, the Lease Term shall automatically extend on a month-to-month basis at the Rent in effect on the Expiration Date (prorated on a monthly basis if the Payment Period was other than monthly during the Primary Term). Such extension shall continue until Lessee: (i) provides thirty (30) days prior written notice of its intention to return or purchase the Products (to take effect on the next Rent payment date that is at least 30 days after the notice is received by Lessor) and (ii) either returns or purchases all of the Products in accordance with the End of Lease options above. Payments of Rent during the month-to-month extension are due and payable monthly as specified in Lessor's invoice. If Lessee fails to return or purchase any Products, the Schedule and associated Rent for the Products that have not been returned or purchased shall extend on a month-to-month basis in accordance with the prior sentence.

3. **COMPLETION OF SCHEDULE.** Lessee hereby authorizes Lessor to insert or update the serial numbers of the Products from time to time if necessary.

If Lessee delivers this signed Schedule, any amendment or other document related to this Schedule or the Master Lease (each a "Document") to Lessor by facsimile transmission, and Lessor does not receive all of the pages of that Document, Lessee agrees that, except for any pages which require a signature, Lessor may supply the missing pages to the Document from Lessor's database which conforms to the version number at the bottom of the page. If Lessee delivers a signed Document to Lessor as an e-mail attachment, facsimile transmission or by U.S. mail, Lessee acknowledges that Lessor is relying on Lessee's representation that the Document has not been altered. Lessee further agrees that, notwithstanding any rule of evidence to the contrary, in any hearing, trial or proceeding of any kind with respect to a Document, Lessor may produce a tangible copy of the Document transmitted by Lessee to Lessor by facsimile or as an e-mail attachment and such signed copy shall be deemed to be the original of the Document. To the extent (if any) that the Document constitutes chattel paper under the Uniform Commercial Code, the authoritative copy of the Document shall be the copy designated by Lessor or its assignee, from time to time, as the copy available for access and review by Lessee, Lessor or its assignee. All other copies are deemed identified as copies of the authoritative copy. In the event of inadvertent destruction of the authoritative copy, or corruption of the authoritative copy for any reason or as the result of any cause, the authoritative copy may be restored from a backup or archive copy, and the restored copy shall become the authoritative copy. At Lessor's option, this electronic record may be converted into paper form. At such time, such paper copy will be designated or marked as the authoritative copy of the Document.

By signing below, each of the parties hereto agrees to be bound by the terms of the Agreement, this Schedule and the attached Exhibit "A".

"Lessee"
By: _____
Name: _____
Title: _____
Date: _____

DELL FINANCIAL SERVICES L.L.C.
"Lessor"
By: _____
Name: _____
Title: _____
Date: _____



LEGAL COMPANY NAME
LEASE PURCHASE SCHEDULE NO. CONTRACT NUMBER
TO MASTER LEASE AGREEMENT NO. MLA NUMBER

THIS SCHEDULE IS SUBJECT TO AND INCORPORATES THE TERMS AND CONDITIONS OF MASTER LEASE AGREEMENT NO. MLA NUMBER ("Agreement") DATED MLA EFFECTIVE DATE BETWEEN DELL FINANCIAL SERVICES L.L.C. ("Lessor") AND LEGAL COMPANY NAME ("Lessee").

Lessor hereby agrees to lease and/or make available to Lessee subject to the terms, conditions and provisions set forth in this Schedule and in the Agreement, the Products described below. Any capitalized term used herein and not defined herein shall have the meaning ascribed to it in the Agreement.

PRODUCT DESCRIPTION AND LOCATION: See below or Exhibit "A" attached to and made a part hereof.

PRODUCT SELLER:

Table with 5 columns: Product Description, Product Location, Lessee Purchase Order No., Primary Term (Mos.), Commencement Date*. Row 1: See Exhibit 'A', See Exhibit 'A', TBD, TERM, TBD.

Rent is payable: in Advance

Payment Period:

*The Commencement Date may be extended for one Payment Period until the Schedule is returned in accordance with the terms in the Agreement. Lessor may charge Lessee prorated Rent accruing from the Acceptance Date to the Commencement Date, as such date is finally determined.

LEASE PURCHASE PROVISIONS

The following provisions shall apply with respect to this Schedule in addition to those provisions in the Agreement:

1. SECTION 4. RENT; TAXES; PAYMENT OBLIGATION.

Insert as a new last sentence to subsection (a) the following:

"For the purposes of this Schedule, the Rent and Purchase Price (as of the applicable Purchase Date) are shown in the chart below or on Exhibit "B", attached to and made a part hereof.

Table with 6 columns: Payment Number, Purchase Date, Rent, Interest Portion, Principal Portion, Purchase Price. Row 1: See Exhibit 'B'.

2. PURCHASE OPTION.

Provided that no Event of Default has occurred and is continuing, and at least 60 days but no more than 180 days before the purchase date ("Purchase Date") selected by Lessee, Lessee will give irrevocable written notice to Lessor of its intention to:

- (i) purchase the Products for \$1.00 at the end of the Primary Term;
(ii) purchase the Products at the Purchase Price as stated in Paragraph (i) above or as listed on Exhibit B, so long as all other amounts due on the Purchase Date have been paid in full; or
(iii) return the Products in accordance with the Agreement for a fee agreed upon by both parties.

Upon satisfaction by Lessee of such conditions, Lessee shall be entitled to Lessor's interest in the Products, AS IS, WHERE IS, WITHOUT WARRANTY OR RECOURSE, EXPRESS, IMPLIED OR OTHERWISE, BY OR AGAINST LESSOR,

INCLUDING ANY WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT, other than the absence of any liens by, through, or under Lessor.

As continuing security for Lessee's obligations hereunder, Lessee hereby grants to Lessor, a first-priority security interest in all of Lessee's rights and interest in and to the Products and all proceeds thereof, free and clear of all security interests, liens or encumbrances whatsoever.

3. COMPLETION OF SCHEDULE. Lessee hereby authorizes Lessor to insert or update the serial numbers of the Products from time to time as necessary.

By signing below, each of the parties hereto agrees to be bound by the terms of the Agreement, this Schedule and the attached Exhibits "A" and "B".

LEGAL COMPANY NAME
"Lessee"

DELL FINANCIAL SERVICES L.L.C.
"Lessor"

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



**SAMPLE
LEASE PURCHASE SCHEDULE NO.
TO MASTER LEASE AGREEMENT SCHEDULE NO.**

THIS SCHEDULE IS SUBJECT TO AND INCORPORATES THE TERMS AND CONDITIONS OF MASTER LEASE AGREEMENT NO. _____ ("Agreement") DATED _____ BETWEEN DELL FINANCIAL SERVICES L.L.C. ("Lessor") AND _____ ("Lessee").

Lessor hereby agrees to lease and/or make available to Lessee subject to the terms, conditions and provisions set forth in this Schedule and in the Agreement, the Products described below. Any capitalized term used herein and not defined herein shall have the meaning ascribed to it in the Agreement.

PRODUCT DESCRIPTION AND LOCATION: See below or Exhibit "A" attached to and made a part hereof.

PRODUCT SELLER:

<u>Product Description</u>	<u>Product Location</u>	<u>Lessee Purchase Order No.</u>	<u>Primary Term (Mos.)</u>	<u>Commencement Date</u>
See Exhibit 'A'	See Exhibit 'A'			

Rent is payable: in

Payment Period:

LEASE PURCHASE PROVISIONS

The following provisions shall apply with respect to this Schedule in addition to those provisions in the Agreement:

1. SECTION 4. RENT; TAXES; PAYMENT OBLIGATION.

Insert as a new last sentence to subsection (a) the following:

"For the purposes of this Schedule, the Rent, as well as the principal and interest portions of each Rent payment and the Purchase Price as of the applicable Purchase Date are shown in the chart provided on Exhibit "B", attached to and made a part hereof.

Add as a new last sentence to subsection (b) the following:

"Because the Products will be used for a governmental or proprietary purpose of Lessee, they are exempt from all sales, use and property taxes."

2. SECTION 11. REPRESENTATIONS AND WARRANTIES OF LESSEE.

For purposes of this Schedule, add paragraphs (j) through (t) as follows:

(j) Lessee will comply with the information reporting requirements of Section 149(e) of the Code, including but not limited to, the execution and delivery to Lessor of information statements requested by Lessor;

(k) Lessee will not do, cause to be done or fail to do any act if such act or failure to act will cause this Agreement, or any transaction hereunder, to be an Arbitrage Bond within the meaning of Section 148 of the Code or a Private Activity Bond within the meaning of Section 141 of the Code;

(l) The total cost of the Products listed in this Schedule will not be less than the total Principal Portion of the Rent listed in this Schedule; :

(m) The Products listed in this Schedule have or will be ordered within six months of the date hereof in order to commence such Schedule;

(n) The Products listed in this Schedule are expected to be delivered and installed, and the Seller fully paid, within one year from the date hereof;

(o) No fund or account which secures or otherwise relates to the Rent has been established;

(p) Lessee will not sell, encumber or otherwise dispose of any property comprising this Schedule prior to the final maturity or termination of such Schedule without a written opinion of nationally recognized bond counsel to the effect that any such disposition will not adversely affect the exclusion of interest on the Rent from gross income for federal income tax purposes;

(q) Lessee agrees to execute, deliver and provide Lessor with satisfactory evidence of the filing of such documentation, as may be required for the purposes of properly reporting this Schedule, including, without limitation, IRS forms 8038-G or 8038-GC, as required under the Code;

(r) It is expected that Rent under this Schedule will be paid from periodic appropriations of the Lessee deposited into the general fund of the Lessee, that such appropriations will equal the Rent due during each Fiscal Period of Lessee, and that all amounts paid for Rent will be from an appropriation made by the Lessee during the Fiscal Period in which such Rent is made;

(s) To the best of Lessee's knowledge, information and belief, the above expectations are reasonable; and

(t) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103, 141 and 148 thereof, and the applicable regulations of the Treasury Department to maintain the exclusion of the interest components of Rent from gross income for purposes of federal income taxation.

Without limiting the generality of the foregoing, Lessor hereby gives notice to Lessee that, upon execution of this Schedule by Lessor, Lessor shall assign all of its right, title and interest in, to and under this Schedule, including all Products and all payments owing under such Schedule, to Dell Equipment Funding L.P. ("DEF") pursuant to a purchase agreement between the Lessor and DEF. Lessee hereby acknowledges and consents to such assignment and shall keep, or cause to be kept, a complete and accurate record of all such assignments in a manner and form necessary to comply with Section 149(a) of the Code and the Treasury Regulations promulgated thereunder. Lessor hereby directs Lessee to continue to make any and all payments required to be made under this Schedule directly to Lessor, as servicing agent for DEF, at the same address to which Lessee is currently making payments unless and until Lessor is directed by DEF to make such payments to a different address or payee."

TO THE EXTENT PERMITTED BY LAW, AND IN ADDITION TO LESSEE'S OBLIGATION UNDER SECTION 16 OF THE AGREEMENT AND ANY AMENDMENTS THERETO, LESSEE HEREBY ASSUMES LIABILITY FOR, AND SHALL PAY WHEN DUE, AND SHALL DEFEND LESSOR AND ITS SUCCESSORS AND ASSIGNS AGAINST, ANY AND ALL LIABILITIES, LOSSES, DAMAGES, CLAIMS AND EXPENSES (INCLUDING REASONABLE ATTORNEY FEES) RELATING TO OR ARISING OUT OF LESSEE'S BREACH OF ANY OF ITS REPRESENTATIONS, WARRANTIES, OR COVENANTS CONTAINED IN SECTION 11 OF THE AGREEMENT AS SUPPLEMENTED HEREIN.

3. SECTION 12. WARRANTY ASSIGNMENT; EXCLUSION OF WARRANTIES; LIMITATIONS ON LIABILITY; FINANCE LEASE.

For purposes of this Schedule, delete "FINANCE LEASE" in the title of this Section and delete the first and last sentences of paragraph (d).

4. SECTION 17. OWNERSHIP; LIENS AND ENCUMBRANCES; LABELS.

Insert at the end of this paragraph the following: "Notwithstanding the first sentence of this Section, upon Lessee's acceptance of the Products under this Schedule, title to the Products shall vest in Lessee subject to Lessor's rights under the Agreement; provided that, upon an Event of Default or any termination of this Schedule, other than by Lessee's purchase of the Products, title to the Products shall immediately and without any action by either party vest in Lessor, and Lessee shall immediately surrender possession of the Products to Lessor. Any such transfer of title shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee shall, nevertheless, execute and deliver any such instruments as Lessor may request to evidence such transfer.

5. PURCHASE OPTION.

Provided that no Event of Default has occurred and is continuing, and upon satisfaction of all payment obligations herein by Lessee, Lessee shall be entitled to Lessor's interest in the Products, AS IS, WHERE IS, WITHOUT WARRANTY OR RECOURSE, EXPRESS, IMPLIED OR OTHERWISE, BY OR AGAINST LESSOR, INCLUDING ANY WARRANTIES OF

DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT, other than the absence of any liens by, through, or under Lessor.

As continuing security for Lessee's obligations hereunder, Lessee hereby grants to Lessor, a first-priority security interest in all of Lessee's rights and interest in and to the Products and all proceeds thereof, free and clear of all security interests, liens or encumbrances whatsoever.

6. COMPLETION OF SCHEDULE: Lessee hereby authorizes Lessor to insert or update the serial numbers of the Products from time to time as necessary.

If Lessee delivers this signed Schedule, any amendment or other document related to this Schedule or the Master Lease (each a "Document") to Lessor by facsimile transmission, and Lessor does not receive all of the pages of that Document,

By signing below, each of the parties hereto agrees to be bound by the terms of the Agreement, this Schedule and the attached Exhibits "A" and "B".

"Lessee"

By: _____

Name: _____

Title: _____

Date: _____

DELL FINANCIAL SERVICES L.L.C.

"Lessor"

By: _____

Name: _____

Title: _____

Date: _____



Ancillary Documents:

Validity Opinion

8038G

8038GC

**SAMPLE OPINION LETTER
TO BE EXECUTED ON COUNSEL'S LETTERHEAD**

To: Dell Financial Services L.L.C.
One Dell Way
Round Rock, TX 78682

Ladies and Gentlemen:

We are counsel to the _____ (the "Lessee") and, in that capacity, we have examined Master Lease Agreement No. _____ dated as of _____ 2018, and the Lease Purchase Schedule No. _____ to Master Lease Agreement No. _____ thereto, dated as of _____, 2018 (collectively the "Agreement"), between the Lessee and Dell Financial Services L.L.C. (the "Lessor").

Based on our examination of the Agreement and such other examinations as we have deemed appropriate, we are of the opinion as follows:

(a) The Lessee is an entity duly organized and existing under and by virtue of the authorizing statute or constitutional provisions of the State of _____ and is a state or political subdivision thereof as described in Section 103(a) of the Internal Revenue Code of 1986, as amended, with full power and authority to enter into the Agreement and the transactions contemplated thereby and to perform all of its obligations thereunder;

(b) The Agreement has been duly authorized, executed and delivered by _____*, _____ of the Lessee by proper action of its governing board at a meeting duly called, regularly convened and attended throughout by the requisite majority of the members thereof or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of the Agreement against the Lessee;

(c) The Agreement constitutes the valid, legal and binding obligation of the Lessee, enforceable in accordance with its terms;

(d) No approval, consent or withholding of objection is required from any federal, state or local governmental authority or instrumentality with respect to the entering into or performance by the Lessee of the Agreement and the transactions contemplated thereby;

(e) Lessee has complied with any applicable public bidding requirements and other applicable state and federal laws in connection with the Agreement and the transactions contemplated thereby;

(f) The entering into and performance of the Agreement will not violate any judgment, order, law or regulation applicable to the Lessee or result in any breach of, or constitute a default under, any instrument to which the Lessee is a party or by which it or its assets may be bound, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of the Lessee or on the Products, other than those created by the Agreement;

(g) The Products are tangible personal property and when subject to use by the Lessee will not be or become fixtures or real property under the laws of the State of _____;

(h) There are no actions, suits, proceedings, inquiries or investigations, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting, nor to the best of our knowledge and belief is there any basis therefor, which, if determined adversely to Lessee, will have a material adverse effect on the ability of the Lessee to fulfill its obligations under the Agreement; and

(i) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for Lessee's current Fiscal Period to make the Rent payments scheduled to come due during Lessee's current Fiscal Period and to meet its other obligations under the Agreement for the current Fiscal Period, and such funds have not been expended for other purposes.

This opinion is delivered to the addressee for its benefit and the benefit of its assigns for the purpose contemplated by the Agreement.

Very truly yours,
*Authorized Signatory of Lessee under the Agreement.

Information Return for Tax-Exempt Governmental Obligations

► Under Internal Revenue Code section 149(e)
 ► See separate instructions.

OMB No. 1545-0720

Caution: If the issue price is under \$100,000, use Form 8038-GC.

Part I Reporting Authority		If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name		2 Issuer's employer identification number (EIN)	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions) Dell Financial Services, L.L.C.		3b Telephone number of other person shown on 3a 512-728-1417	
4 Number and street (or P.O. box if mail is not delivered to street address) Room/suite		5 Report number (For IRS Use Only) 3	
6 City, town, or post office, state, and ZIP code		7 Date of issue	
8 Name of issue Dell Financial Services, L.L.C.		9 CUSIP number None	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a	

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

11 Education	11		
12 Health and hospital	12		
13 Transportation	13		
14 Public safety	14		
15 Environment (including sewage bonds)	15		
16 Housing	16		
17 Utilities	17		
18 Other. Describe ► Dell Leased Equipment	18		
19 If obligations are TANs or RANs, check only box 19a <input type="checkbox"/>			
If obligations are BANs, check only box 19b <input type="checkbox"/>			
20 If obligations are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>			

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$	\$	years	%

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22	Proceeds used for accrued interest	22	NA
23	Issue price of entire issue (enter amount from line 21, column (b))	23	NA
24	Proceeds used for bond issuance costs (including underwriters' discount)	24	NA
25	Proceeds used for credit enhancement	25	NA
26	Proceeds allocated to reasonably required reserve or replacement fund	26	NA
27	Proceeds used to currently refund prior issues	27	NA
28	Proceeds used to advance refund prior issues	28	NA
29	Total (add lines 24 through 28)	29	NA
30	Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30	NA

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31	Enter the remaining weighted average maturity of the bonds to be currently refunded	NA	years
32	Enter the remaining weighted average maturity of the bonds to be advance refunded	NA	years
33	Enter the last date on which the refunded bonds will be called (MM/DD/YYYY)	NA	
34	Enter the date(s) the refunded bonds were issued ► (MM/DD/YYYY)	NA	

Part VI Miscellaneous

<p>35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)</p> <p>36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)</p> <p style="padding-left: 20px;">b Enter the final maturity date of the GIC ▶ _____</p> <p style="padding-left: 20px;">c Enter the name of the GIC provider ▶ _____</p> <p>37 Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units</p> <p>38a If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ <input type="checkbox"/> and enter the following information:</p> <p style="padding-left: 20px;">b Enter the date of the master pool obligation ▶ _____</p> <p style="padding-left: 20px;">c Enter the EIN of the issuer of the master pool obligation ▶ _____</p> <p style="padding-left: 20px;">d Enter the name of the issuer of the master pool obligation ▶ _____</p> <p>39 If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶ <input type="checkbox"/></p> <p>40 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶ <input type="checkbox"/></p> <p>41a If the issuer has identified a hedge, check here ▶ <input type="checkbox"/> and enter the following information:</p> <p style="padding-left: 20px;">b Name of hedge provider ▶ _____</p> <p style="padding-left: 20px;">c Type of hedge ▶ _____</p> <p style="padding-left: 20px;">d Term of hedge ▶ _____</p> <p>42 If the issuer has superintegrated the hedge, check box ▶ <input type="checkbox"/></p> <p>43 If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ▶ <input type="checkbox"/></p> <p>44 If the issuer has established written procedures to monitor the requirements of section 148, check box ▶ <input type="checkbox"/></p> <p>45a If some portion of the proceeds was used to reimburse expenditures, check here ▶ <input type="checkbox"/> and enter the amount of reimbursement ▶ _____</p> <p style="padding-left: 20px;">b Enter the date the official intent was adopted ▶ _____</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">35</td> <td style="width: 50px; height: 20px;"></td> <td style="width: 50px; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">36a</td> <td style="width: 50px; height: 20px;"></td> <td style="width: 50px; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">37</td> <td style="width: 50px; height: 20px;"></td> <td style="width: 50px; height: 20px;"></td> </tr> </table>	35			36a			37		
35										
36a										
37										

Signature and Consent	<p>Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.</p>				
	<p>▶ _____ Signature of issuer's authorized representative</p>		<p>_____ Date</p>		<p>_____ Type or print name and title</p>
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name ▶ Dell Financial Services, LLC		Firm's EIN ▶ 74-7825828		
	Firm's address ▶ One Dell Way, Round Rock, TX 78682		Phone no. 512-221-0521		

**Information Return for Small Tax-Exempt
Governmental Bond Issues, Leases, and Installment Sales**
a Under Internal Revenue Code section 149(e)

OMB No. 1545-0720

Caution: If the issue price of the issue is \$100,000 or more, use Form 8038-G.

Part I Reporting Authority Check box if Amended Return a

1 Issuer's name _____ 2 Issuer's employer identification number (EIN) _____

3 Number and street (or P.O. box if mail is not delivered to street address) _____ Room/suite _____

4 City, town, or post office, state, and ZIP code _____ 5 Report number (For IRS Use Only) _____

6 Name and title of officer or other employee of issuer or designated contact person whom the IRS may call for more information 7 Telephone number of officer or legal representative _____

Part II Description of Obligations Check one: a single issue or a consolidated return .

8a Issue price of obligation(s) (see instructions)	8a	
8b Issue date (single issue) or calendar date (consolidated). Enter date in mm/dd/yyyy format (for example, 01/01/2009) (see instructions) a		
9 Amount of the reported obligation(s) on line 8a that is:		
a For leases for vehicles	9a	
b For leases for office equipment	9b	
c For leases for real property	9c	
d For leases for other (see instructions)	9d	
e For bank loans for vehicles	9e	
f For bank loans for office equipment	9f	
g For bank loans for real property	9g	
h For bank loans for other (see instructions)	9h	
i Used to refund prior issue(s)	9i	
j Representing a loan from the proceeds of another tax-exempt obligation (for example, bond bank)	9j	
k Other	9k	
10 If the issuer has designated any issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check this box	a	<input type="checkbox"/>
11 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check this box (see instructions)	a	<input type="checkbox"/>
12 Vendor's or bank's name: _____		
13 Vendor's or bank's employer identification number: _____		

Signature and Consent Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person(s) that I have authorized above.

Signature of issuer's authorized representative Date Type or print name and title

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name a	Firm's EIN a			
Firm's address a	Phone no.			

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

The IRS has created a page on IRS.gov for information about the Form 8038 series and its instructions, at www.irs.gov/form8038. Information about any future developments affecting the Form 8038 series (such as legislation enacted after we release it) will be posted on that page.

Purpose of Form

Form 8038-GC is used by the issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

Who Must File

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file Form 8038-G, Information Return for Tax-Exempt Governmental Obligations.

Filing a separate return for a single issue. Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with an issue price of less than \$100,000.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to

pay a penalty in lieu of arbitrage rebate (see the line 11 instructions).

Filing a consolidated return for multiple issues. For all tax-exempt governmental obligations with issue prices of less than \$100,000 that are not reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, if the issue is a construction issue, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.

When To File

To file a separate return for a single issue, file Form 8038-GC on or before the 15th day of the second calendar month after the close of the calendar quarter in which the issue is issued.

To file a consolidated return for multiple issues, file Form 8038-GC on or before February 15th of the calendar year following the year in which the issue is issued.

Late filing. An issuer may be granted an extension of time to file Form 8038-GC under section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file on time is not due to willful neglect. Type or print at the top of the form, "Request for Relief under section 3 of Rev. Proc. 2002-48." Attach to the Form 8038-GC a letter briefly stating why the form was not submitted to the IRS on time. Also indicate whether the obligation in question is under examination by the IRS. Do not submit copies of any bond documents, leases, or installment sale documents. See *Where To File* next.

Where To File

File Form 8038-GC, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

Private delivery services. You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. These private delivery services include only the following:

- DHL Express (DHL): DHL Same Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the Federal Government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate. For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

For a tax-exempt governmental obligation with an issue price of \$100,000 or more, use Form 8038-G.

Rounding to Whole Dollars

You may show the money items on this return as whole-dollar amounts. To do so, drop any amount less than 50 cents and increase any amount from 50 to 99 cents to the next higher dollar.

Definitions

Obligations. This refers to a single tax-exempt governmental obligation if Form 8038-GC is used for separate reporting or to

multiple tax-exempt governmental obligations if the form is used for consolidated reporting.

Tax-exempt obligation. This is any obligation including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

Tax-exempt governmental obligation. A tax-exempt obligation that is not a private activity bond (see below) is a tax-exempt governmental obligation. This includes a bond issued by a qualified volunteer fire department under section 150(e).

Private activity bond. This includes an obligation issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use, and
- More than 10% of the payment of principal or interest of the issue is either (a) secured by an interest in property to be used for a private business use (or payments for such property) or (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

Issue. Generally, obligations are treated as part of the same issue only if they are issued by the same issuer, on the same date, and as part of a single transaction, or a series of related transactions. However, obligations issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan") or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the obligations are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for obligations issued under a draw-down loan that meets the requirements of the preceding sentence, obligations issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first obligation. Likewise, obligations (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first obligation.

Arbitrage rebate. Generally, interest on a state or local bond is not tax-exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

Construction issue. This is an issue of tax-exempt bonds that meets both of the following conditions:

1. At least 75% of the available construction proceeds of the issue are to be used for construction expenditures with respect to property to be owned by a governmental unit or a 501(c)(3) organization, and

2. All of the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1-1/2% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

Specific Instructions

In general, a Form 8038-GC must be completed on the basis of available information and reasonable expectations as of the date of issue. However, forms that are filed on a consolidated basis may be completed on the basis of information readily available to the issuer at the close of the calendar year to which the form relates, supplemented by estimates made in good faith.

Part I—Reporting Authority

Amended return. An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the "Amended Return" box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new corrected information. Attach an explanation of the reason for the amended return and write across the top "Amended Return Explanation."

Line 1. The issuer's name is the name of the entity issuing the obligations, not the name of the entity receiving the benefit of the financing. In the case of a lease or installment sale, the issuer is the lessee or purchaser.

Line 2. An issuer that does not have an employer identification number (EIN) should apply for one on Form SS-4, Application for Employer Identification Number. You can get this form on the IRS website at IRS.gov or by calling 1-800-TAX-FORM (1-800-829-3676). You may receive an EIN by telephone by following the instructions for Form SS-4.

Lines 3 and 4. Enter the issuer's address or the address of the designated contact person listed on line 6. If the issuer wishes to use its own address and the issuer receives its mail in care of a third party authorized representative (such as an accountant or attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box. Include the suite, room, or other unit number after the street address. If the post office does not deliver mail to the street address and the issuer has a P.O. box, show the box number instead of the

street address. If a change in address occurs after the return is filed, use Form 8822, Change of Address, to notify the IRS of the new address.

Note. The address entered on lines 3 and 4 is the address the IRS will use for all written communications regarding the processing of this return, including any notices. By authorizing a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS may contact about this return, the issuer authorizes the IRS to communicate directly with the individual listed on line 6, whose address is entered on lines 3 and 4 and consents to disclose the issuer's return information to that individual, as necessary, to process this return.

Line 5. This line is for IRS use only. Do not make any entries in this box.

Part II—Description of Obligations

Check the appropriate box designating this as a return on a single issue basis or a consolidated return basis.

Line 8a. The issue price of obligations is generally determined under Regulations section 1.148-1(b). Thus, when issued for cash, the issue price is the price at which a substantial amount of the obligations are sold to the public. To determine the issue price of an obligation issued for property, see sections 1273 and 1274 and the related regulations.

Line 8b. For a single issue, enter the date of issue (for example, 03/15/2010 for a single issue issued on March 15, 2010), generally the date on which the issuer physically exchanges the bonds that are part of the issue for the underwriter's (or other purchaser's) funds; for a lease or installment sale, enter the date interest starts to accrue. For issues reported on a consolidated basis, enter the first day of the calendar year during which the obligations were issued (for example, for calendar year 2010, enter 01/01/2010).

Lines 9a through 9h. Complete this section if property other than cash is exchanged for the obligation, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of obligation is sometimes referred to as a "municipal lease.") Also complete this section if real property is directly acquired in exchange for an obligation to make periodic payments of interest and principal.

Do not complete lines 9a through 9d if the proceeds of an obligation are received in the form of cash even if the term "lease" is used in the title of the issue. For lines 9a through 9d, enter the amount on the appropriate line that represents a lease or installment purchase. For line 9d, enter the type of item that is leased. For lines 9e through 9h, enter the amount on the appropriate line that represents a bank loan. For line 9h, enter the type of bank loan.

Lines 9i and 9j. For line 9i, enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any other issue of bonds, including proceeds that will be used to fund an escrow account for this purpose. Several lines may apply to a particular obligation. For example, report on lines 9i and 9j obligations used to refund prior issues which represent loans from the proceeds of another tax-exempt obligation.

Line 9k. Enter on line 9k the amount on line 8a that does not represent an obligation described on lines 9a through 9j.

Line 10. Check this box if the issuer has designated any issue as a "small issuer exception" under section 265(b)(3)(B)(i)(III).

Line 11. Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of rebate with Form 8038-GC. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the "election document."

Line 12. Enter the name of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

Line 13. Enter the employer identification number of the vendor or bank who is a party to the installment purchase agreement, loan, or financial lease. If there are multiple vendors or banks, the issuer should attach a schedule.

Signature and Consent

An authorized representative of the issuer must sign Form 8038-GC and any applicable certification. Also print the name and title of the person signing Form 8038-GC. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that has been designated in this form.

Note. If the issuer authorizes in line 6 the IRS to communicate with a person other than an officer or other employee of the issuer, (such authorization shall include contact both in writing regardless of the address entered in lines 3 and 4, and by telephone) by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

Paid Preparer

If an authorized representative of the issuer filled in its return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer Use Only* area of the return. A paid preparer cannot use a social security number in the *Paid Preparer Use Only* box. The paid preparer must use a preparer tax identification number (PTIN). If the paid preparer is self-employed, the preparer should enter his or her address in the box.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature, and
- Give a copy of the return to the issuer.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Learning about the law or the form	4 hr., 46 min.
Preparing the form	2 hr., 22 min.
Copying, assembling, and sending the form to the IRS	2 hr., 34 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File*.

**Exhibit C: Dell Financial Services
Flexible Consumption Schedule and Master Flexible Consumption
Agreement**



Exhibit C: Flexible Consumption Schedule (Flex on Demand) – U.S. STATE & LOCAL GOVERNMENT

This Flexible Consumption Schedule (the “**Schedule**”) sets forth the terms under which the customer identified below (“**Customer**”) may access and use certain Deployed Capacity from the Dell entity identified below (“**DELL EMC**”). Customer’s use of the Deployed Capacity is subject to the terms of this Schedule and the **Governing Agreement** identified below.

Effective Date: _____	Governing Agreement: Customer’s existing Master Flexible Consumption Agreement with DELL EMC dated on or about: _____
Name of Dell EMC entity (“DELL EMC”): EMC CORPORATION 176 SOUTH STREET HOPKINTON MA 01748	Name of Customer: [xxxxx] Xxxx Xxxxxxx

1. **Effective Date, Commencement Date.**
 - 1.1 **Schedule Effective Date and Transaction Start Date.** This Schedule expresses the current understanding of DELL EMC and Customer with regard to the Deployed Capacity listed on the Attachment 1 hereto. This Schedule, when signed by DELL EMC and Customer takes effect as of the **Effective Date** shown above.
 - 1.2 **Commencement Date.** DELL EMC shall begin to monitor Customer’s usage of the Deployed Capacity for the purpose of calculating the Flexible Consumption Fee on either (i) the first day of the first month following the date the Deployed Capacity has been installed at the Installation Site, or, if Customer delays the installation process or if Customer’s facility is not prepared for the installation of Deployed Capacity, (ii) the first day of the second month following the Deployed Capacity’s arrival at the Installation Site (as applicable, the “**Commencement Date**”).
2. **Listing of Deployed Capacity; Unit of Measure (“UOM”) for Software; Level of Support Services.**
 - 2.1 **Deployed Capacity.** The Deployed Capacity subject to this Schedule is listed on the Attachment 1 hereto.
 - 2.2 **Unit of Measure for Software.** A complete description of the Unit of Measure applicable to each unit of Software listed on the Attachment 1 is contained in the Software Use Rights Guide at <https://www.dellemc.com/content/dam/digitalassets/active/en/unauth/manual-warranty-informations/products/data-protection/h2483-sw-use-rights.pdf>
 - 2.3 **Support Services.** The following Table 2.3 specifies the level of Support Services to be provided for all Deployed Capacity during the Flexible Consumption Period.

Table 2.3 – Level of Support Services	
Support Services Level is:	XXXXXXXXXX

- 2.4 **Support Services Terms.** Support Services identified in a Schedule relating to Dell-branded Deployed Capacity will be provided in accordance with and pursuant to the following terms: <http://www.dell.com/servicecontracts/global>. Support Services identified in a Schedule relating to EMC-branded Deployed Capacity will be provided in accordance with and pursuant to the following terms: www.dell.com/dellemc-openscale
3. **BILLING/METRICS. PURCHASE ORDER, FLEXIBLE CONSUMPTION PERIOD AND RENEWALS.**
 - 3.1 **Billing Metrics and Flexible Consumption Period.** Customer is authorized to use all or a portion of the Deployed Capacity and receive Support Services thereon only during the **Flexible Consumption Period** as described in Table 3.3 below. During the Flexible Consumption Period, DELL EMC will measure the usage of the Deployed Capacity on a daily basis and issue a monthly invoice, in arrears, to Customer that reflects the amount of average usage during the prior month. The monthly Flexible Consumption Fee for usage is based on a minimum committed amount of use (the “**Monthly Committed Capacity**”) plus any usage in excess thereof (use of the “**Monthly Reserve Capacity**”). The Metered Total Capacity, Monthly Committed Capacity and Reserve Capacity are measured by means of the following metric:
 - 3.2 **Capacities and Asset Metering.** Prior to Billing, Dell EMC will provide Customer a monthly usage report, which reflects both the Metered Total Capacity of the Products and the Monthly Committed Capacity as a Percentage of that Metered Total Capacity. “**Metered Total Capacity**” means the reported capacity of the Products based upon Customer’s storage configuration in the applicable environment. Monthly reports will reflect the Metered Total Capacity of Products as reported by the asset and will scale the Monthly Committed Capacity in line with the Monthly Committed Capacity as a Percentage of Metered Total Capacity (see table 3.3). The committed Monthly Flexible Consumption Fee, the Monthly Unit Rate (Charge per GiB per Month) and the Monthly Committed Capacity as a Percentage of Metered Total Capacity remain fixed.

3.3 Rate, Billing Period and Flexible Consumption Fee. Table 3.3 sets forth the Billing Period, Monthly Unit Rate, the Flexible Consumption Period and Fee for the Monthly Committed Capacity. The Flexible Consumption Fee per Billing Period is the sum of the fee for the Monthly Committed Capacity and plus the fee for the Reserve Capacity, if any, used during that Billing Period. These fees are calculated by multiplying the applicable amount of use by the Monthly Unit Rate. In no event shall the Flexible Consumption Fee for any Billing Period be less than that which would apply to the Monthly Committed Capacity. Without limiting the foregoing, Customer is responsible to pay DELL EMC the fees for the Monthly Committed Capacity in accordance with the terms and conditions of this Schedule even if Customer's actual usage is less than the Monthly Committed Capacity. If the monthly use is not greater than the Monthly Committed Capacity, no Reserve Capacity fee shall be due. If the monthly use exceeds the Monthly Committed Capacity, DELL EMC shall calculate the amount of the Reserve Capacity usage, using the Monthly Unit Rate set forth in Table 3.3 and include the amount in the next monthly invoice issued by DELL EMC. DELL EMC shall issue an invoice referencing this Schedule.

Table 3.3 – Billing Information	
Flexible Consumption Period begins on	The Commencement Date
Flexible Consumption Period duration is:	xxxxx (xx) months, but continues thereafter on a month-to-month basis until all Deployed Capacity is made available for pick-up by DELL EMC.
Billing Period	Monthly (in arrears)
Monthly Committed Capacity as a Percentage of Metered Total Capacity	Xxxx
Monthly Unit Rate (Charge per GiB per Month)	Xxxxx
Monthly Flexible Consumption Fee for Monthly Committed Capacity	Xxxxx

3.4 Purchase Order Requirements. Customer's initial purchase order must specify an amount that is at least equal to the monthly Flexible Consumption Fee for the Monthly Committed Capacity multiplied by the number of months in the Flexible Consumption Period. That minimum amount of the purchase order is shown in Table 3.4 below. Customer shall pay all invoices for Flexible Consumption Fees, including, but not limited to, those that contain charges for use of Reserve Capacity, regardless of whether or not such amounts exceed the amount of Customer's purchase order(s) issued to DELL EMC in connection with this Schedule. If DELL EMC reasonably determines that the amount of Customer's original purchase order will not cover the actual Flexible Consumption Fee, then DELL EMC will notify and discuss the situation with Customer. Upon agreement on the additional funds, Customer shall promptly issue a related purchase order for that additional amount.

Table 3.4 – Purchase Order Amount	
Customer Purchase Order amount is:	\$X,XXX,XXX

3.5 Increasing Monthly Committed Capacity/Flexible Consumption Period. During the Flexible Consumption Period, Customer may increase (i) its Monthly Committed Capacity; or (ii) both the duration of the Flexible Consumption Period and the Monthly Committed Capacity at the applicable Monthly Unit Rates stated in Table 3.5 below. To do so, Customer must agree to the increase in an amendment to this Schedule. When DELL EMC and Customer have agreed on the increase, DELL EMC shall prepare and send an amendment to Customer using the pricing in Table 3.3. The parties shall indicate their acceptance by signing the amendment and DELL EMC shall invoice Customer based on the new pricing pursuant to the amendment. When extending the duration of the Flexible Consumption Period, the revised duration continues to be measured from the original Commencement Date of the Flexible Consumption Period. If the duration of Flexible Consumption Period was thirty (36) months and the amendment adds six (6) months, then the new Flexible Consumption Period is a total of forty-two (42) months, beginning on the original starting date. The revised Monthly Unit Rate commences on the first day of the first month following the month in which the amendment becomes effective. In no event shall the amendment have any retroactive effect.

Table 3.5 – Pricing for Increases Monthly Committed Capacity/Flexible Consumption Period						
80%	\$	-	\$	-	\$	-
70%	\$	-	\$	-	\$	-
60%	\$	-	\$	-	\$	-
	48 Months		54 Months		60 Months	

3.6 Renewal and/or Month-to-Month Extension. Prior to the expiration of the applicable Flexible Consumption Period, Customer shall notify DELL EMC that Customer no longer wishes to use the Deployed Capacity. Customer shall completely migrate its information and data off of the Deployed Capacity and establish a mutually convenient date, coinciding with the end of a Billing Period, when the Deployed Capacity will be returned to DELL EMC. However, until Customer notifies DELL EMC that Customer has removed its data

and the Deployed Capacity has been returned, Customer shall continue to pay the then currently applicable Flexible Consumption Fee on a month-to-month basis. In order to implement a new agreement, Customer must issue a new purchase order that complies with the requirements of the new agreement. Customer agrees to pay all charges incurred on a month-to-month extension regardless of whether or not it has issued a purchase order to DELL EMC.

4. DELIVERY, INSTALLATION AND IDENTIFICATION.

4.1 Delivery. DELL EMC shall deliver all Deployed Capacity to the "Ship-To" address stated in Table 4.3 below. Where Software is provided in a form that is embedded on the Equipment, DELL EMC will enable any required license keys (meaning information needed to enable activation and use of the Software) by electronic means.

4.2 Deployment Services. Deployed Services, subject to this Schedule, are listed on the Attachment 1 hereto. Other services, may be made available under a separate contract signed by the parties.

4.3. Shipment and Installation Site(s).

Table 4.3 – Shipment and Installation Site(s).	
Licensed Software Ship-To Address (one address):	Installation Site(s), if any:

5. Miscellaneous. Unless otherwise set forth above, the terms and conditions of the Governing Agreement shall apply to, and shall be considered incorporated into, this Schedule. The terms and conditions in this Schedule are deemed to be confidential information in accordance with the Governing Agreement. In the event of the assignment of this Schedule by DELL EMC, the assignee shall have all DELL EMC's rights hereunder, but none of its obligations, and upon receipt by Customer of written notice of any such assignment, Customer shall make all Flexible Consumption Fee payments thereafter becoming due under any assigned Schedule to such assignee, and in regards to the Committed Capacity portion of that Fee, without regard to any set-off, defense or counter claim that Customer may have against DELL EMC or any third party. Customer and DELL EMC agree that a signed Schedule may be amended by written notice from DELL EMC to Customer provided such notice is to correct the serial (or service tag) number of Deployed Capacity.

The parties have caused their authorized representatives to sign and this Schedule becomes effective as of the Effective Date.

EMC CORPORATION ("DELL EMC")

By (Sign): _____

Name (Print): _____

Title: _____

ABC ("Customer")

By (Sign): _____

Name (Print): _____

Title: _____

Attachment 1

Dell EMC CONFIDENTIAL AND PROPRIETARY

MASTER FLEXIBLE CONSUMPTION AGREEMENT – U.S. STATE & LOCAL GOVERNMENT

This Master Flexible Consumption Agreement (this “**Master Agreement**” or “**MFCA**”) is made effective as of _____ (the “**Effective Date**”) between the following parties:

EMC Corporation (“Dell EMC”)
176 South Street
Hopkinton, MA 01748
Email for Legal Notices: LegalNotices@emc.com

XXXXXXXXXXXX (“**Customer**”)
And XXXXXXXXXXXXXXX
XXXXXXXXXXXX
Email for Legal Notices:

This MFCA governs Customer's access to and use of a configuration of Deployed Capacity on a Flexible Consumption basis at an agreed Customer location, as described in one or more separately executed Flex Consumption Schedules (the “**Schedule(s)**”). This MFCA shall govern each Schedule (including any related purchase order) that references this MFCA.

1. DEFINITIONS.

A. “Billing Period” means the period of time identified on a Schedule for which DELL EMC will invoice Customer for its Flexible Consumption.

B. “Customer Data” means all data stored on the Deployed Capacity by or on behalf of Customer or its end users and information derived from such data, including all file layouts and records associated therewith). As between Customer and DELL EMC, Customer Data is Customer's Confidential Information.

C. “Documentation” means the then-current, generally available, written user manuals and online help and guides provided by DELL EMC for Deployed Capacity.

D. “Flexible Consumption” means the amount of Customer's usage of the Deployed Capacity, as it may vary from time to time, measured pursuant to a description and metrics identified on the Schedule.

E. “Flexible Consumption Fee” means, for a particular Billing Period, (i) the fee for the Monthly Committed Capacity, and (ii) the fee charged by DELL EMC for Customer's Flexible Consumption above the Monthly Committed Capacity, calculated in accordance with the pricing set forth in the Schedule.

F. “Flexible Consumption Period” means the time period identified as such on a Schedule, and any DELL EMC approved extension(s) thereto.

G. “Installation Site” means the ship-to address or other location identified as such on the Schedule as the site of installation and/or use of a Deployed Capacity, or a subsequent location approved by DELL EMC.

H. “Monthly Committed Capacity” means the amount of capacity the Customer commits to paying for each month as specified in a Schedule regardless of its actual consumption of capacity.

I. “Deployed Capacity” means collectively: (a) “**Equipment**” (which is EMC-branded or Dell-branded hardware that DELL EMC provides to Customer under this Master Agreement); and (b) “**Software**” (any EMC-branded or Dell-branded programming code licensed to

Customer as a standard product, also including microcode, firmware and operating system software), as more specifically identified on a Schedule. The Deployed Capacity exclude Third Party Products.

J. “Prime Contract” means, if applicable, the contract (Prime Contract) and any applicable purchase order, task order or delivery order between Customer and the state or local government entity for the Deployed Capacity and Support Services described in an applicable Schedule issued under this Agreement.

K. “Return” of Deployed Capacity means the earlier to occur of (a) DELL EMC taking possession of the Deployed Capacity at the Installation Site, or (b) DELL EMC receiving and accepting a return of the Deployed Capacity.

L. “Support Services” mean services for the support and maintenance of Deployed Capacity as described in the Applicable Schedule.

M. “Third Party Deployed Capacity” means hardware, software, or services that are not “Dell” branded, “EMC” branded, or “DELL EMC” branded.

N. “Warranty Period” means for a specific Deployed Capacity, the period of warranty coverage listed at: <https://www.delltechnologies.com/content/dam/digitalasset/s/active/en/unauth/manual-warranty-informations/h4276-emc-prod-warranty-maint-table.pdf>.

2. SCHEDULES, PURCHASING, FEES AND PAYMENT.

A. Schedules. The description of the Deployed Capacity, Support Services, and related pricing are as stated in the applicable Schedule. The product specific terms informs Customer of product-specific use rights and restrictions, unit of measure (if any), and the applicable maintenance (support) obligations.

B. Ordering. Customer indicates its approval of a specific Schedule by signing it and issuing a purchase order, task order or delivery order pursuant to the Prime Contract, if applicable, to DELL EMC that incorporates by reference in its entirety the terms and conditions of such Schedule and this Agreement. DELL EMC indicates its approval of Customer's purchase order by (i) counter-signing a

Schedule and any purchase order, task order or delivery order, if applicable, executed by Customer and (ii) shipping the applicable Deployed Capacity to Customer.

C. Authorization to Monitor; Flexible Consumption Fees. During the Flexible Consumption Period, Customer shall pay a Flexible Consumption Fee calculated in accordance with pricing and frequency set forth on and defined in the applicable Schedule. DELL EMC is authorized to periodically monitor the Flexible Consumption in order to calculate the applicable Flexible Consumption Fee. DELL EMC may conduct such activity through the use of electronic means and/or on-site inspection by DELL EMC personnel and do so only in order to authenticate Customer as the user of the Flexible Consumption and verify Customer's usage levels. Customer is responsible for providing and maintaining the equipment (a physical server or virtual machine) necessary to run storage utilization scripts and to enable electronic communications between the Deployed Capacity and DELL EMC. Customer authorizes DELL EMC to store at the Installation Site, or load onto Deployed Capacity used for electronic communications, such equipment and programming as may be needed by DELL EMC to track usage levels or perform any Support Services for Deployed Capacity and shall not disable or interfere in the operation thereof. Customer shall (i) not copy or make any use thereof whatsoever; and (ii) protect such from disclosure to any third party and give DELL EMC reasonable access thereto. DELL EMC shall cooperate with Customer to minimize the impact of any DELL EMC on-site inspection to Customer's operations.

D. Payment and Assignment. DELL EMC or if applicable, its assignee, shall invoice Customer monthly. Customer shall pay invoices in full and in the same currency as the invoice within thirty (30) days after the date of invoice, with interest accruing thereafter at the lesser of 1.5% per month or the highest lawful rate under any applicable Prompt Payment Act, if any. No credit cards will be accepted as a form of payment. Payments to DELL EMC's assignee of any amounts due shall not be subject to reduction or setoff. Subject to any right of non-appropriation pursuant to Section 10.B herein, Customer's obligation to pay the Monthly Flexible Consumption Fee for the Flexible Consumption Period is absolute, unconditional and non-cancellable and shall not be subject to any abatement, reduction, set off, defense, delay or counterclaim for any reason whatsoever.

E. Taxes. The charges due hereunder and any other items provided by DELL EMC are exclusive of, and Customer shall pay or reimburse DELL EMC for, all value added (VAT), sales, excise, withholding, state or other local governmental taxes, property taxes, use taxes and any other taxes, levies, customs and duties resulting from a Customer purchase order, except for taxes based on DELL EMC's net income. If Customer is required to withhold taxes, then Customer will forward any withholding receipts

to DELL EMC. Unless otherwise provided on Customer's purchase order, invoices shall be sent to the Customer contact point or Customer's Accounts Receivable department, as specified on the applicable Schedule.

F. Interruption of Monitoring Capabilities. For Schedules in which Flexible Consumption varies based upon usage or another metric, if, for more than five (5) days of any calendar month, DELL EMC is unable to monitor to determine the applicable Flexible Consumption Fee due to (i) any action by anyone other than DELL EMC, or (ii) a failure of any communications equipment provided by Customer that is used for purposes of monitoring, DELL EMC shall invoice, and Customer shall pay, a Flexible Consumption Fee for the affected Billing Period(s) that shall be based on the Flexible Consumption during the previous Billing Period; provided, however, that if DELL EMC is unable to monitor for a period of more than thirty (30) days, DELL EMC shall invoice, and the Customer shall pay, either (a) the maximum capacity of the Deployed Capacity, or (b) such other maximum rate described in the Schedule, if applicable. If DELL EMC is unable to monitor the Flexible Consumption due to any failure which is caused by DELL EMC (e.g. failure of the modem, software or other equipment used by DELL EMC to monitor Customer's usage), the amounts owed by Customer for such outage period shall be based on Customer's Flexible Consumption during the previous Billing Period. DELL EMC shall promptly notify Customer of an inability to electronically and or physically access the Deployed Capacity, as applicable, and work cooperatively to reestablish access.

3. DELIVERY, RISK, TITLE, USE AND RETURN.

A. Installation Site Preparation. On or before arrival of the Deployed Capacity, Customer shall arrange (i) appropriate space at the Installation Site; (ii) the necessary environment (power, cooling, etc.) required to support and operate the Deployed Capacity; and (iii) servers and network connectivity required to support Deployed Capacity.

B. Deployed Capacity Shipment. DELL EMC shall deliver the Deployed Capacity by common carrier to the Installation Site. Software may be provided by (i) shipment of physical media; or (ii) electronic download (when so offered by DELL EMC).

C. Risk of Loss. DELL EMC shall bear the entire risk of loss, theft, damage or destruction with respect to the DELL EMC Deployed Capacity until the time of arrival of the Deployed Capacity at the Installation Site(s) and Customer shall bear such risk from such time on until the Deployed Capacity is Returned. If any loss, theft, damage or destruction to the Deployed Capacity occurs during the time Customer bears such risk, DELL EMC shall be relieved of its Flexible Consumption obligations to the extent such event impacts DELL EMC's ability to provide such Flexible Consumption until such time as the Deployed Capacity is repaired or replaced. Charges shall continue to accrue during this period of such interruption. If Deployed Capacity

is materially damaged, stolen or destroyed, Customer shall promptly notify DELL EMC.

D. Customer Insurance Coverage. Subject to any applicable law or regulation to the contrary, Customer must insure the Deployed Capacity (with a reputable insurance company) against all: (a) liability whatsoever to any third party arising directly or indirectly out of Customer's selection, possession or use of the Deployed Capacity, and (b) loss or damage to the Deployed Capacity from all insurable risks for the full cost of replacing it, and (c) other risks in respect of which a prudent owner or operator of Deployed Capacity of the same nature as the Deployed Capacity would normally insure such Deployed Capacity. In regard to (a) and (b), DELL EMC will be named as co-insured and loss payee respectively, unless otherwise prohibited by law. Upon DELL EMC's prior written consent, Customer may meet the above insurance requirements with its existing self-insurance program, as provided under applicable law. Upon DELL EMC's request Customer must show DELL EMC evidence that the insurance required under this Master Agreement is in place in respect of the relevant Schedule(s). Customer must immediately notify DELL EMC of any loss claim and Customer must not settle any claims without DELL EMC's agreement.

E. Personal Property and Identification. Title to Deployed Capacity provided by DELL EMC pursuant to any Schedule remains with DELL EMC at all times and Customer shall have no right or interest in such Deployed Capacity except as provided in this Master Agreement and related Schedule. All Deployed Capacity shall remain personal property of DELL EMC notwithstanding the manner in which such may be attached or affixed to realty. At any time, Customer shall (i) at request of DELL EMC, legibly mark each item of Equipment in a reasonably prominent location with a label, disc or other marking stating that the Equipment is owned by DELL EMC; and (ii) not remove such without the prior written consent of DELL EMC. Customer may not change the Installation Site without DELL EMC's prior written consent. Customer shall give DELL EMC immediate written notice of any attachment or judicial process affecting the Deployed Capacity or DELL EMC's ownership of which Customer becomes aware. In case the Equipment is installed at a third party Installation Site, Customer undertakes to notify in writing such third party that DELL EMC is the owner of the Equipment and that such Equipment (i) can not be treated as a fixture or fitting forming part of the third party property (ii) can not be seized by such third party in distress for monies owed by the Customer to such third party. Customer undertakes to guarantee that, at any time during the course of any Equipment applicable Schedule, DELL EMC have the right to enter the third party Installation Site to inspect the Equipment and to retake possession of the Equipment on expiry or termination of any Schedule.

F. Ownership of Customer Data. All Customer Data, shall remain the responsibility and property of Customer.

The parties acknowledge and agree that DELL EMC does not handle, process, or direct the use of Customer Data.

G. Return of Deployed Capacity; Data Migration. Prior to any Return of Deployed Capacity, including in case of expiration or termination of the corresponding Schedule, Customer must completely migrate and erase (by use of a method that does not cause damage to the Deployed Capacity) its Customer Data and establish a mutually convenient date, generally coinciding with the end of a Billing Period, when the Deployed Capacity will be Returned to DELL EMC. Customer is liable for any Return costs and shall reimburse DELL EMC for the reasonable value of any Deployed Capacity that is not Returned or is Returned in a condition that evidences damage in excess of reasonable wear and tear.

4. LICENSE TERMS. License Grant. Customer is granted a non-exclusive, non-transferable license to use the Software and the Documentation during the Flexible Consumption Period solely for Customer's internal business operations, and, when so indicated on the applicable Schedule, for delivery of services to its end users. Customer's rights to use the Software provided by DELL EMC during the Flexible Consumption Period are governed by the terms of the Agreement and the terms of the applicable end-user license agreement. Unless different terms have been agreed between the parties, the terms posted on www.dell.com/eula for the relevant Software product family and effective as of the date of the applicable Quote shall apply taking into account the character of this Master Agreement. DELL EMC will provide a hard copy of the applicable terms upon request. Unless expressly otherwise agreed, microcode, firmware or operating system software required to enable the Equipment with which it is shipped to perform its basic or enhanced functions, is licensed for use solely on such Equipment item.

5. WARRANTY.

A. DELL EMC Warranty. During the Warranty Period, DELL EMC will maintain a Deployed Capacity's ability to perform substantially in accordance with the related Documentation. Customer shall promptly provide DELL EMC with written notice of any material defect of which it becomes aware. DELL EMC shall remedy such defect within thirty (30) days of receipt of notice (the "Cure Period"). If DELL EMC fails to cure such defect within the Cure Period, DELL EMC's entire liability and Customer's exclusive remedy shall be for DELL EMC to substitute the defective Deployed Capacity with an identical or equivalent Deployed Capacity model.

B. Exclusions. DELL EMC shall not be responsible for, and shall have the right to charge Customer for, and Customer shall promptly pay any charges for, Deployed Capacity related problems that arise from (i) accident or neglect by Customer or any third party; (ii) any third party items or services with which the Deployed Capacity is used or other causes beyond DELL EMC's control; (iii) installation, operation or use not in accordance with DELL EMC's instructions or the applicable Documentation; (iv) use in an environment, in a manner or for a purpose for

which the Deployed Capacity was not designed; (v) modification, alteration or repair by anyone other than DELL EMC or its authorized representatives; or (vi) in case of Equipment only, causes attributable to normal wear and tear. DELL EMC has no obligation whatsoever for Software installed or used beyond the licensed use, for Equipment which was moved from the Installation Site without DELL EMC's consent or whose original identification marks have been altered or removed.

C. No Further Warranties; Disclaimer. EXCEPT AS EXPRESSLY STATED HEREIN, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO DEPLOYED CAPACITY, SUPPORT SERVICES OR ANY OTHER ITEMS OR MATTERS ARISING HEREUNDER, DELL EMC (INCLUDING ITS SUPPLIERS) MAKES NO OTHER EXPRESS WARRANTIES, WRITTEN OR ORAL, UNDER THIS MASTER AGREEMENT AND DISCLAIMS ALL IMPLIED WARRANTIES. INsofar AS PERMITTED UNDER APPLICABLE LAW, ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. DELL EMC AND ITS SUPPLIERS DO NOT WARRANT THAT SOFTWARE WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET CUSTOMER'S REQUIREMENTS.

D. Customer Warranties.

(i). **Validity and Documentation.** Customer represents, warrants and covenants to DELL EMC and will provide to DELL EMC at DELL EMC's request all documents deemed necessary or appropriate by DELL EMC, including Certificates of Insurance, financial statements, Secretary or Clerk Certificates, essential use information or documents (such as affidavits, notices and similar instruments in a form satisfactory to DELL EMC) and Opinions of Counsel (in substantially such form as provided to Customer by DELL EMC and otherwise satisfactory to DELL EMC)(together "Documentation") to the effect that, as of the time Customer enters into this Agreement and each Schedule that:

(a) Customer is an entity duly organized and existing under and by virtue of the authorizing statute or constitutional provisions of its state and is a state or political subdivision thereof as described in Section 103(a) of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder as in effect and applicable to the MFCA or any Schedule, with full power and authority to enter into this MFCA and any Schedules and perform all of its obligations under the Schedules;

(b) The MFCA and each Schedule have been duly authorized, authenticated and delivered by Customer by proper action of its governing board at a regularly

convened meeting and attended by the requisite majority of board members, or by other appropriate official authentication, as applicable, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this MFCA and each Schedule against Customer;

(c) This MFCA and each Schedule constitute the valid, legal and binding obligations of Customer, enforceable in accordance with their terms;

(d) No other approval, consent or withholding of objection is required from any federal, state or local governmental authority or instrumentality with respect to the entering into or performance by Customer of the MFCA or any Schedule and the transactions contemplated thereby;

(e) Customer has complied with such public bidding requirements and other state and federal laws as may be applicable to the MFCA and any Schedule and the acquisition by Customer of the Deployed Capacity;

(f) The entering into and performance of the MFCA or any Schedule will not (i) violate any judgment, order, law or regulation applicable to Customer; (ii) result in any breach of, or constitute a default under, any instrument to which the Customer is a party or by which it or its assets may be bound; or (iii) result in the creation of any lien, charge, security interest or other encumbrance upon any assets of DELL EMC or on the Deployed Capacity, other than those created pursuant to this MFCA;

(g) There are no actions, suits, proceedings, inquiries or investigations, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting Customer, nor to the best of Customer's knowledge and belief is there any basis therefor, which if determined adversely to Customer will have a material adverse effect on the ability of Customer to fulfill its obligations under the MFCA or any Schedule;

(h) The Deployed Capacity is essential to the proper, efficient and economic operation of Customer or to the services which Customer provides to its citizens. Customer expects to make immediate use of the Committed Capacity, at a minimum, for which it has an immediate need that is neither temporary nor expected to diminish during the applicable Flexible Consumption Period. The Deployed Capacity will be used for the sole purpose of performing one or more of Customer's governmental or proprietary functions consistent within the permissible scope of Customer's authority; and

(i) Customer has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds to make all Flexible Consumption Fees and other obligations under this MFCA and any Schedule during the current Fiscal Period, and such funds have not been expended for other purposes.

B. Operating Environment Warranty. Customer shall, at its expense, operate the Deployed Capacity with reasonable care and in accordance with the

Documentation, and keep the Deployed Capacity located at the Installation Site free and clear from any liens or encumbrances. Customer shall operate and maintain a data back-up system in its data center environment. Customer shall provide for a daily back-up process including backing up data before performance of any remedial, upgrade or other works on Customer's production systems.

6. INDEMNITY.

A. IP Indemnity. DELL EMC will: (a) defend Customer against any third party claim that Deployed Capacity or Support Services (but excluding Third Party Products and open source software) infringe that party's patent, copyright or trade secret enforceable in the country where Customer acquired the Deployed Capacity from DELL EMC ("Claim"); and (b) indemnify Customer by paying: (1) the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (2) the amounts stated in a written settlement negotiated and approved by DELL EMC. In addition, should any Deployed Capacity or Support Service become, or in DELL EMC's opinion be likely to become, the subject of such a Claim, DELL EMC may, at its expense and in its discretion: (a) obtain a right for Customer to continue using the affected Deployed Capacity or Support Service; (b) modify the affected Deployed Capacity or Support Service to make them non-infringing; (c) replace the affected Deployed Capacity or Support Service with non-infringing substitutes; or (d) notify Customer to return the Deployed Capacity and discontinue Support Services, and, upon receipt thereof, refund the remaining portion, if any, of any pre-paid Flexible Consumption Fee. Except as otherwise provided by law, this Section 6 states Customer's exclusive remedies for any third-party intellectual property claim relating to Deployed Capacity or Support Services, and nothing in this Master Agreement or elsewhere will obligate DELL EMC to provide any greater indemnity.

B. Exclusions from Indemnity. DELL EMC has no obligation under Section 6.1 above: (a) if Customer is in material breach of this Master Agreement; or (b) for any Claim resulting or arising from: (1) any combination, operation or use of a Deployed Capacity or Support Service with any other products, services, items or technology, including Third Party Products and open source software; (2) use for a purpose or in a manner for which the Deployed Capacity or Support Service was not designed, or use after DELL EMC notifies Customer to cease such use due to a possible or pending Claim; (3) any modification to the Deployed Capacity or Support Service made by any person other than DELL EMC or its authorized representatives; (4) any modification to the Deployed Capacity or Support Service made by DELL EMC pursuant to instructions, designs, specifications or any other information provided to DELL EMC by or on behalf of Customer; (5) use of any version of a Deployed Capacity when an upgrade or newer iteration of the Deployed Capacity or Support Service

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made available by DELL EMC would have avoided the infringement; (6) services provided by Customer (including Claims seeking damages based on any revenue Customer derives from Customer's services); or (7) any data or information that Customer or a third party records on or utilizes in connection with the Deployed Capacity or Support Services.

C. Indemnification Process. DELL EMC's duty to defend and indemnify under this section is contingent upon Customer: (a) sending prompt written notice of the Claim to DELL EMC and taking reasonable steps to mitigate damages; (b) granting to DELL EMC the sole right to control the defense and resolution of the Claim; and (c) cooperating with DELL EMC in the defense and resolution of the Claim and in mitigating any damages.

7. LIMITATION OF LIABILITY.

A. Limitation on Direct Damages. EXCEPT FOR CUSTOMER'S OBLIGATION TO PAY AMOUNTS OWED HEREUNDER, CUSTOMER'S VIOLATION OF DELL EMC'S OR ITS AFFILIATES' INTELLECTUAL PROPERTY RIGHTS, OR DELL EMC'S INDEMNITY OBLIGATION STATED IN SECTION 6 ABOVE, EACH PARTY'S TOTAL LIABILITY FOR ANY CLAIM ARISING UNDER THIS MASTER AGREEMENT SHALL BE LIMITED TO THE TOTAL OF THE FLEXIBLE CONSUMPTION FEES FOR THE DEPLOYED CAPACITY, SUPPORT SERVICES, OR BOTH TO WHICH THE CLAIM RELATES PAID DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CLAIM IS MADE, EXCLUDING AMOUNTS RECEIVED AS REIMBURSEMENT OF EXPENSES OR PAYMENT OF TAXES ACCRUED.

B. No Indirect Damages. EXCEPT WITH RESPECT TO CLAIMS REGARDING VIOLATION OF DELL EMC'S INTELLECTUAL PROPERTY RIGHTS, NEITHER CUSTOMER NOR DELL EMC SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

C. Limitation Period. All claims must be made within (i) the time period specified by applicable law; or (ii) eighteen (18) months after the cause of action accrues if (a) no such period is specified at law; or (b) the applicable law allows the parties to agree to a shorter period than that specified therein.

8. CONFIDENTIALITY.

A. Existing Non-Disclosure Agreement: If Customer and DELL EMC have a non-disclosure agreement in place as of the date of this Master Agreement, then that non-disclosure agreement shall supersede this Section 8. Where no such non-disclosure agreement exists Section 8.B shall apply.

B. Confidential Information. "Confidential Information" means any information that is marked "confidential" or "proprietary" or any other similar term or in relation to which its confidentiality should by its nature be inferred or, if disclosed orally, is identified as being confidential at the

time of disclosure and, within two (2) weeks thereafter, is summarized, appropriately labeled and provided in tangible form. Confidential Information does not include information that is (i) rightfully in the receiving party's possession without prior obligation of confidentiality from the disclosing party; (ii) a matter of public knowledge; (iii) rightfully furnished to the receiving party by a third party without confidentiality restriction; or (iv) independently developed by the receiving party without reference to the disclosing party's Confidential Information. Each party shall (a) use Confidential Information of the other party only for the purposes of exercising rights or performing obligations in connection with this Master Agreement or any Schedule or purchase order hereunder; and (b) protect from disclosure to any third parties, by use of a standard of care equivalent to that as used by recipient to protect its own information of a similar nature and importance, and, no less than the use of reasonable care, any Confidential Information disclosed by the other party for a period commencing upon the date of disclosure until three (3) years thereafter, except with respect to (1) Customer Data to which DELL EMC may have access in connection with the provision of Services, which shall remain Confidential Information until one of the exceptions stated in the above definition of Confidential Information applies; and (2) Confidential Information that constitutes, contains or reveals, in whole or in part, DELL EMC proprietary rights, which shall not be disclosed by the receiving party at any time. Notwithstanding the foregoing, the receiving party and its assignees may disclose Confidential Information to (A) other companies within the receiving party's group, advisors, banks and agents for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such group companies, advisors, banks and agents comply with the foregoing; (B) to any third party for the purposes of raising funds secured on or collateralised by this Master Agreement and/or any Schedule (whether by way of bank loan or any other form of financing or fundraising or funding process); and (C) to the extent required by law, court order or regulation.

9. TRADE COMPLIANCE.

Customer's usage of DELL EMC's Deployed Capacity or Support Services and access to related technology (the "Materials") are for its own use, not for resale, export, re-export, or transfer. Customer is subject to and responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported, or transferred except as in compliance with such laws, including, without limitation, export licensing requirements, end-user, end-use, and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities, including but not limited to persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject

or target of, and that Customer is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of, economic sanctions of the United States or other applicable jurisdictions.

10. TERM; APPROPRIATION OF FUNDS; EVENTS OF DEFAULT; REMEDIES.

A. Master Agreement Term. This Master Agreement commences on its Effective Date, and unless otherwise terminated as set forth below, shall terminate for convenience when a party sends written notice of termination, which notice shall become effective forty-five (45) days after receipt thereof. Such termination shall not terminate any Schedule already in effect at the time thereof and shall not impact any renewal provisions of such Schedules. Any provision that by its nature or context is intended to survive any termination or expiration, including but not limited to provisions relating to payment and liability, shall so survive. Unless earlier terminated pursuant to its term, each Schedule shall commence and expire in accordance with its terms.

B. Appropriation of Funds.

(i) Customer reasonably believes that legally available funds in an amount sufficient to make all Monthly Flexible Consumption Fees during the Flexible Consumption Period defined in Table 3.3 on each applicable Schedule and will do all things lawfully within its power (notwithstanding its right to self rule) to obtain and maintain funds from which Monthly Flexible Consumption Fees may be paid. The parties intend that the obligation of Customer to pay the Monthly Flexible Consumption Fee and other amounts due under a Schedule constitutes a current expense of Customer and is not to be construed to be a debt in contravention of any applicable constitutional or statutory limitation on the creation of indebtedness or as a pledge of funds beyond Customer's current Fiscal Period.

(ii) Customer may terminate a Schedule in whole, but not in part by giving at least sixty (60) days notice prior to the end of the then current Fiscal Period (as defined in the Customer's Secretary/Clerk's Certificate or other such documentation as reasonably requested by and provided to DELL EMC) certifying that: (1) sufficient funds were not appropriated and budgeted by Customer's governing body or will not otherwise be available to continue the Schedule beyond the current Fiscal Period; and (2) that Customer has exhausted all funds legally available for payment of the Monthly Flexible Consumption Fee beyond the current Fiscal Period. Upon termination of the Schedule, Customer's obligations under the Schedule (except those that expressly survive the end of the Flexible Consumption Period) and any interest in the Deployed Capacity shall cease and Customer shall surrender the Deployed Capacity in accordance with Section 3.F and/or if requested by DELL EMC, assemble the Deployed Capacity in a single location designated by DELL EMC granting DELL EMC the right to enter the premises where such Deployed Capacity

is located for the purpose of repossession; free from all claims by Customer; provided that the parties shall reasonably cooperate to enable Customer to migrate and erase its data and for DELL EMC to recover such Deployed Capacity. Customer shall be responsible for the payment of the actual documented price of any component(s) of the DELL EMC Deployed Capacity not returned by Customer and for any damage to the DELL EMC Deployed Capacity beyond normal wear and tear. DELL EMC shall take reasonable steps to protect Customer Data for thirty (30) days after recovery of Deployed Capacity under this Subsection B.

(iii) Notwithstanding the foregoing, Customer agrees that, without creating a pledge, lien or encumbrance upon funds available to Customer in other than its current Fiscal Period, it will use its best efforts to take all action necessary to avoid termination of a Schedule, including making budget requests for each Fiscal Period during each applicable Flexible Consumption Period for adequate funds to meet its obligations hereunder and to continue the Schedule in force.

C. Events of Default. Notwithstanding Customer's rights under Section 10 B. to non-appropriate, the occurrence of any of the following in connection with the MFCA, any Schedule, or any amendments to either of the foregoing documents, shall constitute an Event of Default: (i) Customer shall fail to pay the Monthly Flexible Consumption Fee within thirty (30) days of its due date; (ii) Customer shall fail to perform any provision, covenant, condition or agreement, and such failure shall continue for thirty (30) days after notice thereof; or (iii) bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings shall be instituted by or against Customer or all or any part of its property under the Federal Bankruptcy Code or other law of the United States or any state or jurisdiction in which Customer is organized, and it shall consent thereto or shall fail to cause the same to be discharged within sixty (60) days.

D. Remedies. If an Event of Default shall occur, DELL EMC may exercise any one or more of the following remedies: (i) immediately terminate any or all Schedules; (ii) by notice in writing to Customer, declare immediately due and payable, and Customer shall be obliged to pay immediately, (1) all past due Monthly Flexible Consumption Fees and other past due amounts plus (2) as the parties agreed upon pre-estimate of damages and not a penalty, all Monthly Flexible Consumption Fees for the Monthly Committed Capacity for the remainder of the Flexible Consumption Period with clause (2) being discounted to present value using the discount rate of the Federal Reserve Bank of Chicago on the Commencement Date of the applicable Schedule and (iii) require Customer to Return any or all Deployed Capacity as provided in Section 3G and/or if requested by DELL EMC, assemble the Deployed Capacity in a single location designated by DELL EMC granting DELL EMC the right to enter the premises where such Deployed Capacity is located for the purpose of repossession; free from all claims by Customer; provided

that the parties shall reasonably cooperate to enable Customer to migrate and erase its data and for DELL EMC to recover such Deployed Capacity. Customer shall be responsible for the payment of the actual documented costs and reasonable attorney's fees incurred by DELL EMC in retaking possession of the Deployed Capacity and/or seeking to recover amounts due. DELL EMC shall take reasonable steps to protect Customer Data for thirty (30) days after recovery of Deployed Capacity under this Subsection D.

11. MISCELLANEOUS.

A. Notices. Notice to DELL EMC under this Master Agreement or any related transaction must be in writing and sent (i) by registered or certified mail, postage prepaid first-class mail with return receipt requested; or (ii) by overnight delivery service with verification of receipt, to the address below; or (iii) by electronic mail to: Dell_Legal_Notices@dell.com. All such notices will be effective upon receipt.

Dell EMC

Attn: Contracts Manager

Dell Legal Department

One Dell Way, Round Rock, TX 78682

B. Entire Agreement. This Master Agreement, applicable Schedule(s) and each purchase order (i) comprise the complete statement of the agreement of the parties with regard to the subject matter thereof; and (ii) may be modified only in a writing with evidence of acceptance by both parties. All terms of any purchase order or similar document provided by Customer, that are inconsistent or conflict with this Master Agreement and/or Schedule, shall be null and void and of no legal force or effect.

C. Assignment and Change in Control. The assignment or transfer, whether by operation of law or otherwise, of a party's right(s) or delegation of obligation(s) hereunder, shall require the consent of the other party. However, such consent shall not be required of Customer if the assignment or transfer involves (i) assignment by DELL EMC or its assignee of the right to receive payments and related rights due by Customer (iii) the purchase of all or substantially all of DELL EMC's assets or any deemed assignment or transfer by DELL EMC by reason of merger, consolidation, change-in-control or corporate reorganization. DELL EMC may use its direct or indirect subsidiaries or other sufficiently qualified subcontractors to provide Services to Customer, provided that DELL EMC remains responsible to Customer for the Services' performance.

D. Governing Law.

This Master Agreement is governed by the laws of the State in which Customer is located. Subject to applicable state and local laws, the exclusive venue for all litigation arising between the parties related to this Agreement and any Schedules issued hereunder shall be in the federal courts sitting within the State in which Customer is located. BOTH PARTIES HEREBY WAIVE TRIAL BY JURY..

E. Waiver. Failure to enforce a provision of this Master Agreement will not constitute a waiver.

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F. Independent Contractors. The parties shall act as independent contractors for all purposes under this Master Agreement. Nothing contained herein shall be deemed to constitute either party as an agent or representative of the other.

G. Financial Statements. In addition to providing the Documentation that may be requested by DELL EMC under Section 5D(i) above, Customer agrees to furnish Customer's financial statements (prepared in accordance with generally accepted accounting principles) and other financial information, relating to a Schedule within five (5) Business Days as DELL EMC may from time to time

reasonably request and subject to the applicable confidentiality terms as provided for in Section 8.

H. Severability. If any part of this Master Agreement, Schedule, purchase order, or quote is held unenforceable, the validity of all remaining parts will not be affected.

I. Order of Precedence. In the event of a conflict between the provisions of the documentation related to this MFCA, the order of precedence with respect to the term in conflict will be: (a) the terms of a Schedule (as amended); (b) the terms of this MFCA (as amended) In the event of a conflict between the terms of the MFCA and any Prime Contract, the MFCA shall prevail.

In Witness Whereof, the parties have caused their duly authorized representatives to execute this Master Agreement as of the Effective Date.

EMC Corporation ("Dell EMC")

CUSTOMER NAME ("Customer")

By: _____

By: _____

Name (Print): _____

Name (Print): _____

Title: _____

Title: _____

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