

October 04 2021

Dell Marketing L.P.  
Attn: Sandra Giakoumatos  
One Dell Way  
Round Rock, TX 78682

Reference: 2000003292; Computer Device and Parts

Dear Ms. Giakoumatos:

**Acceptance Agreement**

**Contract Number: 4400010765**

This acceptance agreement signifies a contract award to Dell Marketing, L.P. for Computer Device and Parts. The period of the contract shall be from October 1, 2021 through June 30, 2026 with the option to renew for three (3) one-year periods.

The contract award shall be in accordance with:

1. This Acceptance Agreement.
2. The Terms and Conditions of RFP2000003290; Computer Device and Parts, and all addenda.
3. Your Proposal dated March 31, 2021.
4. The attached summarized Pricing Schedule.
5. The signed Memorandum of Negotiations.

Please note that this is not an order to proceed. A purchase order, which constitutes your notice to proceed, will be issued to your company. Please provide your Insurance Certificate according to Special Provisions Paragraph 24 within ten (10) days after receipt of this letter. Contract award documents may be viewed on the Fairfax County, Department of Purchasing and Supply Management website at: [www.fairfaxcounty.gov/cregister](http://www.fairfaxcounty.gov/cregister).

Sincerely,

*Michelle Pratt*

Michelle R. Pratt  
Director

MRP/RT



Office of Procurement Services  
8115 Gatehouse Road, Suite 4400  
Falls Church, VA 22042

DATE: September 27, 2021

Sent via email: [Sandra.Giakoumatos@Dell.com](mailto:Sandra.Giakoumatos@Dell.com)

Dell Marketing L.P.  
Attn: Sandra Giakoumatos  
One Dell Way  
Round Rock, TX 78682

Subject: Memorandum of Negotiations

Reference: RFP# 2000003290 – Computer Device and Parts

Dear Ms. Giakoumatos:

Thank you for responding to Request for Proposal, RFP# 2000003290 – Computer Device and Parts. Enclosed with this letter is the Memorandum of Negotiations, which defines the final agreement between your firm and Fairfax County Public Schools.

Please review the Memorandum of Negotiation, execute a legal authorized signature in the space provided, and return it to my office within five (5) days of the date of this letter. After I receive the signed Memorandum, I will return an executed copy to you along with the Acceptance Agreement which signifies award of this contract to your firm.

If you have any questions or need additional information, don't hesitate to contact me at 571-423-3584 or via email at [rtaylor@fcps.edu](mailto:rtaylor@fcps.edu). Thank you for your interest in Fairfax County Public Schools' requirements and we hope that you will bid on future requirements.

Sincerely,

Reginald Taylor  
Contract Specialist

Attached: Memorandum of Negotiations

DISTRIBUTION:

FCPS – IT – Jean Welsh  
FCPS - OPS -

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**MEMORANDUM OF NEGOTIATION**  
 RFP2000003290

The County of Fairfax, Fairfax County Public Schools (hereinafter called the County or FCPS) and Dell Marketing, L.P (hereinafter called the Contractor) hereby agree to the following in the execution of Contract 4400010765. The final contract contains the following items:

- a. Fairfax County's Request for Proposal RFP2000003290 and all Addenda.
- b. Dell Marketing, L.P. Technical and Business proposal as amended by this Memorandum of Negotiations.
- c. Contractor's Best and Final Offer response dated September 7, 2021,
- d. Contractor's written negotiation responses dated July 8, 2021,
- e. Contractor's clarification responses,
- f. The Memorandum of Negotiations; and
- g. All subsequent amendments to the contract.

In the event of a conflict or ambiguity between or among the documents listed above, the terms and conditions of this MON will have priority over documents referenced in (a) and (b).

1. Dell credits program: Dell is offering FCPS a product credit of TWO percent (2%) payable quarterly in arrears ("Product Credit").
  - Calculation of Product Credit: The amount of Product Credit will be determined based on timely payments received during the quarter for Eligible Purchases (defined below).
  - Eligible Purchases: Eligible purchases include Dell-branded client computing hardware and peripherals purchased directly by FCPS, net of any shipping, taxes, returns, credits, or adjustments.
  - Timely Payments: Timely payments for points qualification shall be considered payments made within net 90 days. Contractual payment terms between FCPS and Dell remain net 30. It is the responsibility of FCPS to ensure payments are made in a timely fashion.
  - Reporting: Within 10 business days following each Dell fiscal quarter, Dell will provide to FCPS reporting including PO Number, Order Number, Product Description, Purchase Amount, Invoice Date, Paid Date, and Product Credit Amount. Customer shall have 10 business days to review and advise of any discrepancies. After this review period, the Product Credit shall be considered final and shall not be subject to future adjustments.
  - Use of Credit: Customer shall place one order for Dell-branded hardware and peripherals and will clearly indicate on the Purchase Order the amount of Product Credit used. Product Credits expire if unused within 60 days of the end of the period for which the Product Credit applies.
  - Term of Agreement: This agreement shall apply to orders placed on or after Award and shall continue through. This agreement shall renew annually upon mutual written agreement of the parties. Invoices that are unpaid on termination of the agreement shall not be Product Credit eligible. Either party may terminate this Agreement with 30 days prior written notice.

2. Try and Buy Program Agreement and "Keep It" Program Agreement Terms and Conditions attached.

**Professional Learning**

3. Included within the laptop purchases made through this RFP, once a purchase of 10,000 Dell devices is completed, FCPS will receive up to \$100,000 total in professional learning services through the Dell value-

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add program (regardless of purchasing agent). Additionally, Dell will provide one (1) additional onsite Professional Learning day for every 1,376 laptops purchased.

4. Professional learning is offered as “days” of learning, at a rate of \$2,600 per day. Dell is able to provide \$100,000 of professional learning, which is the equivalent of 38.4 days, which is why “approximately” is included. This is a total of 38 days, as opposed to “annual through the course of the contract”. The \$100,000 in professional learning credits may also be used to access BrightBytes resources.
5. Cost per day for Advanced Learning Partnerships beyond what is included as part of the contract are at a cost of \$2600 per day.
6. In addition to the value-added Professional Learning, through a direct contract with Dell, the Dell Strategy team will continue to work with FCPS on a wide range of collaborative projects, at no additional cost to the district, including:
  - The opportunity for up to 24 students to participate in an after-school gaming club focused on developing the global competencies needed in our diverse and interconnected society and aligned with the FCPS Portrait of a Graduate.
  - Participation in the CTE Networking Group that meets monthly and shares resources from CTE Directors across the country.
  - Engagement in the Virtual Schools Networking Group that meets monthly to collaborate on the development of virtual schools that will be in place beyond the 2020-21 school year, including refining curriculum resources, recruiting teachers and facilitating professional learning, defining and clarifying teacher evaluation processes, etc.
7. Success Training workshops leverage [Microsoft Innovative Educator \(MIE\)](#) content for professional development and remote learning support. Microsoft, in partnership with Dell, will provide *up to 20 hours of Customer Success Training Workshops virtually*. Topics may include:
  - Windows
  - Accessibility tools for the classroom
  - Minecraft Education Edition
  - Microsoft Innovative Educator
  - Teams for Education
  - Flipgrid
  - PowerApps
  - Outlook
  - OneNote Class Notebook
  - OneDrive
  - Word
  - Forms
  - Excel
  - PowerPoint

Benefits of these sessions include custom training tailored to FCPS needs, in your tenant or user environment, demystifying new and existing Microsoft products and features, leveraging Microsoft tools to enhance engagement and learning, and continuing to support teachers in building digitally inclusive environments.

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8. Parent and Family Workshops: Microsoft is committed to supporting FCPS now more than ever: supporting your learners as they learn anytime, anywhere. A number of remote workshops are available to help including:
- Teams for Families: In this virtual training session, parents and caregivers will discover how to support their student as they navigate Microsoft Teams. Learn how to request access to your child's class team as a guest to support their use. Translate content in Teams into your native language with one click, modify content to fit your learner's needs, and more.
  - Online Safety: Learn how to protect your family's devices and information and help your children stay safe online. You'll discover the steps to take to strengthen online safety for everyone in your family, including those who are learning remotely or in hybrid environments for the first time, to those who are working from home.
  - Microsoft, in partnership with Dell, will provide up to 10 hours of parent and family workshops virtually.
9. Dell Technologies is able to expand the professional learning opportunities beyond those described in the initial and interview responses to include an additional \$10,000 focused on digital literacy. The funds will be provided to facilitate professional learning dedicated to enhancing the digital literacy skills of students, educators, and families. A customized plan for implementation will be developed with the FCPS team.

All other prices, terms, and conditions remain the same.

ACCEPTED BY:Carina Clifford  
Carina Clifford (Sep 28, 2021 13:44 EDT)

Name: Carina Clifford Contract Administrator  
Dell Marketing, L.P.

Sep 28, 2021Date

LO

Gautam Sethi

Gautam Sethi, Assistant Superintendent  
Department of Information Technology

10/4/2021Date

DocuSigned by:

Michelle Pratt

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Michelle R. Pratt, Director  
Office of Procurement Services

10/4/2021Date

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## PRICING SCHEDULE Dell

### 1. HARDWARE

<b><u>PERCENTAGE DISCOUNT:</u></b>	<b>% Discount</b>
<b>Dell Products</b> Price Assurance from Dell for standard computing configurations = Latitude, Precision, Optiplex	45% minimum discount

<b><u>PERCENTAGE DISCOUNT:</u></b>	<b>% Discount</b>
<b>Dell Products</b> Price Assurance from Dell for standard computing configurations = Chromebook	38% minimum discount

### 2. MONITORS:

<b>Item Description</b>	<b>Discount</b>
Dell	5%

### 3. OPTIONAL PACKAGING AND PREPARATION SERVICES: services described in Special Provisions 10.22 A through I.

<b>Item Description</b>	<b>Unit Price</b>
Optional Packaging and Preparation Services	\$26.60

### 4. VALUE-ADDED & RELATED SERVICES: as described in Special Provisions, Paragraph 10.

<b>Item Description</b>	<b>Unit Price</b>
Basic Installation Service (Client System and Monitor)	\$51.07
De-installation of Legacy System (Client System and Monitor)	\$28.10
Warehouse and Redeliver New Equipment per system	\$19.40
Attended Imaging & BIOS Setting Configurations	\$14.55
Asset Tagging and Reporting	\$3.70
All Services Bundle: <ul style="list-style-type: none"> <li>Asset Tagging &amp; Reporting</li> <li>Warehouse and Redeliver New Equipment per system</li> <li>Basic Installation &amp; Service (Client System and Monitor)</li> <li>Attended Imaging &amp; BIOS Setting Configuration</li> <li>De-Installation of Legacy (Client System and Monitor)</li> </ul>	\$87.77
Additional 30 Days of Warehousing- per unit	\$0.42

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Training	0%, included from Microsoft
Professional Learning	\$1.40/device
Rebates/ Credits	2%

**5. STUDENT LAPTOP WARRANTY- ADP**

Dell for Worth (WAG)

Below are 1 battery and 2 battery replacements.

Item	Quantity	Currency	Price	Extended	Denominational SKU Number
1 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 1 Battery (25%)	0	USD	\$7.32	0	850-0255
1 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 1 Battery /Arrears)	0	USD	\$21.96	0	850-0267
2 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 1 Battery 125%)	0	USD	\$14.65	0	850-0261
2 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 1 Battery (Arrears)	0	USD	\$43.92	0	850-0286
3 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 1 Battery (25%)	0	USD	\$21.96	0	850-0267
3 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 1 Battery (Arrears)	0	USD	\$65.88	0	850-0304
4 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 1 Battery (25%)	250,000	USD	\$27.83	\$6,957,500	850-0272
4 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 1 Battery (Arrears)	250,000	USD	\$83.49	\$20,872,500	850-0319
1 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 2 Battery (25%)	0	USD	\$8.44	0	850-0256
1 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 2 Battery (Arrears)	0	USD	\$25.13	0	850-0270
2 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 2 Battery (25%)	0	USD	\$16.74	0	850-0263
2 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 2 Battery (Arrears)	0	USD	\$50.19	0	850-0291
3 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 2 Battery (25%)	0	USD	\$25.25	0	850-0270
3 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 2 Battery (Arrears)	0	USD	\$ 75.75	0	850-0313
4 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 2 Battery (25%)	250,000	USD	\$32.06	8,015,000	850-0276
4 year Tier 4 \$401-\$500 Replacement Value (UIAD/OneStep) WAG 2 Battery (Arrears)	250,000	USD	\$96.18	24,045,000	850-0330

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## 6. PART II, PARTS

<b><u>PERCENTAGE DISCOUNT:</u></b>	<b>Discount</b>
<b>NEW Dell Replacement Parts</b>  <b><u>DELIVERY:</u></b> a. Stocked items 5 days after receipt of order b. Non-Stocked/Out of Stock Items 20 days after receipt of order  Please note that these estimated lead times may be extended, or delays can occur for: (1) large un-forecasted orders, (2) force majeure event, (3) delay caused by Customer or its affiliates; and/or (4) industry shortages and other events outside Dell's reasonable control. • Please note that the estimated lead times do not apply to the following situations: (1) Rack and Stack projects, (2) Customer requested change after order entry, and (3) Employee purchase plan or non-revenue generating orders.	35% minimum  Price reflects the 35% discount, but Dell may sell to FCPS at a reduced price.
<b>NEW General/Multi-Platform Replacement Parts</b>  <b><u>DELIVERY:</u></b> a. Stocked items N/A days after receipt of order b. Non-Stocked/Out of Stock Items N/A days after receipt of order	8% Only available for specific parts
<b>Remanufactured/Refurbished Replacement Parts</b>  <b><u>DELIVERY:</u></b> a. Stocked items 5 days after receipt of order b. Non-Stocked/Out of Stock Items 20 days after receipt of order  Please note that these estimated lead times may be extended, or delays can occur for: (1) large un-forecasted orders, (2) force majeure event, (3) delay caused by Customer or its affiliates; and/or (4) industry shortages and other events outside Dell's reasonable control. • Please note that the estimated lead times do not apply to the following situations: (1) Rack and Stack projects, (2) Customer requested change after order entry, and (3) Employee purchase plan or non-revenue generating orders.	35% minimum  Price reflects the 35% discount, but Dell may sell to FCPS at a reduced price.



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<p><b>APC Parts DELIVERY:</b></p> <p>a. Stocked items 5 days after receipt of order b. Non-Stocked/Out of Stock Items 20 days after receipt of order</p> <p>Please note that these estimated lead times may be extended, or delays can occur for: (1) large un-forecasted orders, (2) force majeure event, (3) delay caused by Customer or its affiliates; and/or (4) industry shortages and other events outside Dell's reasonable control. • Please note that the estimated lead times do not apply to the following situations: (1) Rack and Stack projects, (2) Customer requested change after order entry, and (3) Employee purchase plan or non-revenue generating orders.</p>	<p>17% Minimum discount from List</p> <p>*Where ESI can achieve deeper discounts, we will quote higher discounts to FCPS.</p>
<p><b>Percentage Discount for Products Not Listed in previous tables. The discount(s) will be applied to prices at the time of any applicable orders for items not listed above.</b></p>	
<p><u>Manufacturer &amp; Brand Name % Discount</u></p> <p>Dell Compact USB-C Charging Cart 31% Dell Compact CT36U18 Charging Cart 31% Latitude 3120 – 4-year Warranty 63% Latitude 3190 – 4-year Warranty 63%</p>	



## “Keep It” Program Agreement

### General Terms

This agreement (“**Agreement**”) between you (“**you**” or “**Customer**”), and either Dell Marketing L.P. (in the U.S.) or Dell Canada Inc. (in Canada) (“**Dell**”), or EMC Corporation (in the U.S.) or EMC Corporation of Canada (in Canada), as applicable (“**Supplier**”), governs the provision and your use of the Products and Services and is effective upon your acceptance hereof.

#### 1. Purpose.

Supplier will provide you with hardware and software products (“**Products**”) and services (“**Services**”) at no charge. The Products and Services are yours to keep and use as described in this Agreement. Title to hardware Products (except for the software provided with such hardware) passes from Supplier to you upon shipment. However, title to any software will always remain with Supplier or the applicable licensor(s) (your rights are subject to the license). Shipping and delivery dates are provided as estimates only. The term “**Purpose**” refers to the following: (a) if you are a Channel Partner (defined below) or Federal Reseller (defined below) you will use the Products and Services only for product demonstrations to customers, for internal testing or evaluation by you or your customer, or for training your team to sell Supplier Products and Services, and then only in a test environment and not in a production environment, and (b) if you are a commercial entity or a Public Customer (defined below), you will use the Products and Services only for evaluation or internal business use. Supplier will have all rights, title and ownership of any feedback you provide about the Products and Services.

#### 2. Software.

2.1 Software provided to you is licensed by Dell Products L.P., a Texas Limited Partnership; Dell Global B.V. (Singapore Branch), the Singapore branch of a company incorporated in the Netherlands with limited liability on behalf of itself, Dell Inc. and “Dell Affiliates” (which are Dell Inc.’s direct and indirect subsidiaries); or the applicable Dell Affiliate or third party identified at [www.dell.com/swlicensortable](http://www.dell.com/swlicensortable) (“**Licensor**”) and, except as provided otherwise in Section 2.2 below, shall be governed by the following:

A. General License Grant. Licensor grants to Customer a nonexclusive and non-transferable temporary license (with no right to sublicense) to use (a) the software solely for the Purpose; (b) microcode, firmware, and operating system software shipped with hardware, or other software licensed together with hardware and designed to enable the hardware to perform enhanced functions, solely on that hardware; and (c) the then-current, generally available, written user manuals and online help and guides (“**Documentation**”) related to such software for the purpose of supporting Customer’s use of such software.

B. License Restrictions. All software licenses granted in this Section 2.1 are for use of object code. Customer is permitted to copy the software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation as reasonably necessary in connection with Customer’s authorized use of the software. Customer shall not (a) use software in a service bureau, application service provider or similar capacity; (b) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of the Products and Services that Customer performs or that are performed on Customer’s behalf; (c) make software available in any form to anyone other than Customer’s employees or contractors; or (d) transfer software to an



affiliate or a third party.

C. **Reserved Rights.** All rights not expressly granted to Customer are reserved. No title to, or ownership of, the software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the software. Unless applicable law expressly permits, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the software, nor shall Customer permit any third party to do the same.

2.2 **Other License Terms.** If a particular Product is provided with a “click-to-accept” agreement included as part of the installation and/or download process, or a “shrink-wrap” agreement is included in the Product packaging, the terms of such “click-to-accept” or “shrink-wrap” agreement shall, in case of conflict with these terms, (a) prevail with regard to software for which Supplier or a Dell Affiliate is not the licensor; and (b) not prevail with regard to software for which Supplier or a Dell Affiliate is the licensor.

2.3 **Software Releases.** Software versions that Supplier provides after initial delivery of the software (but not a new product) shall be subject to the license terms applicable to the software being updated.

### 3. **Services.**

Services provided under this Agreement are governed by the supplemental terms and conditions applicable to such service and located at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global) and/or [www.dellmc.com/en-us/customer-services/product-warranty-and-service-descriptions.htm](http://www.dellmc.com/en-us/customer-services/product-warranty-and-service-descriptions.htm).

### 4. **Returns and Data Backup and Removal.**

No exchanges or credits are permitted. If you decide to return the Products and Services to Supplier, such return is subject to Supplier’s approval and you must follow Supplier’s return policies and instructions. Title to the hardware Product will transfer from you to Supplier upon Supplier’s receipt. Customer must backup any data or software and remove any confidential, non-public or sensitive data (“**Covered Data**”) from the Products prior to returning them to Supplier. **Under no circumstances will Supplier be liable for lost data or software, for costs associated with data or software restoration, for any disclosure of confidential or sensitive data residing on the Products or utilized in the Services or for any legal or compliance requirements to comply with special rules or other requirements that may apply to the Covered Data.** Customer agrees to indemnify, defend and hold harmless Supplier from any and all claims or liability against Supplier arising from any Covered Data that may be on the Products or utilized in the Services.

### 5. **Warranty Disclaimer.**

**The products and services are provided “as is,” with all faults. Supplier disclaims any and all warranties and conditions, express, implied or otherwise, with respect to the products and services, including without limitation: (a) any warranties or conditions of merchantability, fitness for a particular purpose, title and non infringement, and (b) any warranties arising by statute, operation of law, course of dealing or performance or usage of trade.**



## 6. High-Risk Applications.

Customer acknowledges that the Products and Services are not designed or intended for use in High-Risk Activities (defined below) and that Supplier **does not test or certify the products and services for use in high-risk activities. Supplier expressly disclaims any express or implied warranty of fitness for high-risk activities. “high-risk activities” means the use of the products and services in hazardous environments requiring fail safe performance, such as any application in which the failure of the products or services could lead directly to death, personal injury, or physical or property damage.**

## 7. Limitation of Liability.

Supplier, its affiliates and subcontractors shall not be liable for any indirect, punitive, incidental, consequential, exemplary or special damages, or for lost profits, loss of revenue, loss of use, loss or corruption of data, or business interruption of any kind. Supplier’s total liability for any and all disputes (defined below) and damages arising out of or in connection with this agreement and/or any products and services will not exceed the lesser of: (a) the list price of the applicable products and services giving rise to the claim or (b) \$50,000 USD. These limitations apply whether arising under any contract, tort, warranty or any other theory of liability, even if advised or aware of the possibility of such damages and even if any remedy fails of its essential purpose. All claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing a claim, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

## 8. Intellectual Property Rights.

All rights, titles and interests to Supplier’s patents, copyrights, trademarks, trade secrets, or other intellectual property, including, without limitation, those incorporated into the Products or used by Supplier to perform the Services, remain with Supplier. Customer will not use the name of Supplier nor any Supplier trademarks, trade names, service marks or quote the opinion of any Supplier employee in any advertising or otherwise without first obtaining Supplier’s prior written consent.

## 9. Compliance with Laws.

You will comply with all laws and regulations applicable to your use of the Products and Services in the countries in which you do business including, without limitation, any laws relating to taxes, U.S and applicable local export and sanctions laws, anti-bribery, or competition laws (“**Applicable Laws**”). Supplier is providing and Customer accepts the Products or Services and access to related technology (the “**Materials**”) for the Purpose, and 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 with Supplier’s prior written authorization and 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. **Confidentiality and Nondisclosure.**

Customer agrees to protect Supplier's Confidential Information with the same degree of care, but no less than a reasonable degree of care, as Customer uses with respect to its own confidential information. Customer will not disclose Supplier Confidential Information without Supplier's prior written consent. "**Confidential Information**" means any oral, written, graphic or machine-readable information disclosed by Supplier that should be reasonably understood to be confidential.

11. **Termination.**

At any time, Supplier may terminate its Keep It program, your participation, any Services and your license to use any software without notice if there is a shortage of Products and Services or for any other reason, including for its own convenience. All terms intended to survive such termination shall survive.

12. **Governing Law.**

This Agreement, and any claim, dispute or controversy (whether in contract, tort or otherwise, including statutory, consumer protection, common law, intentional tort and equitable claims) between Customer and Supplier, including their affiliates, contractors and agents, and each of their respective employees, directors and officers (a "**Dispute**") will be governed by the laws of the State of Texas (or by U.S. federal laws if you are a Federal End User, or by laws of the province of Ontario and the federal laws of Canada applicable therein if you are a Canadian entity), without regard to conflicts of law. The UN Convention for the International Sale of Goods will not apply.

13. **General.**

This Agreement ([GENERAL TERMS](#) and applicable [CUSTOMER-SPECIFIC TERMS](#)) constitutes the entire agreement between you and Supplier regarding the Products and Services. Customer will not transfer or assign this Agreement. Supplier and Customer are independent contractors, and neither is a legal representative or agent of the other.

[Customer-Specific Terms](#) apply to you if you are a Channel Partner, Federal Reseller or Public Customer. If there is a conflict, the Customer Specific Terms will take precedence over the [GENERAL TERMS](#).



## **Customer Specific Terms**

### **Channel Partners**

#### **Additional terms applicable to resellers (including Federal Resellers), distributors, system integrators, OEM customers and other channel partners ("Channel Partners")**

The additional terms and conditions in this section apply to you if you are a Channel Partner. These additional terms and conditions supplement, amend or revise the [GENERAL TERMS](#) as described below.

1. In Supplier's discretion, the term "Purpose" may include the following: Supplier may provide, directly or indirectly through you, at no charge to Channel Partner, the Products and Services to your end user customer or potential end user customer (each, "**End User**") for the End User to use solely for evaluation or internal business use. The hardware Products are for End User to keep. Shipping and delivery dates are provided as estimates only. Notwithstanding the foregoing, Supplier may request you to return the Products to Supplier if Supplier has reasonable belief that you have breached, or refused to provide information requested by Supplier to confirm your compliance with, clause 9 of the [GENERAL TERMS](#), and you shall comply with such request at your sole expense.
2. Products and Services may be provided to an End User under the preceding paragraph only if the End User has agreed in writing to the terms of this Agreement. In such agreement between you and End User, the applicable references to "you" or "Customer" in the Agreement shall mean "End User". You shall ensure End User complies with this Agreement and all Applicable Laws, and you are responsible for End User's failure to comply with such terms and Applicable Laws. You shall indemnify and hold Supplier and its licensors and suppliers harmless from any and all claims or liability against Supplier related to or arising out of End User's noncompliance with the terms or use of the Products and Services.
3. If Supplier provides Channel Partner with Products and Services for the Purpose described in clause 1 of the [GENERAL TERMS](#), then sections 3.1, 3.2, and 3.3 apply:
  - 3.1 Supplier may require Channel Partner to meet, perform, or complete certain tasks. Such requirements will be set forth in writing by Supplier and will be made part of this Agreement by referencing the Agreement. If Channel Partner does not meet, perform or complete all requirements within the specified time, then Supplier has the right to de-install and pick up the hardware Product and/or terminate the software Product license and Services. If Channel Partner does not provide Supplier with access to pick up the hardware Product, Channel Partner will be required to de-install and return the Product to Supplier at Channel Partner's sole expense.
  - 3.2 Channel Partner will not sell, lease, transfer or otherwise convey the hardware Product to any third party without Supplier's prior written permission.
  - 3.3 Product must be installed and used only at Channel Partner's site where Product was initially shipped to Channel Partner by Supplier or a designated third party. Product will not be moved from the installation site without Supplier's prior written approval.



4. Supplier may, at its discretion, terminate any software Product license or any Services and/or require Channel Partner return hardware Products at any time, including if Channel Partner violates or breaches any provision in this Agreement or Applicable Laws.
5. Clause 4 of the **GENERAL TERMS** will apply if hardware Product is picked up or returned pursuant to Clause 3.1 or 3.3 of the Customer Specific Terms for Channel Partners.





## **Federal Resellers**

### **Additional terms applicable to Federal Resellers**

The additional terms and conditions in this section apply to you if you are a reseller to any department, agency, division, or office of the United States government ("**Federal Reseller**"). These additional terms and conditions supplement, amend or revise the [GENERAL TERMS](#) as described below. For purposes of this section, the term "Supplier" will mean Dell Marketing L.P. or Dell Federal Systems L.P.

Clauses 1 through 5 and clause 7 set forth below in the U.S. Public Customer Terms shall apply to Federal Resellers, and the term "Federal Reseller" shall be substituted for the term "Public Customer" in each instance.

## **Public Customers**

### **Additional terms applicable to Public Customers**

#### **United States**

### **Additional terms applicable to U.S. Public Customers**

The additional terms in this section ("**U.S. Public Customer Terms**") apply to public sector or healthcare customers such as (i) any healthcare provider, department, agency, division or office of the United States government ("**Federal End User**"), or (ii) any healthcare provider, education institution, department, agency, division, or office of any district, state, county or municipal government within the United States (together with Federal End Users, "**Public Customer**"). The U.S. Public Customer Terms supplement, amend or revise the [GENERAL TERMS](#) as described below. If you are a Federal End User, then references to "Supplier" below will mean Dell Marketing L.P. or Dell Federal Systems L.P.

1. Any portion of the [GENERAL TERMS](#) that is not applicable to you by law shall not apply to you. US Public Customer Terms shall take precedence over the [GENERAL TERMS](#). Any applicable software licensing terms shall control over these terms.
2. Software and documentation provided with the Products and Services constitutes "commercial items" as defined at 48 C.F.R. 2.101; consisting of "commercial computer software" and "commercial computer software documentation" as used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 to 227.7202-4, Federal End Users acquire only the rights set forth in the applicable licensing agreement (see Section 2 of the [GENERAL TERMS](#)).
3. You agree to provide Supplier with an electronic evaluation form provided by Supplier within 90 days of the date you receive the Products and Services. If you fail to provide the electronic evaluation within this timeframe, you will return all hardware Products to Supplier and pay Supplier's then-current commercial price for all software included in the Products and Services.
4. The parties agree that the Products and Services are intended exclusively for your evaluation and (a) do not constitute a "gift" or "gratuity," as contemplated under relevant regulations such as 5 C.F.R. Part 2635, *Federal Acquisition Regulation* ("FAR") 3.101-2, and FAR Subpart 3.2, and (b) do not give the appearance of a conflict of interest as described under FAR





Subpart 3.11 or other relevant regulations. The consideration for Supplier providing the Products and Services is your promise to submit the electronic evaluation form. By accepting the Agreement, you acknowledge, affirm and agree that you are authorized to accept the Products and Services pursuant to established gift rules applicable to you and/or your agency.

5. Public Customer does not intend to award a contract on the basis of Supplier's provision of the Products and Services, nor grant Supplier any preferential treatment in any contracts or task or delivery orders currently being performed by Supplier, or future procurement actions.

6. Public Customer is responsible for reporting receipt or value of the Products and Services to any federal or state healthcare program that it participates in to the extent such reporting is required.

7. You confirm that (a) you are a contracting officer or other authorized representative of Public Customer with authority to bind the Public Customer for purposes of accepting the Products and Services in accordance with the terms and conditions set forth in this Agreement, and (b) you have read and agree to be bound by the terms and conditions of any licensing agreement applicable to the Products (see Section 2 of the [GENERAL TERMS](#)) or service terms applicable to Services (see Section 3 of the [GENERAL TERMS](#)).

### Canada

#### **Additional terms applicable to Canadian Public Customers**

The additional terms in this section ("**Canadian Public Customer Terms**") apply to public sector customers in Canada such as any federal, provincial or municipal government, department or agency, healthcare provider or education institution ("**Canadian Public Customer**"). These additional terms and conditions supplement, amend or revise the [GENERAL TERMS](#) as described below.

1. Any portion of the [GENERAL TERMS](#) that is not applicable by law shall not apply to you. Canadian Public Customer Terms shall take precedence over the [GENERAL TERMS](#). Any applicable software licensing terms shall control over these terms.

2. The parties agree that the Products and Services are intended exclusively for your evaluation and: (a) are not provided as a gift or similar gratuity; and (b) do not give the appearance of a conflict of interest under your applicable procurement rules and regulations.

3. Canadian Public Customer does not intend to award a contract on the basis of Supplier's provision of the Products and Services, nor grant Supplier any preferential treatment in any contracts or task or delivery orders currently being performed by Supplier, or future procurement actions.

4. Canadian Public Customer is responsible for reporting receipt or value of the Products and Services to the extent such reporting is required.

5. You confirm that (a) you are a contracting officer or other authorized representative of Canadian Public Customer with authority to bind the Canadian Public Customer for purposes of accepting the Products and Services in accordance with the terms and conditions set forth in this Agreement, and (b) you have read and agree to be bound by the terms and conditions of any



licensing agreement applicable to the Products (see Section 2 of the [GENERAL TERMS](#)) or service terms applicable to Services (see Section 3 of the [GENERAL TERMS](#)).

**Accepted and Agreed:**

<b>&lt;CUSTOMER&gt;</b> Fairfax County Public Schools	
CUSTOMER NAME AND ADDRESS:	
By:	<div>DocuSigned by: <i>Michelle Pratt</i> 1912EDF639994EC...</div>
Print Name:	Michelle Pratt
Title:	Director, Procurement
Date:	10/4/2021



## “TRY & BUY” Program Agreement

### General Terms

This agreement (“**Agreement**”) between you (“**you**” or “**Customer**”), and either Dell Marketing L.P. (in the U.S.) or Dell Canada Inc. (in Canada), or EMC Corporation (in the U.S.), or EMC Corporation of Canada (in Canada), as applicable (“**Supplier**”), governs the provision and your use of the Products and Services and is effective upon your acceptance hereof.

#### 1. Purpose.

Supplier will provide you with hardware and software products (“**Products**”) and services (“**Services**”) as quoted by Supplier at no charge. You have a non-transferable right to use, perform and execute the Products and Services solely for internal evaluation and testing purposes in a secure, non-production environment (“**Purpose**”) as further set forth herein. You shall not, and shall not offer to, lease, sublicense, encumber, sell, assign or otherwise transfer or dispose of the Products and Services, or move the Products and Services from the original ship-to location, except Channel Partners (defined below) may be authorized to provide the Products and Services to End-User as expressly permitted in the Customer Specific Terms for Channel Partners below.

#### 2. Software.

2.1 Software provided to you is licensed by Dell Products L.P., a Texas Limited Partnership; Dell Global B.V. (Singapore Branch), the Singapore branch of a company incorporated in the Netherlands with limited liability on behalf of itself, Dell Inc. and “Dell Affiliates” (which are Dell Inc.’s direct and indirect subsidiaries); or the applicable Dell Affiliate or third party identified at [www.dell.com/swlicensortable](http://www.dell.com/swlicensortable) (“**Licensor**”) and, except as provided otherwise in Section 2.2 below, shall be governed by the following:

A. General License Grant. Licensor grants to Customer a nonexclusive and nontransferable temporary license (with no right to sublicense) to use (a) the software solely for Customer’s internal evaluation and testing in accordance with the Purpose; (b) microcode, firmware, and operating system software shipped with hardware, or other software licensed together with hardware and designed to enable the hardware to perform enhanced functions, solely on that hardware; and (c) the then-current, generally available, written user manuals and online help and guides (“**Documentation**”) related to such software for the purpose of supporting Customer’s use of such software.

B. License Restrictions. All software licenses granted in this Section 2.1 are for use of object code. Customer is permitted to copy the software as necessary to install and run it in accordance with the license, but otherwise for back-up purposes only. Customer may copy Documentation as reasonably necessary in connection with Customer’s authorized internal use of the software. Customer shall not (a) use software in a service bureau, application service provider or similar capacity; or (b) disclose to any third party the results of any comparative or competitive analyses, benchmark testing or analyses of the Products and Services that Customer performs or that are performed on Customer’s behalf; (c) make software available in any form to anyone other than Customer’s employees or contractors; or (d) transfer software to an affiliate or a third party.

C. Reserved Rights. All rights not expressly granted to Customer are reserved. No



title to, or ownership of, the software is transferred to Customer. Customer shall reproduce and include copyright and other proprietary notices on and in any copies of the software. Unless applicable law expressly permits, Customer shall not modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, decompile or otherwise reduce to human readable form the software, nor shall Customer permit any third party to do the same.

2.2 Other License Terms. If a particular Product is provided with a “click-to-accept” agreement included as part of the installation and/or download process, or a “shrink-wrap” agreement is included in the Product packaging, the terms of such “click-to-accept” or “shrink-wrap” agreement shall, in case of conflict with these terms, (a) prevail (excluding any perpetual license language) with regard to software for which Supplier or a Dell Affiliate is not the licensor; and (b) not prevail with regard to software for which Supplier or a Dell Affiliate is the licensor. Notwithstanding any deviating terms in a “click-to-accept” or “shrink-wrap” license, all licenses to use software expire at the end of the Evaluation Period.

2.3 Software Releases. Software versions that Supplier provides after initial delivery of the software (but not a new product) shall be subject to the license terms applicable to the software being updated.

### 3. **Services.**

Services provided under this Agreement are governed by supplemental terms and conditions applicable to such service and located at [www.dell.com/servicecontracts/global](http://www.dell.com/servicecontracts/global) and/or [www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm](http://www.dell.com/en-us/customer-services/product-warranty-and-service-descriptions.htm).

### 4. **Evaluation Period.**

The “**Evaluation Period**” begins five (5) days after the Products are shipped and will continue, subject to [Section 11](#), for forty five (45), sixty (60), ninety (90), or one hundred and twenty (120) days as agreed between the Parties unless terminated in writing prior to that time in compliance with [Section 11](#) below, or as extended by mutual written agreement of the parties. At the end of the Evaluation Period, Customer will either: (a) return the Products in accordance with Supplier’s instructions in good condition, reasonable wear and tear excluded, within 10 days after expiration or termination of the Evaluation Period or (b) pay the purchase price of the Products within 30 days. If Customer does not so return the Products within the prescribed timeline, and without limiting Supplier’s other remedies, Supplier shall automatically invoice Customer for the purchase price of the Products.

### 5. **Title and Risk of Loss.**

Title to the hardware Products (except for the software provided with such hardware) shall remain with Supplier until Customer has paid the purchase price in accordance with Section 4(b) above. However, title to any software will always remain with Supplier or the applicable licensor(s) (your rights are subject to license). All related reports, testing, feedback, benchmarking or other analysis shall be owned by Supplier. The risk of loss and damage to the Products shall be with Customer while in Customer’s possession. Customer shall maintain reasonable insurance coverage for the Products until returned to Supplier.



6. **Warranty Disclaimer.**

The products and services are provided “as is,” with all faults. Supplier disclaims any and all warranties and conditions, express, implied or statutory, with respect to the products and services, including without limitation, any warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, title and non infringement.

7. **Limitation of Liability.**

Supplier, its affiliates, and subcontractors shall not be liable for any indirect, punitive, incidental, consequential, exemplary or special damages, or for loss of profits; loss of use; loss or use of data; or business interruption of any kind. Supplier’s total liability for any and all claims and damages arising out of or in connection with this agreement and/or any products and services will not exceed the lesser of: (a) the list price of the applicable products and services giving rise to the claim; or (b) \$50,000 USD. These limitations apply whether arising under contract, tort, warranty or any other theory of liability, even if advised or aware of the possibility of such damages and even if any remedy fails of its essential purpose.

8. **Intellectual Property Rights.**

All rights, titles and interests to Supplier’s intellectual property, including without limitation those embodied in the Products and Services, remain with Supplier. Customer will not use the name of Supplier nor any Supplier trademarks, trade names, service marks, or quote the opinion of any Supplier employee in any advertising or otherwise without first obtaining the prior written consent of Supplier.

9. **Compliance with Laws.**

You will comply with all laws and regulations applicable to your use of the Products and Services in any country in which you conduct business, including without limitation any laws relating to taxes, U.S. and applicable local export and sanctions laws, and anti-bribery or competition laws (“**Applicable Laws**”). The Products and Services are for your own use, and you will not, and will not allow, the Products and Services to be exported, re-exported, sold or transferred (i) to U.S. embargoed countries (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) or (ii) without a license where such license is required by Applicable Laws.

10. **Confidentiality and Non-Disclosure.**

Customer agrees to protect Supplier’s confidential information with the same degree of care, but no less than a reasonable degree of care, as Customer uses with respect to its own confidential information. Customer will not disclose the confidential information of Supplier without the prior written consent of Supplier. “**Confidential Information**” means any oral, written, graphic or machine-readable information disclosed by Supplier that should be reasonably understood to be confidential.

11. **Termination and Data Backup and Removal.**

Either party may terminate this Agreement and the rights granted hereunder at any time upon written notice. All confidentiality obligations will survive termination. Upon termination, Customer shall promptly return the Products as directed by Supplier. At any time, Supplier may require that



the Products be returned. As directed by Supplier, Customer shall promptly cease all use and provide written notice certifying destruction of software (including copies) to Supplier. **Customer must backup any data or software and remove any confidential, non-public or sensitive data ("covered data") from the products prior to surrendering them to supplier. Under no circumstances will supplier be liable for lost data or software, for costs associated with data or software restoration, for any disclosure of confidential or sensitive data residing on the products or utilized in the services or for any legal or compliance requirements or special rules that may apply to the covered data.** Customer agrees to indemnify, defend and hold harmless Supplier from any and all claims or liability against Supplier arising from any Covered Data that may be on the Products or utilized in the Services.

12. **Governing Law.**

This Agreement, and **Any Claim, Dispute, Or Controversy (Whether In Contract, Tort, Or Otherwise, Including Statutory, Consumer Protection, Common Law, Intentional Tort And Equitable Claims) Between Customer And Supplier**, including their affiliates, contractors, and agents, and each of their respective employees, directors, and officers (a "**Dispute**") will be governed by the laws of the State of Texas (or by U.S. federal laws if you are a Federal End User, or by laws of the province of Ontario and the federal laws of Canada applicable therein if you are a Canadian entity), without regard to conflicts of law. The UN Convention for the International Sale of Goods will not apply.

13. **General.**

This Agreement ([GENERAL TERMS](#) and applicable [CUSTOMER-SPECIFIC TERMS](#)) constitutes the entire agreement between you and Supplier regarding the Products and Services. Customer will not transfer or assign this Agreement. Supplier and Customer are independent contractors and neither is a legal representative or agent of the other.

[Customer-Specific Terms](#) apply to you if you are a [channel partner](#) or a [public customer](#). If there is a conflict, the Customer Specific Terms will take precedence over the General Terms.





## **Customer Specific Terms**

### **Channel Partners**

#### **Additional Terms Applicable to Resellers, Distributors, System Integrators, OEM Customers and other Channel Partners (“Channel Partners”)**

Supplier may provide, or may authorize you to provide, the Products and Services to your customer or potential customer (each, “**End User**”) for the Purpose. You must provide the End User's name and address, and any other information requested by Supplier. Products and Services may be provided to an End User only if the End User has agreed in writing to the terms of this Agreement. For the foregoing purpose, the applicable references to “you” or “Customer” in the Agreement shall mean “End User”. You shall ensure End User agrees and complies with this Agreement and all Applicable Laws, and you are responsible for End User's failure to comply with such terms and Applicable Laws. You shall indemnify and hold Supplier and its licensors and suppliers harmless against any claims arising out of End User's noncompliance with the terms or use of the Products and Services. You may not modify the Products and Services without Supplier's prior written permission; and if Supplier grants such permission, you agree to take responsibility for all issues and claims related to your modifications, for maintaining regulatory and safety compliance after you have modified the Products and Services, and for obtaining any regulatory approvals or certifications that may be required as a result of your modification. If you do not purchase the Products, you are responsible for removing all modifications and restoring the Products to their original condition (reasonable wear and tear excluded) before returning the Products to Supplier. You will indemnify, defend and hold Supplier and its licensors and suppliers harmless from any and all claims or liability against Supplier arising from your modifications. For the avoidance of doubt, you remain Supplier's sole contractual partner under this Agreement and as such are solely responsible for returning the Products and Services to Supplier at the end of the Evaluation Period unless you have purchased the Products and Services.

### **United States**

#### **Additional Terms for US Public and Healthcare Customers**

The terms in this Additional Terms for US Public and Healthcare Customers section (“**US Public Customer Terms**”) below apply to public sector or healthcare customers such as any healthcare provider, department, agency, division or office of the United States government (“**Federal End User**”), or any department, agency, division, or office of any district, state, county or municipal government within the United States (together with Federal End Users, “**Public Customer**”), and supplement the [GENERAL TERMS](#). If you are a Federal End User then references to “Supplier” below will mean Dell Marketing L.P. or Dell Federal Systems L.P.

1. Any portion of the [GENERAL TERMS](#) that is not applicable by law shall not apply to you.
2. Federal End User is authorized to perform any testing it deems necessary to evaluate the Products and Services for official Government purposes only, without obligation to pay any compensation or consideration.
3. Federal End User shall notify Supplier when evaluation and testing is complete. Supplier will arrange for the return of the Products and Services at no cost, unless the Federal End User has entered into a separate agreement to purchase or lease the Products and Services from



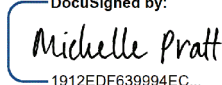
Supplier or a Channel Partner. Disputes with Federal End Users shall be governed by the Contract Disputes Act of 1978, as amended.

4. Software and documentation provided with the Products and Services constitutes “commercial items” as defined at 48 C.F.R. 2.101; consisting of “commercial computer software” and “commercial computer software documentation” as used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 to 227.7202-4, Federal End Users acquire only the rights set forth in the applicable licensing agreement (see Section 2 of the General Terms).

5. Public Customer does not intend to award a contract on the basis of Supplier’s provision of the Products and Services, nor grant Supplier any preferential treatment in any contracts or task or delivery orders currently being performed by Supplier, or future procurement actions.

6. You confirm that (a) you are a contracting officer or other authorized representative of Public Customer with authority to bind the Public Customer for purposes of accepting the Products and Services as set forth herein, and (b) you have read and agree to be bound by the terms and conditions of any licensing agreement applicable to the Products (see Section 2 of the General Terms) or service terms applicable to Services (see Section 3 of the General Terms).

**Accepted and Agreed:**

<b>CUSTOMER NAME AND ADDRESS:</b> Fairfax County Public Schools	
By:	<div>DocuSigned by:  1912EDF639994EC...</div>
Print Name:	Michelle Pratt
Title:	Director, Procurement
Date:	10/4/2021