



District School Board of Pasco County

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Heather Fiorentino, Superintendent


www.pasco.k12.fl.us

Department of Purchasing
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April 17, 2012

MEMORANDUM

TO: Honorable School Board Members

FROM: Kendra Goodman, CPPO, CPPB, Purchasing Agent 

SUBJECT: **Dell Computer Products**
Valencia College RFQ #11/12-09
Technology Refresh Program (TRP)

For over ten years the District has purchased Dell computer products via piggyback agreements with other state educational institutions. The District currently piggybacks on Seminole Community College Bid #01-01. This agreement between Dell Computers and Seminole Community College will expire on May 8, 2012 and will not be renewed. The Purchasing Department has identified a contract between Valencia College and Dell Computer Products. Full documentation regarding the bid is on file in Purchasing. The bid allows the District to purchase Dell software, hardware and peripherals, as well as third-party peripherals and software, at deeply discounted pricing.

The above-referenced piggyback process has worked well for the District. The agreement with Dell specifically permits other educational entities to utilize the terms and the conditions of the contract with Valencia College. Purchasing has canvassed the following departments for information regarding the recommended dollar thresholds: Information Services, Instructional Media and Technology, and Community, Career and Technical Education. Based upon the projections of these departments, we are requesting permission to use this bid to purchase up to \$900,000 of Dell products on an as-needed basis for the term April 17, 2012 – April 16, 2013. This amount is the same as requested for the last contract term. Funding is provided through general, capital and federal funding sources. This contract was reviewed and approved by Nancy Alfonso, the Board's attorney, from McClain, Alfonzo Meeker & Dunn. P.A. via email correspondence dated March 29, 2012.

Should this request be granted, the Purchasing Department will monitor and calculate all Dell purchase orders to verify that the dollar limits are not exceeded. If you have any questions or concerns, please contact me at your earliest convenience.

KDG/mw
Attachments

Date/Time: April 11, 2012 09:30:00

VALENCIA COLLEGE

*REQUEST FOR PROPOSALS (RFP) 11/12-09
Technology Refresh Program – TRP*

Notice of Recommendation to Award
November 16, 2011

The evaluation committee for the above mentioned request for proposals met, as scheduled and posted, at 9:00AM Tuesday November 15, 2011 at Seminole State College's Heathrow location.

All of the appointed committee members were present for the meeting and are listed below:

Keith Houck-Valencia College
Anthony Parziala- Palm Beach State
Liz Gomez-Pensacola State College
Fred Evans – Santa Fe College
Don Windham – Indian River State College
Dick Hamann – Seminole State College
Ed Ames – Valencia College-non-voting procurement official

Ed Ames opened the meeting and asked that all of the attendees present and via telephone introduce themselves.

John Walden, a Dell representative was present at the meeting. Four additional Dell representatives asked to conference in via telephone. Those Dell representatives were Nicholas Stokes, Mike Hendrix, Denise Paternoster, and Paul Moore.

Ed stated that proposals from Hewlett-Packard, Dell and CDW-G were received in response to the RFP. The response from CDW-G was missing mandatory information and was determined to be non-responsive.

After discussion of the two remaining proposals, Dick Hamann, the chair of the committee made a motion to short list both Dell and Hewlett-Packard to move on to the second phase of the evaluation. The motion carried, second and unanimously passed by all members.

The committee further deliberated on the merits of both short-listed proposals. Based on those deliberations, the chair made a second motion to bypass the equipment testing phase, since both HP and Dell are currently providing equipment and services to the Florida Colleges, and award a contract to both of the short-listed firms. This motion also carried, second and unanimously passed by all members.

Therefore, it is the recommendation of the TRP Evaluation Committee that a contract be awarded to Dell and Hewlett Packard for the Florida Colleges Technology Refresh Program. This recommendation will be posted on the Valencia Procurement website as required by F.S. 120.57. The posting will commence on Wednesday November 16, 2011. This recommendation will be presented to Valencia's District Board of Trustees for approval at their December meeting.

Ed Ames
Procurement Director
Valencia College

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes"

December 13, 2011

TO: BOARD OF TRUSTEES
Valencia College

FROM: SANDFORD C. SHUGART
President

RE: BID AWARD FOR TECHNOLOGY REFRESH PROGRAM

Valencia College, on behalf of the twenty-eight member Florida College System, issued a Request for Proposals (RFP) for a STATEWIDE COLLEGE TECHNOLOGY REFRESH PROGRAM (TRP). It was the intent of the RFP to identify those technology manufacturers and/or wholesale/retail entities possessing the resources, service/maintenance facilities, equipment, consulting services, and financing capabilities, desiring to commit to a long-term relationship with the colleges. The award, on the basis of this RFP, is contingent upon approval by the District Board of Trustees of Valencia College, Florida (as the facilitating college).

Proposals were received from Dell, Hewlett-Packard, and CDW-G. Lenovo had submitted questions prior to the due date but chose not to submit a proposal.

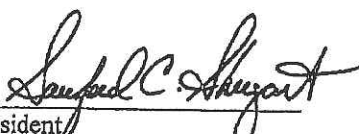
The evaluation committee consisted of Mr. Keith Houck, Valencia College, Mr. Anthony Parziala, Palm Beach State College, Ms. Liz Gomez, Pensacola State College, Mr. Fred Evans, Santa Fe College, Mr. Don Windham, Indian River State College, and Mr. Dick Hamann, Seminole State College. Ed Ames, Procurement Director from Valencia College, was the non-voting member of the committee responsible for the process.

The committee held a public evaluation meeting on Tuesday, November 15, 2011, at Seminole State College. Dell and HP were responsive in all categories and offered excellent pricing on equipment and services requested. The proposal from CDW-G was found not to have all of the required information and was eliminated from the competition.

Following a further discussion of each of the two remaining proposals, the committee unanimously decided that it would be in the best interest of the State College System to award a contract to both Dell and Hewlett-Packard.

RECOMMENDATION:

The President recommends that the District Board of Trustees award a technology refresh contract to Dell Marketing L.P., and the Hewlett-Packard Company, on behalf of the twenty-eight member Florida College System.


President

**VALENCIA COLLEGE
DISTRICT BOARD OF TRUSTEES**

Minutes

December 13, 2011

Valencia College at Lake Nona High School

Present

Mr. Raymer F. Maguire III, Chair

Ms. Bertica Cabrera Morris, Vice Chair

Ms. Jerry D. Buchanan

Dr. Sanford C. Shugart, Secretary to the Board and
President of the College

Ms. Lori Kifer-Johnson

Mr. Lewis M. Oliver III

Ms. Maria Grulich Toumazos

Absent

Ms. Jo Quittschreiber

Call to Order

The meeting was called to order at 8:46 a.m.

Invocation

The invocation was offered by Dr. Stan Stone, Vice President of Human Resources and Diversity.

Pledge of Allegiance

The Pledge of Allegiance was recited by all.

**Approval of Minutes
October 18, 2011**

A motion was made by Mr. Oliver and seconded by Ms. Cabrera Morris to approve the October 18, 2011 Regular Board Meeting Minutes. The motion was approved unanimously.

REPORTS:

**Veterans' Education
Report**

Dr. Joyce Romano, Vice President for Student Affairs, and Dr. Falecia Williams, Valencia College West Campus President, reported on veterans' services available at the Valencia West Campus. Professor John Creighton was introduced; Dr. Creighton presented details on veterans' transition into higher education after their return to civilian life.

**Financial Indicators
Report**

Mr. Keith Houck, Vice President for Operations and Finance, presented

- a report providing in-depth comparison of Valencia's operating revenue from FY2001-02 to FY2010-11
- an update showing the college's FY2010-11 tuition rates against the tuition rates of other area two-year colleges
- a report on the college's tuition revenues by funding source for FY2010-11
- an outline on the college's facilities square footage per FTE

Construction Report	Mr. Keith Houck reported on the status of construction at Osceola, Lake Nona and West campuses.
Financial Statement	Mr. Keith Houck presented an overview of the college's financials.
Valencia Foundation Annual Direct Support Audit Review	Ms. Michelle Matis, Vice President for Finance and Administration, Valencia Foundation, presented the annual audit review.
Faculty Association Report	Dr. Bob Gessner, Faculty Association President, presented an overview of various key points on behalf of the Faculty Council.
Valencia Foundation Report	Trustee Lori Kifer Johnson reported the highlights of various Foundation main points pertaining to their philanthropic efforts.
President's Report	Dr. Sandy Shugart, reported the highlights of the Aspen Prize Award.

NEW BUSINESS:

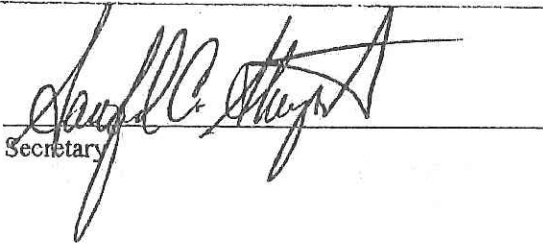
Consent Agenda

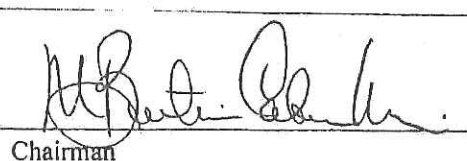
A motion was made to accept the consent agenda, and members of the Board approved the following actions:

- 2011 Valencia College Emeritus Awards
- Conveyance of Right of Way to Orange County for Improvement of Econlockhatchee Trail
- Guaranteed Maximum Price for Building 10 at Valencia West Campus
- Request to Increase Designation of Fund Balance for Purchase of Osceola Campus Land
- Amendment to Unexpected Plant Fund Budget; Request to Designate Fund Balance for Construction of Osceola Building 4
- Bid Award for Technology Refresh Program
- Additions, Deletions or Modifications of Courses and Programs
- Continuing Education Courses and Fees
- Human Resources Agenda
- Submission of Grant Proposals
- Property Deletions

Adjournment

Mr. Maguire moved for adjournment, the motion was seconded by Mr. Oliver and the motion was approved. The meeting adjourned at 10:46 a.m.


Secretary


Chairman



PURCHASE AGREEMENT FOR EQUIPMENT AND SERVICES

1. INTRODUCTION

This Purchase Agreement For Equipment and Services ("Agreement"), effective as the last date signed below ("Effective Date"), is made by and between the District Board of Trustees Valencia College, Florida 1800 S. Kirkman Road, Orlando, Florida 32811 ("College" or "Customer") and Dell Marketing LP, One Dell Way, Round Rock, Texas 78682 ("Dell" or "Supplier"). Dell and College (each a "Party," and collectively, the "Parties") which agree to the following terms and conditions:

2. SCOPE

Valencia College has selected Dell as a supplier of Products and/or Services as a result of Valencia College's RFP No. 11/12-09 ("RFP") and Dell's Response thereto dated October 20, 2011 ("Dell's Response"), both of which are attached hereto and fully incorporated herein by reference. Purchases of Products and Services under this Agreement shall be governed by the terms and conditions of the following in the order of precedence as listed: (i) this Agreement, (ii) Dell's Response, including pricing specified therein, and (iii) the RFP. Eligible Purchasers under the Agreement shall include Florida's public colleges, state universities, and district school boards and other educational entities should they elect to adopt the Technology Refresh Program ("Eligible Purchasers"). Under this Agreement, Eligible Purchasers may purchase Dell's full catalog of equipment, hardware, software licensing arrangements, and related products and peripherals ("Products") and/or services, including but not limited to IT and business consulting services, managed services, maintenance and support services, configuration and deployment/installation services, cloud services, leasing, refresh/trade-in, imaging or Custom Factory Integration "CFI" services, training ("Services"), all as further described in Dell's Response. Except as expressly agreed by the Parties in a separate contract, this Agreement also incorporates the terms of the limited warranties applicable to the Products, which can be found at www.dell.com/warranty or in the documentation Dell provides with the Product.

3. TERM

The term of this Agreement will be initially for three years from the Effective Date, thereafter renewed annually with written agreement of both parties. Either party may terminate the contract by serving a certified letter, return receipt requested, to the designated representative at least ninety (90) days prior to the termination date.

4. NEGOTIATED TERMS

The parties have agreed to the following negotiated terms, numbered in accordance with the RFP numbering. Unless specified otherwise below, the following negotiated terms shall replace in their entirety the corresponding terms in the RFP.

RFP SECTION 5.1. TERMINATION

A. Termination for Default

The College may, by written notice to the supplier, terminate this contract for default in whole or in part if the supplier fails to:

- a. Provide products or services that comply with the specifications in the RFP or fails to meet the College's performance standards.
- b. Deliver the supplies or to perform the services within the time specified in this contract or any extension, or any applicable work order or statement of work.
- c. Make progress so as to endanger performance of this contract.
- d. Perform any of the other provisions of this contract.

Prior to termination for default, the College will provide written notice to the supplier through the Director of Procurement, describing the deficiencies and affording the supplier the opportunity to cure the deficiencies. Supplier shall acknowledge receipt of such notice of deficiency within 24 hours of receipt. College may immediately terminate the Agreement upon Supplier's failure, within ten (10) business day after receipt of notice, to either (i) adequately cure the deficiency, or (ii) provide College a written plan to cure in a commercially reasonable and timely manner. Such termination may also result in suspension of purchasing goods/services with the College. In the event of termination by the College for any cause, the supplier will have, in no event, any claim against the College for lost profits or compensation for lost opportunities. After a receipt of a Termination Notice and except as otherwise directed by the College the supplier shall:

- a. Stop orders/work on the date and to the extent specified.
- b. Terminate and settle all orders and/or subcontracts relating to the performance of the terminated work.
- c. Transfer all work in process, completed work, and other materials related to the terminated work as directed by the College.
- d. Continue and complete all parts of that work that have not been terminated.

If the supplier's failure to perform the contract arises from causes beyond the control and without the fault or negligence of the supplier's, the contract shall not be terminated for default. Examples of such causes include (1) Acts of God or the public enemy, (2) acts of a government in its sovereign capacity, (3) fires, (4) floods, (5) epidemics, (6) strikes and (7) unusually severe weather.

B. Termination for Convenience

The College, by written notice, may terminate this contract, in whole or in part, when it is in the College's best interest. If this contract is terminated, the College shall be liable only for goods or services delivered and accepted. The College Notice of Termination may provide the supplier thirty (30) days prior notice before it becomes effective.

RFP SECTION 5.2 INDEMNIFICATION FOR TORT ACTIONS / LIMITATION OF LIABILITY

- A. The provisions of Florida Statute 768.28 applicable to Valencia College, apply in full to this contract. Any legal actions to recover monetary damages in tort for injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the College acting within the scope of his/her office or employment are subject to the limitations specified in this statute.

No officer, trustee, employee or agent of the College acting within the scope of his/her employment or function shall be held personally liable in tort or named as a defendant in any action for injury or damage suffered as a result of any act, event or

failure to act. The College shall not be liable for the acts or omissions of an officer, employee or agent committed while acting outside the course and scope of his/her employment. This exclusion includes actions committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

- B. To the fullest extent permitted by law, the supplier shall defend, indemnify, and hold harmless the College, its trustees, officials, agents, and employees from and against any and all third party claims, suits, judgments, demands, liabilities, damages, cost and expenses (including attorney's fees) of any kind or nature whatsoever for personal injury, including death to persons, or for damage to real property or tangible personal property arising directly out of or caused in whole or in part by any negligent or intentional wrongful act or omission of the supplier or its subcontractors (if any), anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the College.
- C. In any and all claims against the College, or any of its officers, trustees, agents, suppliers, or employees, by any employee of the supplier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation of the supplier under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefit payable by or for the supplier or any subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.
- D. No provisions of this Section herein shall be construed to negate, abridge, or otherwise reduce any other right of indemnity that College may have as to any party or person described therein.
- E. The supplier's obligations under this Section with respect to any legal action are contingent upon the College giving the supplier (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at supplier's sole expense, provided the College is advised of any settlement offers and permitted to provide input as to any conditions placed on or created by settlement and (3) assistance in defending the action at supplier's sole expense. The supplier shall not be liable for any cost, expense, or compromise incurred or made by the State or supplier in any legal action without the supplier's prior written consent, which shall not be unreasonably withheld.
- F. Supplier shall comply with all applicable state or Federal law, state or municipal or agency rule, regulation or order. The supplier shall give to the proper authorities all required notices relating to its performance, obtain all official permits and licenses, and pay all proper fees and taxes.
- G. The supplier will notify the College in writing of any claim made or suit instituted against the supplier because of its activities in performance of this Agreement.
- H. LIMITATION OF LIABILITY. FOR ALL CLAIMS AGAINST THE SUPPLIER UNDER ANY CONTRACT OR PURCHASE ORDER, AND REGARDLESS OF THE BASIS ON WHICH THE CLAIM IS MADE, THE SUPPLIER'S LIABILITY UNDER A CONTRACT OR PURCHASE ORDER FOR SHALL BE LIMITED TO THE DOLLAR AMOUNT PAID BY THE CUSTOMER TO SUPPLIER UNDER THE PURCHASE ORDER THAT IS THE SUBJECT OF THE CLAIM DURING THE PREVIOUS 12

MONTH PERIOD. THIS LIMITATION SHALL NOT APPLY TO CLAIMS ARISING UNDER THE INDEMNITY REQUIREMENTS OF SECTION 5.2B.

UNLESS OTHERWISE SPECIFICALLY ENUMERATED IN THE CONTRACT OR IN THE PURCHASE ORDER, NO PARTY SHALL BE LIABLE TO ANOTHER FOR SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST DATA OR RECORDS, AND LOSS OF USE, EVEN IF THE PARTY HAS BEEN ADVISED THAT SUCH DAMAGES ARE POSSIBLE. NO PARTY SHALL BE LIABLE FOR LOST PROFITS, LOST REVENUE, OR LOST INSTITUTIONAL OPERATING SAVINGS.

RFP SECTION 5.3 PATENTS AND ROYALTIES

Dell agrees, to the extent allowed, to pass through to customer all warranties and infringement indemnification available from third party manufacturers of any third party products, software and services provided under the Contract.

The supplier, without exception, shall indemnify and save harmless the College and its employees from liability of any nature or kind, including cost and expenses for or on account of any Dell-branded copyrighted, patented, or unpatented invention, process, or article manufactured or supplied by the supplier. In the event of any claim against the College, of copyright or patent infringement, the College shall promptly provide written notification to the supplier. If such a claim is made, the supplier shall use its best efforts to promptly procure a license, at no cost to the College, which will allow continued use of the service or product, or modify it to become non-infringing.

If none of the alternatives are reasonably available, the College agrees to return the article on request to the supplier and receive reimbursement, if any, of any amounts paid in excess of a reasonable rental for past use as may be determined by a court of competent jurisdiction.

Notwithstanding the foregoing, Dell's obligations set forth in this Section 5.3 shall not apply to a Customer's misuse or modification of Products or a Customer's operation or use of Products in a manner not contemplated by the Agreement or the purchase order.

RFP SECTION 5.5 PRICING / AUDIT

Section 5.5 is modified to add the following additional language at the end of such Section:

The term "records" as used in the preceding paragraph shall be further defined as this Contract and all delivery/purchase orders, invoices or correspondence directly relating to this agreement.

RFP SECTION 5.6 INSURANCE REQUIRED AND SECTION O. INSURANCE SCHEDULE

RFP Section 5.6 and Section O are deleted in their entirety. Dell shall purchase and maintain in force during the term of this Contract, at its own cost and expense, general liability and other insurance, including automobile insurance, with limits of coverage as shown in Exhibit A, including statutory workers' compensation insurance, with an insurer authorized to do business under the laws of the state of Florida with a BEST guide rating of B+B or higher covering the supplier's employees engaged in the provision of services under this Contract. Dell's Memorandum of Insurance per Exhibit A shall comprise complete satisfaction of any requirement to provide any and all

insurance coverage and insurance certificates to Customer or Eligible Purchaser under the Contract. Eligible Purchaser will be included as an additional insured via blanket additional insured coverage endorsement. Upon request, Dell will provide a copy of the then current MOI to Eligible Purchasers.

RFP SECTION 5.9(A) REMEDIES; ATTORNEY'S FEES AND COSTS

A. All remedies provided for in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to either Party at law or in equity arising hereunder. In the event any suit or action is brought pursuant to or in connection with this Agreement, the non-prevailing Party will pay all reasonable costs (including all costs, expenses, and reasonable attorneys', expert witness and paralegal fees) incurred by the prevailing Party in connection with such suit or action, and for any and all appeals referable thereto. In the event each Party shall partially prevail in such action, such costs shall be equitably apportioned between the Parties by the court.

RFP SECTION 5.15 PAYMENT

Section 5.15 is modified to add the following terms:

When sections 215.422 and 287.0585 of the Florida Statutes are mandatory with respect to a particular customer, those sections shall govern time limits for payment of invoices. In all other cases, Invoices are due and payable within 30 days from the date of the invoice, subject to continuing credit approval by Dell, such approval may be revoked without further notice from Dell. Notwithstanding the foregoing, credit card or purchasing card payments are charged at the time of shipment. Dell may invoice parts of an order separately or may invoice purchases of the Products, Software and Services in one invoice to Customer. Dell is not responsible for pricing, typographical, or other errors in any offer, and reserves the right to cancel orders arising from such errors. Customer agrees that all invoices shall be deemed accurate unless Customer advises Dell in writing of a bona fide, material error within fourteen (14) days of the date of such invoice. In the event that Customer advises Dell of a material error, (i) payment of any amounts corrected or modified by Dell in writing shall be due within fourteen (14) days of such correction, and (ii) all other amounts shall be paid by Customer by the invoice due date. In the event Customer withholds payment of any invoiced amounts upon an assertion by Customer that such amounts are erroneous, and Dell subsequently concludes that such invoiced amounts are accurate, Customer shall pay interest of 1.5% per month on such amounts from the due date for such amounts until Dell's receipt of those amounts. However, good faith disputes raised by Customer shall not be subject to this fee. In no case shall Customer be entitled to offset, defer or deduct any invoiced amounts that Dell determines are not erroneous following the notification process set forth above.

5. SERVICE AGREEMENTS

Dell may provide Services, Software, or Deliverables to Customer in accordance with one or more "Service Agreements." "Service Agreements" are service contracts, including "Service Descriptions" available at www.Dell.com/ServiceContracts/, "Statements of Work," and any other such mutually agreed upon documents. Each Service Agreement will be interpreted as a single agreement, independent of any other Service Agreement, so that all of the provisions are given as full effect as possible. However, all such Service Agreements are subject to the terms and conditions of this Agreement.

6. PROPRIETARY RIGHTS

All right, title, and interest in the intellectual property (including all copyrights, patents, trademarks, trade secrets, and trade dress) embodied in the Software, Products and Materials, as well as the methods by which the Services are performed and the processes that make up the Services, shall belong solely and exclusively to Dell or the applicable suppliers or licensors, and Customer shall have no rights whatsoever in any of the above, except as expressly granted in this Agreement. The Software, Products and Materials are protected pursuant to copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Customer may not modify, remove, delete, augment, add to, publish, transmit, adapt, translate, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Software and Materials, in whole or in part.

7. DELIVERABLES

Dell and its applicable suppliers or licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title, and interest in any ideas, concepts, know-how, documentation, and techniques associated with such Deliverables. Subject to payment in full for the applicable Services, Dell grants Customer a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country or countries in which Customer does business, solely for Customer's internal use, and solely as necessary for Customer to enjoy the benefit of the Services as stated in the applicable Service Agreements.

8. SUSPENSION OR MODIFICATION OF SOFTWARE OR SERVICES

Dell may suspend, terminate, withdraw, or discontinue all or part of the Services or Customer's access or one or more users' access to the Software (and third-party software) upon receipt of a subpoena or law-enforcement request, or when Dell believes, in its sole discretion, that Customer (or Customer's users) have breached any term of this Agreement or an applicable Service Agreement, or are involved in any fraudulent, misleading, or illegal activities.

With respect to Software provided or otherwise made available to Customer by Dell in connection with Services, it may be necessary for Dell to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the software, which may temporarily degrade the quality of the Services or result in a partial or complete outage of the Software. Dell provides no assurance that Customer will receive advance notification of such activities or that the Software or Services will be uninterrupted or errorfree. Unless otherwise agreed to in writing between Customer and Dell, any degradation or interruption in the Software or Services shall not give rise to a refund or credit of any fees paid by Customer.

CUSTOMER AGREES THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOFTWARE, INCLUDING TELEPHONE, COMPUTER NETWORKS, AND THE INTERNET, OR TO TRANSMIT INFORMATION, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF THE SOFTWARE. DELL SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF CUSTOMER'S ACCESS TO OR USE OF THE SOFTWARE.

9. SOFTWARE.

- A. **Accompanying License.** Software is subject to the separate software license agreements accompanying the software, along with any product guides, operating manuals, or other documentation included with the software media packaging or presented to Customer during the installation or use of the Software. Customer agrees that Customer will be bound by such license agreement, as negotiated by the parties; provided that Customer understands and acknowledges that Dell is the reseller only and not the publisher of third party software and therefore Dell is not able to negotiate licensing terms for third party software.
- B. **Software License from Dell.** With respect to Software provided or otherwise made available to Customer by Dell in connection with the Services, if no license terms accompany the Software, then subject to Customer's compliance with the terms set forth in this Agreement, Dell hereby grants Customer a personal, non-exclusive license to access and use such Software only during the term of the Services and solely as necessary for Customer to enjoy the benefit of the Services as stated in the applicable Service Agreements.
- I. **Restrictions.** Customer may not copy, modify, or create a derivative work, collective work, or compilation of the Software, and may not reverse engineer, decompile or otherwise attempt to extract the code of the Software or any part thereof. Customers may not license, sell, assign, sublicense, or otherwise transfer or encumber the Software; may not use the Software in a managed-services arrangement; and may not use the Software in excess of the authorized number of licensed seats for concurrent users, sites, or other criteria specified in the applicable Service Agreements. In addition, Customer may not access the Software to monitor its availability, performance, or functionality, or for any other benchmarking or competitive purpose.
 - II. Customer is further prohibited from (1) attempting to use or gain unauthorized access to Dell or to any third party's networks or equipment; (2) permitting other individuals or entities to use the Software or copy the Software or Services; (3) attempting to probe, scan, or test the vulnerability of Software or a system, account, or network of Dell or any of its customers or suppliers; (4) interfering or attempting to interfere with service to any user, host, or network; (5) engaging in fraudulent activity of any nature; (6) transmitting unsolicited bulk or commercial messages; (7) restricting, inhibiting, or otherwise interfering with the ability of any other person, regardless of intent, purpose, or knowledge, to use or enjoy the Software (except for tools with safety and security functions); or (8) restricting, inhibiting, interfering with, or otherwise disrupting or causing a performance degradation to any Dell (or Dell Service supplier) facilities used to deliver the Services.
 - III. **Audit.** Upon reasonable notice to Customer, Customer hereby grants Dell, or an agent designated by Dell, the right to perform an audit of Customer's use of the Software during normal business hours; Customer agrees to cooperate with Dell in such audit; and Customer agrees to provide Dell with all records reasonably related to Customer's use of the Software. The audit will be limited to verification of Customer's compliance with the terms of this Agreement.
 - IV. **Open Source Software.** A portion of the Software may contain or consist of open source software, which Customer may use under the terms and conditions of the specific license under which the open source software is distributed.

THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL DELL, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS BE LIABLE FOR ANY, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

- C. Services. All software services, online services, hosted solutions, cloud computing services and software-enabled services are provided pursuant to the license agreement and Acceptable Use Policy set forth at www.dell.com/AUP.

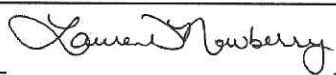
11. LEASING

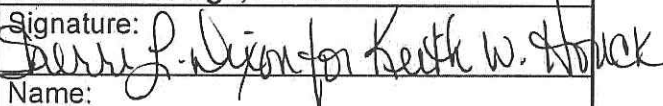
Terms for leasing are in accordance with Exhibit B of Dell's Response.

12. MISCELLANEOUS

The use of preprinted forms, such as purchase orders, will be for convenience only, and all preprinted terms and conditions stated on such forms will not apply to the extent they are inconsistent with the terms of this Agreement or other documents referenced in section 2 of this Agreement as those governing the parties' relationship. Dell and Eligible Purchasers acknowledge that Products licensed or sold under this or any resulting Agreement may be subject to the export control laws and regulations of the United States or those of other countries in which they are used and agree to abide by those laws and regulations.

This Agreement has been executed on behalf of the Parties by their duly authorized representatives.

Dell Marketing L.P.	
Signature:	
Name:	Lauren D. Newberry
Position:	Contracts Consultant
Date:	3/27/2012

The District Board of Trustees of Valencia College, Florida	
Signature:	
Name:	Keith W. Hawk
Position:	VP, Operations & Finance
Date:	3/23/12

APPROVED BY

MAR 22 2012

GENERAL COUNSEL
Valencia College