

## TECHNOLOGY REFRESH PROGRAM AGREEMENT

Customer: **DISTRICT BOARD OF TRUSTEES OF MANATEE COMMUNITY COLLEGE**  
Agreement Number **02000014**

Dell Marketing L.P. ("Dell") and Customer, identified above, agree that the following terms and conditions of this Technology Refresh Program Agreement will apply to purchases by Customer and/or Buyer(s) of products ("Products") from Dell in the United States.

### 1. **Definitions:**

- 1.1. **Buyer(s):** Customer and its subsidiaries and affiliates that are majority-owned by Customer, that are under the control of Customer, or that are governmental entities permitted by statute or other governmental action to procure under this Agreement.
- 1.2. **Effective Date:** The date that this Agreement is signed by Customer's authorized representative
- 1.3. **End Date:** The date of termination of this Agreement.
- 1.4. **Product(s):** Includes Dell-branded hardware and third party products, including but not limited to software. A current retail list of Products may be found at [www.dell.com/products](http://www.dell.com/products).
- 1.5. **Dell Software & Peripheral ("Dell S&P") Product(s):** Third-party name-brand peripherals and software, including but not limited to printers, monitors and networking equipment. A current retail list of Dell S&P Products may be found at [www.dell.com/products/dellware](http://www.dell.com/products/dellware).
- 1.6. **Confidential Information:** The Confidential Information disclosed under this Agreement ("Confidential Information") is described generally as current and future product information, financial and other business information including, but not limited to all confidential and proprietary information so designated in writing or verbally by the words "Confidential", "Proprietary" or similar.s

### 2. **Term; Termination:**

- 2.1. **Term:** This Agreement is in effect beginning on the Effective Date and will continue in effect for three (3) years. It will renew automatically for successive one (1) year terms unless terminated by either party hereto.
- 2.2. **Termination:** Either party may terminate this Agreement at any time on at least thirty (30) days' prior written notice to the other. In the event of Customer's material breach of or failure to timely pay any sum due under this Agreement, Dell may terminate this Agreement if the breach or non-payment is not cured within ten (10) days after written notice from Dell.
- 2.3. **Termination of Funding:** In the event that all funding for Customer is terminated or otherwise becomes unavailable, despite Customer's best efforts to prevent such termination or unavailability, this Agreement shall terminate upon Dell's receipt of Customer's written notice of funding termination or unavailability. Customer agrees to pay for any Products shipped prior to receipt of the notice of funding termination or availability.

### 3. **Buyers:**

- 3.1. Each Buyer agrees that it is buying for its own use, and not for resale.
- 3.2. Dell may extend this contract for use by other community colleges, state universities, district school boards and other public educational institutions within the State of Florida. Dell may also extend this contract for use by other private educational institutions, with the exception of the leasing portion of this Agreement. A separate lease offering will be made available to such private institutions that choose to use this Agreement. Such purchases shall be governed by the same terms and conditions as set forth herein, as provided in State Board of Education Rule 6A-14.0734(2)(d). Neither Customer nor any other member institution of the Florida Community College System shall have any liability or responsibility for performance by any other purchaser electing to use this contract
- 3.3. As outlined in Schedule C, faculty, students and staff of the FCCS may purchase products at the prices set forth herein. In addition, Dell may offer special promotional bundles to faculty, students and staff through Dell's FSS web site. Dell reserves the right to require these end users to make payment in advance, and Customer is not responsible for providing support to them.
- 3.4. In order to continue performance, the rights and responsibilities of Customer may be assigned to another institution pursuant to Section 19.2. Dell will not withhold consent to such an assignment.

4. **Orders:** Buyers may place orders by telephone, Internet or in writing; telephone orders must be confirmed in writing; written orders and telephone order confirmations may be sent by facsimile. An order (including any order placed under a quotation issued by Dell) is subject to acceptance by Dell. A Buyer may change or cancel an order or any part of it at any time up until Dell begins manufacture of the affected Products.

5. **Prices:**

5.1. Prices:

5.1.1. Prices are Dell's then-current published prices less Customer's applicable discount. Dell reserves the right to change published prices at any time for any reason

5.1.2. For large quantity purchases of a single or limited number of configurations, Dell may offer special pricing to Customer. Dell need not extend the same off to other Buyers unless they commit to purchase a similar quantity.

5.2. **Quotations:** Quotations issued by Dell are valid for a period of thirty (30) calendar days from the date the quotation is issued.

5.3. **Shipping and Handling Charges:** Dell will pay charges for shipping and handling for products that are shipped by Dell's designated carrier. If Buyer selects a carrier other than Dell's designated carrier, then Dell will ship freight collect. Expedited delivery will be subject to additional charges. Shipping costs for faculty, staff & students are subject to Schedule C.

5.4. **Taxes:** Except for Dell's franchise taxes and taxes on Dell's net income, Buyer is responsible for sales and all other taxes associated with the transaction and the taxes will be shown on Dell's invoice. If Buyer provides Dell with a valid tax exemption certificate, Dell will not invoice Buyer for the affected taxes.

6. **Discounts:**

6.1. **Discounts:** Customer's discount percentages that are applicable to Products purchased by Buyers are listed by Product classification below:

Category	Products	Discounts
A	Selected PowerEdge; Selected PowerVault; Selected Peripherals; Selected OptiPlex; Selected Latitude; Selected Precision; Customer Kits on Dell Stocked Accessories and Options	<b>10.00%</b>
H	Value Latitude, OptiPlex, Workstations, Future Products to be Determined	<b>5.00%</b>
O	DirectLine Service; 4-Hr On-Site Critical Care Plus; Business Care Plus On-Site (all years)	<b>14.00%</b>
S	Selected Promotional Offers; Consumer Inspiron; Consumer Latitude, PowerEdge SC	<b>3.00%</b>
W	Selected Discountable Dimension Products	<b>3.00%</b>
Z	Items Designated as Non-Discountable at any time; Dimension; Selected PowerEdge and Service	<b>0.00%</b>
M & Z	Dell Software and Peripherals	<b>Cost +5%</b>

6.2. **Discounts Not Retroactive:** If the Effective Date is prior to the date on which this Agreement has been mutually executed by the Customer and Dell, Customer understands that the discounts will not apply retroactively to any Products ordered before the date of mutual execution.

7. **Bundled Configurations:**

7.1. Prices are set forth for bundled configurations as listed in Dell's Response # 201070137KS. The discounts for these products are 23% off of Dell's retail price list. The bundles shall consist of: Two (2) desktop configurations, two (2) laptop configurations and two (2) server configurations. These bundles will be maintained on Customer's Premier Page and any future bundles will be mutually determined on a quarterly basis (or more frequent as required) and, as technology advances. The updated bundles will not be incorporated herein, but maintained on the Premier Page. The parties may agree to incorporate additional bundled configuration to which these discounts may be applied. Factory installed upgrades to bundled configurations will be priced at the Category A product discount. Unless specifically authorized by Dell when the bundles are established, downgrades of bundled configurations will not be permitted. Please note that Dell reserves the right to adjust the price of the bundled configurations to reflect any increase in the cost to Dell that is due to any factor beyond the control of Dell (such as, without limitation, significant increase in the industry-wide costs of labor, materials or other costs of manufacture).

- 7.2. In the event that future price reductions, coupled with the above mentioned discount, cause said bundles to trigger negative profit margins (as determined by Dell), Dell reserves the right to reconfigure bundle options and discounts to maintain a base line positive profit margin (as determined by Dell).
8. **Product Classifications:** Classification of Products is subject to change by Dell at any time if Dell changes classifications for its customers generally.
9. **Payment:** Invoices are due and payable in full as presented within thirty (30) days of the date of Dell's invoice. The invoice date will not be earlier than the shipment date of the Products invoiced. Dell may invoice parts of an order separately. Buyer will pay each invoice accordingly. If any payment due from any Buyer is late, Dell may, in addition to all other remedies, refuse to ship Products ordered by that Buyer until Buyer's account is current.
10. **Product Update and Revision:** Dell's policy is one of on-going product update and revision. Dell may revise and discontinue Products at any time, without notice. The Products shipped to a Buyer will meet or exceed the material specifications of Products ordered; however, minor differences between Products as shipped and products as described in a specification sheet or catalog are possible. The parts and assemblies used in building the Products sold under this Agreement are selected from new and equivalent to new parts and assemblies in accordance with industry practices.
11. **Shipping:**
- 11.1. **Delivery:** All ship dates are Dell's estimates only. Many factors, including availability of parts and assemblies, affect Dell's production scheduling and ship dates.
- 11.2. **Risk of Loss:** Loss or damage that occurs during shipping by a carrier selected by Dell is Dell's responsibility. Loss or damage that occurs during shipping by a carrier selected by Buyer and shipped freight collect is Buyer's responsibility.
- 11.3. **Title:** Title to hardware Products passes from Dell to Buyer on shipment from Dell's facility.
12. **"Total Satisfaction" Return Policy:**  
Under Dell's "Total Satisfaction" Return Policy, as in effect from time to time, Dell-branded hardware Products may be returned to Dell for a refund of the purchase price if already paid. A Credit Return Authorization Number must be requested by Buyer and issued by Dell before Products are returned. The Products must be shipped to Dell in their original packaging, shipping charges prepaid. Risk of loss or damage during shipment to Dell is the responsibility of Buyer. Returned Products must be in as new condition, and all of the manuals, diskettes, power cords and other items included with Products must be returned.
13. **Limited Warranties:**
- 13.1. Dell-Branded Hardware Products:
- 13.1.1. **Invoice:** The warranty period for a Dell-Branded Hardware Product will be referenced on Buyer's invoice. The limited warranty statements for Dell-Branded Hardware Products are included in the documentation provided with such Dell-Branded Hardware Products. Dell may revise its limited warranties from time to time, but no change will be effective for Dell-Branded Hardware Products that have already been ordered. Dell S&P Products and other third party products are not covered by this Section 13.1 and any warranties for those products are provided by the original manufacturers.
- 13.1.2. **Specifications:** Dell-Branded Hardware Products will conform to the specifications current when the Products are shipped. Dell will pass good title to Dell-Branded Hardware Products to Buyers.
- 13.1.3. **Configurations with Third Party Products:** Dell does not warrant that Products will function in any specific configuration that includes hardware or software not provided by Dell or will function to produce a particular result, even if the specific configuration or the result has been discussed with Dell personnel. If there is a specific configuration a Buyer wants to use or a result it wants to achieve, it must order the Dell-Branded Hardware Products Buyer's needs require and evaluate them. If the configuration does not function properly or the result sought is not obtainable, the Buyer may return the Dell-branded hardware Products in accordance with Dell's "Total Satisfaction" Return Policy.
- 13.1.4. **Warranty Repairs and Replacement Products:** Dell owns all warranty repair parts removed from repaired Dell-Branded Hardware Products. Dell uses new and reconditioned parts made by various manufacturers in performing warranty repairs and building replacement products.
- 13.2. Dell Software & Peripheral Product(s):
- 13.2.1. **Warranty:** Dell does not warrant third-party software products. Any warranty provided on a software or Dell S&P product is provided by the publisher or original manufacturer and may vary from product to product.
- 13.2.2. **License Agreement:** All software, including Microsoft software, is provided subject to the

license agreement that is part of the package. Dell has the right to provide such software to Customer. Each Buyer purchasing under this Agreement agrees that it will be bound by the license agreement once the package is opened or the seal is broken.

13.2.3. **Returns:** Dell S&P Products carry different return and warranty policies than Dell-branded hardware Products. The Dell S&P Products that are in the same condition as when received by Buyer may be returned to Dell in accordance with the then-current Dell S&P return policy, which may be found at <http://commercedw.us.dell.com/dellcatalog/policies.asp>.

13.2.4. **Refund or Replacement:** To qualify for refund or replacement, a Dell S&P Product must be returned in 100% complete condition, with the original packing material and all manuals and other accessories originally provided with the Product by the original manufacturer. Credits for return will be issued upon receipt of all of these items and satisfaction of the other requirements of the then-current Dell S&P return policy, which may be found at <http://support.dell.com/us/en/splans/Ready.htm#DellWare>. A return authorization number issued by Dell must accompany all Dell S&P Product returns.

13.3. **WARRANTY DISCLAIMERS:** DELL MAKES NO EXPRESS WARRANTIES FOR DELL-BRANDED HARDWARE EXCEPT THOSE INCLUDED IN THE DOCUMENTATION PROVIDED WITH THE PRODUCT. ANY WARRANTIES, SERVICE, OR TECHNICAL SUPPORT WILL BE EFFECTIVE ONLY UPON DELL'S TIMELY RECEIPT OF PAYMENT IN FULL OF THE APPLICABLE INVOICE. DELL DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ANY WARRANTY PROVIDED ON SOFTWARE OR A DELL S&P PRODUCT IS PROVIDED BY THE PUBLISHER OR ORIGINAL MANUFACTURER AND MAY VARY FROM PRODUCT TO PRODUCT.

13.4. **LIMITATION OF LIABILITY:** NEITHER PARTY WILL HAVE ANY LIABILITY BEYOND THE REMEDIES SET FORTH IN THIS AGREEMENT, INCLUDING ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE, OR ANY LIABILITY FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PURCHASE, USE, OR PERFORMANCE OF THE PRODUCTS, EVEN IF THE PARTY HAS BEEN ADVISED OF THEIR POSSIBILITY. DELL WILL NOT HAVE ANY LIABILITY WHATSOEVER FOR ANY DAMAGES ARISING FROM THE USE OF THE PRODUCTS IN ANY HIGH RISK ACTIVITY, INCLUDING THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT OR WEAPONS SYSTEMS.

14. **Service and Support:** Dell will make available to Buyers in the United States the same service and support offerings that are made generally available to customers that are similarly situated to Customer. The service and support will be provided in accordance with the then-current terms and conditions set by Dell and/or the third party service provider(s).

15. **Infringement of Third Party Rights:** Dell will indemnify, defend and hold Buyer harmless from a claim that a Dell-Branded Hardware Product infringes on another person's or company's patent, copyright, trade secret or other intellectual property rights in the United States. Dell will have no obligation under this Section with respect to any claim of infringement resulting from an unauthorized modification of a Product by Buyer or from any combination, operation, or use of the Products with systems other than those provided by Dell to the extent that such a claim is caused by such modification, combination, operation, or use of the Products. Following notice of a claim or a threat of actual suit, Dell will, at its own expense and at its option, (1) resolve the claim in a way that permits continued ownership and use of the affected Dell-Branded Hardware Product; (2) provide a comparable replacement at no cost; or (3) accept return of the Dell-Branded Hardware Product, freight collect, and provide a reasonable, depreciated refund. This Section is the exclusive statement of Dell's liability and responsibility for the infringement of intellectual property rights.

16. **Export Restrictions:** Buyer acknowledges that the Products are subject to United States export control laws and agrees to comply with all applicable laws, regulations, rules and orders.

17. **Statutory Requirements:** This contract is subject to the following statutory requirements:

17.1. The invoices submitted by Dell to Customer shall be in sufficient detail for a proper post audit thereof.

17.2. Customer may unilaterally cancel this contract if Dell should refuse to allow public access to all documents, papers letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Dell in conjunction with this contract, notwithstanding any information which is considered confidential and subject to Section 18 of this Agreement.

17.3. Renewal of this contract annually is contingent upon satisfactory performance evaluations of Dell by Customer and subject to the availability of funds.

- 17.4. Customer's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature of the State of Florida.
18. **Confidential Information:** In order to protect certain confidential information, Dell and Buyer (individually referred to as a "Party" and collectively referred to as the "Parties"), agree that:
- 18.1. **Discloser:** The Parties disclosing Confidential Information (each, a "Discloser") may be Dell or Buyer.
- 18.2. **Term:** This Section is applicable only to Confidential Information that is disclosed between the Effective Date and the End Date.
- 18.3. **Expiration of Duty of Care:** A Recipient's duty to protect Confidential Information expires three (3) years from the End Date. A Recipient, upon Discloser's written request, will promptly return all Confidential Information received from the Discloser, together with all copies, or certify in writing that all such Confidential Information and copies thereof have been destroyed.
- 18.4. **Duty of Care:** A Recipient will use the same degree of care, but no less than a reasonable degree of care, as the Recipient uses with respect to its own similar information to protect the Confidential Information and to prevent (a) any use of Confidential Information not authorized in this Agreement, (b) dissemination of Confidential Information to any employee of Recipient without a need to know, (c) communication of Confidential Information to any third party or (d) publication of Confidential Information. Customer's obligations hereunder are subject to Florida public record law.
- 18.5. **Identification:** A Recipient will have a duty to protect Confidential Information (a) if it is marked or accompanied by documents clearly and conspicuously designating them as "confidential" or the equivalent;(b) or if it is identified by the Discloser as confidential before, during or promptly after the presentation or communication.
- 18.6. **Obligation:** This Agreement imposes no obligation upon a Recipient with respect to Confidential Information which (a) was known to the Recipient before receipt from the Discloser; (b) is or becomes publicly available through no fault of the Recipient; (c) is rightfully received by the Recipient from a third party without a duty of confidentiality; (d) is disclosed by the Discloser to a third party without a duty of confidentiality on the third party; (e) is independently developed by the Recipient without a breach of this Agreement; or (f) is disclosed by the Recipient with the Discloser's prior written approval. If a Recipient is required by a government body or court of law to disclose Confidential Information, the Recipient agrees to give the Discloser reasonable advance notice so that Discloser may contest the disclosure or seek a protective order.
- 18.7. **Right to Disclose:** Each Discloser warrants that it has the right to disclose its Confidential Information.
- 18.8. **Exchange:** This Agreement imposes no obligation on a Party to exchange Confidential Information or to purchase, sell, license, transfer or otherwise make use of any technology, services or products.
- 18.9. **Applicable Laws; Exports:** A Recipient will adhere to all applicable laws and regulations of the U.S. Export Administration and will not export or re-export any technical data or products received from a Discloser, or the direct product of such technical data, to any proscribed country listed in the U.S. Export Administration regulations unless properly authorized by the U.S. government.
- 18.10. **Intellectual Property Rights:** No Party acquires any intellectual property rights under this Agreement except the limited rights necessary to carry out the purposes as set forth in this Agreement. Subject to the obligations of this Agreement, no Party will be precluded from independently developing technology or pursuing business opportunities similar to those covered by this Agreement. Each Party retains sole discretion to assign or reassign the job responsibilities of its employees.
- 18.11. **Damages:** Each Party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.
- 18.12. **Enforceability:** The obligations and duties imposed by this Agreement with respect to any Confidential Information may be enforced by the Discloser of such Confidential Information against any and all Recipients of such Confidential Information.
- 18.13. **Other Nondisclosure Agreements:** Agreement to this Section and execution of this Agreement neither invalidates nor controls the effect and validity of any existing nondisclosure agreements between the Parties or of any other nondisclosure agreements between the Parties entered hereafter ("Nondisclosure Agreements").
19. **Miscellaneous:**
- 19.1. **Amendments:** Except as otherwise stated in this Agreement, this Agreement may not be amended except by a subsequently dated written instrument signed on behalf of both parties by a duly authorized representative. Specifically, this Agreement may not be amended by addition of terms or conditions to purchase order, delivery orders, or other instruments absent signature by authorized representatives of Dell and Buyers.

- 19.2. **Assignment:** Either party may assign this Agreement, with its Schedules and any addenda hereof, with notice to the other party to any entity owned or controlled by the party's parent corporation. Otherwise, neither party may assign this Agreement without the other party's prior written consent, which will not be unreasonably withheld or delayed.
- 19.3. **Compliance:** Buyer agrees to comply with all applicable laws, rules and regulations.
- 19.4. **Currency; Collection:** All payments due to either party for any reason will be made in U.S. currency. In the event that Dell is required to pursue the collection of past due amounts from Buyer, Dell will be entitled to recover all costs associated with collection, including attorneys' fees and court costs, as well as interest accrued at the highest rate allowed by law from the date of notice of non-payment is given by Dell.
- 19.5. **GOVERNING LAW:** THIS AGREEMENT IS GOVERNED BY FLORIDA LAW, EXCLUSIVE OF ANY PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS, AND WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.
- 19.6. **Independent Contractors:** Dell and Customer are independent contractors. Neither party will state, imply nor knowingly permit anyone, including Buyers, to infer that any other relationship exists between the parties without the other party's prior written consent.
- 19.7. **Notices:** All notices under this Agreement, except as otherwise expressly provided, will be in writing and served by machine-confirmed facsimile, overnight delivery, personal service or by certified or registered mail, return receipt requested, and will be deemed to have been given or received on the earlier of actual receipt or, if mailed, on the fifth (5th) day after it is properly addressed to the party to be notified, certified or registered with return receipt requested, and properly stamped, sealed and deposited in the U.S. mail. Notices from one party to the other will be sent to the respective address listed under the parties' signatures below. Either party may change its address for notices by giving notice of the new address to the other party. Notices to Dell will be sent to the attention of Dell's Contracts Manager. Notices to Customer will be sent to the attention of Customer's then-current liaison.
- 19.8. **Security Interest:** Buyer agrees that Dell retains a purchase money security interest in, and Buyer grants Dell a lien on, Buyer's right, title, and interest in all Products wherever located (and all replacements or proceeds) until the applicable invoice is paid in full. Buyer further agrees that Dell may use this Agreement, as well as any applicable invoices, as a financing statement for perfecting this interest.
- 19.9. **Severability:** If any provision of this Agreement is void or unenforceable, the parties agree to delete it and agree that the remainder of this Agreement will continue to be in effect.
- 19.10. **Force Majeure:** Neither party shall be liable or deemed in default for any delay or failure in performance under this agreement or interruption of service resulting directly or indirectly from acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, fires, explosions, earthquakes, floods, the elements or any other cause beyond the reasonable control of such party. Dell and Buyers agree to address or minimize the impact of such acts by taking reasonable measures to ensure to the extent possible performance hereunder.
- 19.11. **Waiving of Rights:** No waiver of any term or condition is valid unless it is in writing and signed by a duly authorized representative of the waiving party. The failure or delay of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement or to exercise any right, power or privilege under this Agreement, shall not operate or be construed as a relinquishing of performance under this Agreement or as a waiver of any of the same or similar rights, power or privileges in the future, and the obligation of the other party with respect to such rights or performance shall continue in full force and effect as if such failure or delay never occurred. A valid waiver is limited to the specific situation for which it was given.
- 19.12. **Paragraph Headings:** Paragraph headings used in this agreement are for reference purposes only and shall not be interpreted to limit or affect in any way the meaning of the language contained in such paragraphs.
- 19.13. **Schedules:** By the execution of this Agreement, Dell and Customer incorporate herein for all purposes the following schedules and their terms and conditions:

Schedule A, DellPlus Integration Services Schedule
Schedule B, Leasing Schedule
Schedule C, Faculty, Staff and Student Purchases

In the event of conflict between this Agreement and any of the above Schedules, the Agreement controls.

- 19.14. **Items Incorporated by Reference/Order of Precedence:** The following documents are incorporated herein and in the event of conflicting provisions, such documents shall be construed according to the following priority: Any addenda and/or amendments (most recent with first priority) to this Agreement, this Agreement, Dell's Response #20107013KS, and Customer's Request for Proposal #RFP 01-01.

- 19.15. **Attorney Fees:** In any action brought between the parties to enforce or construe the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including any incurred on appeal.
- 19.16. **Entire Agreement:** This Agreement is the exclusive statement of the contract in effect between Dell and Customer regarding this subject matter and supersedes any prior agreements, if any, made between the parties relative to such subject matter. No oral understandings, statements, practice, or other inducements contrary to the terms of this Agreement exist.

This Agreement has been executed on behalf of the parties by their duly authorized representatives, to be effective as of the Effective Date.

**AGREED: DISTRICT BOARD OF TRUSTEES OF  
MANATEE COMMUNITY COLLEGE**

**ACCEPTED: DELL MARKETING L.P.**

BY: SIGNATURE

BY: SIGNATURE

NAME: SARAH H. PAPPAS

NAME: ANDY WOODARD

TITLE: PRESIDENT

TITLE: CONTRACT MANAGER, PUBLIC CONTRACTS

DATE: 3/22/02

DATE: 3/19/02

## SCHEDULE A

### DELLPLUS INTEGRATION SERVICES

#### Introduction

DellPlus is the unique Custom Factory Integration service from Dell®, which provides an extensive range of custom built, factory installed solutions. After determining your exact needs, Dell performs the custom configuration during the initial system build. It's 'one-touch', high quality, custom integration, which means that systems are not twice built and twice shipped via the channel. Instead, Dell provides an efficient model of installing and configuring custom hardware and software as your Dell system is being manufactured in an ISO 9002-certified factory. For additional information see <http://www.dell.com/dellplus/index.htm>

#### Integration Services which may include:

- installation of buyer's software image (which may include industry standard and/or custom software),
- installation or integration of a pre-configured bundle of third party hardware and/or software, in a Dell system ("Order Ready"), and
- asset tagging, hardware integration (which may include standard Dell-branded components or non-standard third party components) or other system integration services; and

#### Image Management Services which may include:

- development by Dell of the buyer-specific DellPlus Configuration; and
- validation by Dell of the buyer-specific DellPlus Configuration.

Any wholly-owned subsidiary or affiliated company under common control with Buyer may obtain DellPlus Services from Dell or any wholly-owned subsidiary or affiliate of Dell under the authority of, and in accordance with, the terms and conditions of the Agreement.

"Dell Standard Products" refers to those portions of a DellPlus Configuration that are Dell-branded and that are originally listed on Dell's standard parts lists. "Third Party Products" refers to any hardware or software, other than Dell Standard Products, that are part of a DellPlus Configuration, whether provided by Buyer or procured for Buyer by Dell.

#### Purchasing Custom Integration Services:

1. **Terms of Purchase.** Buyer's purchase of Dell products with DellPlus Services (in each case, a "DellPlus Configuration") will, in each case, be governed by the purchase agreement between Dell and Buyer or, in the absence of an agreement, Dell's local standard terms and conditions, as reflected on the invoice, quotation or order acknowledgement received by Buyer or provided to Buyer by the local Dell affiliate (in either case, defined as the "Purchase Agreement"). If the terms and conditions of this Agreement differ from the terms of the Purchase Agreement, this Agreement shall control.
2. **Technical Specifications.** Dell may, from time to time at Buyer's request, deliver a DellPlus Configuration for a per-system fee to be determined between the parties. Buyer acknowledges that the DellPlus Configurations are of its choosing, and that the Buyer is responsible for determining its technical specifications for each DellPlus Configuration and for ensuring that those technical specifications are properly documented to Dell in a verified and signed "Technical Specification" or "Statement of Work" (SOW) form. Dell shall be entitled to rely on the Technical Specification and/or the SOW form as well as all statements of Buyer set forth therein. Dell is not responsible for liability or damage arising from the installation of a DellPlus Configuration performed in accordance with the Technical Specifications, SOW, or Buyer's instructions. Dell is not responsible for the operation or suitability of any DellPlus Configuration or for any revision or engineering changes in any third party products included in a DellPlus Configuration. If Dell is of the reasonable view that the DellPlus Configuration or Image Management Services requested by Buyer are not technically feasible, Dell

reserves the right to refuse to proceed with the development of such configuration or the performance of the SOW at any time.

3. **Purchase of Third Party Products.** Buyer shall be responsible for procuring any Third Party Products included in a DellPlus Configuration including items on Dell's S&P Price List or Gigabuy's website. If Buyer elects to have Dell procure such Third Party Products, Buyer shall provide to Dell a firm purchase order for the number of DellPlus Configurations to be ordered for which Dell is requested to procure such products. In the event the Third Party Products procured by Dell are not used for DellPlus Configuration orders within a reasonable time following purchase of the parts by Dell, the Third Party Products will be shipped and invoiced to Buyer, and Buyer will pay for these parts within thirty (30) days after the date of invoice. Buyer warrants that it has read and accepted the terms and conditions of the software license for all software Third Party Products, and has the right to authorize Dell to make, copies, alterations, modifications or adjustments to any software included in a custom software image for purposes of installation of the DellPlus Configuration. If purchasing for internal use, Buyer accepts responsibility for the licensing, copying and or distribution of any such software for the benefit of its employees or agents who are end users of the DellPlus Configuration. If purchasing for resale, Buyer accepts responsibility for the licensing, copying and or distribution of any such software by or for any end user purchaser or recipient of such DellPlus Configuration. Buyer warrants that it has obtained the right to authorize Dell to copy, maintain, store and install any software included in a DellPlus Configuration.

**For Custom Integration Services Purchased:**

- **Software Installation– Buyer-Provided Image.** Buyer will provide Dell with any custom software image to be installed in a DellPlus Configuration and authorizes Dell to copy, install and modify, if necessary, all software to be installed in each DellPlus Configuration or to be recorded in electronic media for subsequent re-installation or back-up of the DellPlus Configuration.

**For Image Management Services Purchased:**

1. **Image Management Services.** Dell will perform the selected IM Services as specified in a written Statement of Work ("SOW") as agreed by Dell and Buyer. Each IM Services transaction may include one or more of the following service offerings:
  - (a) **Image Development & Validation:** DellPlus Configuration development by a Dell technical team, creating a unique DellPlus Configuration that is compatible with Dell Standard Products. Validation is the execution of a Buyer-defined testing protocol to test application and networked peripheral functionality with the newly developed DellPlus Configuration and specified in the SOW.
  - (b) **Image Maintenance:** Notification of changes to Dell Standard Products that affect the DellPlus Configuration and correction to the DellPlus Configuration.
2. **IM Services Description.** Dell will assign a Project Manager to each IM Services transaction. The Project Manager will work with Buyer to establish the SOW for the transaction and coordinate the scheduling and performance of the development work on the Buyer's site. Buyer may elect to purchase two separate IM Services: (1) image development and validation and (2) image maintenance.
  - (a) Image development and validation may include, if specified in the SOW:
    - Verify BIOS is set to Buyer specifications
    - Load core operating system and drivers
    - Configure network environment settings
    - Check device manager for hardware conflicts
    - Load and configure applications

- Configure user (G.U.I.) interface as specified by Buyer
- Execute validation steps as provided by Buyer. The Buyer will provide its validation requirements to Dell as part of the SOW.

- (b) **Image Maintenance.** For each IM Services transaction in which Buyer elects to purchase Image Maintenance, Dell will revise the Buyer's factory-installed DellPlus Configuration to address Covered Hardware Transitions. A Covered Hardware Transition is: (i) any Hardware transitions or Hardware end-of-life applying to Dell standard hardware parts or other hardware parts specified by Buyer's applicable DellPlus configuration and installed during Dell's manufacturing process; (ii) changes to processors and motherboards installed by Dell at Dell's factory; and (iii) changes to drivers installed by Dell at Dell's factory.

Buyer changes to the factory-installed DellPlus Configuration, including adding new software applications to the core hard drive image or transitioning a hard drive image to a new software platform or a new DellPlus Configuration will require the development of a new hard drive image and will be treated as a separate IM Services transaction.

3. **Buyer Responsibilities.** Dell's performance and delivery of the IM Services are, in part and necessary, contingent upon: (i) Buyer providing access, upon Dell's reasonable request, to Buyer's personnel, facilities, equipment, hardware, software, network, and information, and (ii) Buyer's timely decision-making, notification of relevant issues or information, and granting of approvals or permission.

4. **General.**

4.1 **Year 2000 Language.** The IM Services do not address the capability of Buyer systems to handle date data within and between the twentieth and twenty-first centuries. Buyer acknowledges that it is Buyer's responsibility to assess its current systems and the software provided by Buyer to Dell for the development of the DellPlus Configuration and take appropriate action to migrate to Year 2000 ready systems and software.

4.2 **Changes/Project Change Control.** Buyer may from time to time during the term of this Agreement request that Dell implement a change (a "Change") in the scope (including the performance of an out-of-scope service) of the IM Services performed under a specific SOW. Further, one of the following adjustment events (the "Adjustment Events") may also result in a Change hereunder: (i) a change in information which Buyer has supplied to Dell thereby that impacts pricing or schedule associated with the performance of the DellPlus Services; (ii) a change of law or other unanticipated event, including without limitation a "Force Majeure" event experienced by Dell; or (iii) an act or omission by Buyer that impacts pricing or schedule associated with the performance of the DellPlus Services.

When a Change occurs (whether by Buyer request or an Adjustment Event), Dell will seek prior approval or authorization to investigate the effect or impact of the Change. Such authorization will be documented on a Change Authorization signed by both parties. Once authorized, any Dell time for the investigation will be billed at the development and validation rate specified in the SOW. Changes to this SOW will be evaluated by Dell to determine feasibility and effects on schedule, pricing or other terms and conditions of the SOW and aspects of the engagement. Changes will only be implemented after they have been mutually agreed upon by Dell and Buyer, in writing, and this document has been updated accordingly, via the Change Authorization Form.

4.3 **Performance.** The IM Services may include project management, if purchased, and may be performed by Dell employees, subcontractors or business partners. As necessary, the Dell Project Manager will develop the desired DellPlus Configuration through a combination of on-

site and off-site activities during the course of engagement. Dell retains the right to disengage from a project if it has become evident that current systems, tools, and skill sets are incapable of developing the solution requested by Buyer.

- 4.4 **Required Approvals.** Buyer will promptly obtain and provide to Dell any custom software to be installed in a DellPlus configuration and all required consents necessary to provide the IMS described in the applicable Statement(s) of Work. A “Required Consent” means any licenses, consents, or approvals required to give Dell and its subcontractors or employees the right or license to access, copy, distribute, use and/or modify (including creating derivative works) the Third Party Products and all custom software to be included in the DellPlus Configuration, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of such products. Dell will be relieved of the performance of any SOW that may be affected by Buyer’s failure to promptly obtain and provide any required consents to Dell. Buyer is responsible: for specifying the software to be contained in the DellPlus Configuration, and for the results obtained from the purchase of the IM Services, including testing and validation of any DellPlus Configuration provided by Dell.

**Miscellaneous:**

1. **Export.** Buyer acknowledges that DellPlus Configurations and Services licensed or sold under this Agreement are subject to the export control laws and regulations of the USA or those of other countries from which they were supplied and in which they are used. Buyer confirms that with respect to the Products, it will not export or re-export them, directly or indirectly, except in accordance with those laws and regulations which include but are not limited to the US Export Administration Regulations, the Enhanced Proliferation Control Initiative (EPCI) Regulations, the Foreign Asset Control Regulations and any economic sanctions imposed by the US Government upon any foreign country. Buyer confirms that the Products will not be destined for a prohibited chemical, biological or nuclear weapons or missile use.

Buyer hereby represents and warrants that the software provided by Buyer and included in any DellPlus Configuration contains no encryption or, to the extent that it contains encryption, the software is approved for export without a license. If Buyer cannot make the preceding representation, Buyer agrees to provide Dell with all of the information needed for Dell to obtain export licenses from the United States government and to provide Dell with such additional assistance as may be necessary to obtain such licenses.

Buyer further represents and warrants the facts set forth on any technical specification sheet or other document completed by Buyer with or for Dell, which sets forth information regarding the nature of any products which are supplied by Buyer for inclusion in any Dell Products, and recognizes Dell’s reliance on the accuracy of such matters in connection with any export of the Products for or at the request of Buyer. Buyer is also solely responsible for obtaining any specific licenses relating to such export of DellPlus Configurations with the integrated software in the event that such licenses may be needed. Dell’s acceptance of any order for a DellPlus Configuration is contingent upon the issuance of any applicable export license required by the United States Government, and in no event will Dell be liable for any delays or failure to deliver such DellPlus Configurations that may result from Buyer’s failure to obtain such license.

**FOR SOFTWARE PROVIDED BY BUYER OR OTHERWISE OBTAINED BY DELL FOR PERFORMANCE OF DELLPLUS SERVICES AND INCORPORATED IN A DELLPLUS CONFIGURATION AT BUYER’S REQUEST, BUYER INDEMNIFIES DELL FOR INACCURATE REPRESENTATIONS REGARDING THE ELIGIBILITY FOR EXPORT OF SOFTWARE WITHOUT A LICENSE, AND FOR ANY FAILURE TO PROVIDE INFORMATION NEEDED TO OBTAIN A LICENSE.**

2. **Regulatory Requirements.** Dell shall not be under any obligation to perform any SOW or to install any Third Party Products as part of the DellPlus Configuration or proceed with a DellPlus Configuration if such Third Party Products, or the resulting DellPlus Configuration, do not satisfy the local regulatory requirements of the country to which the DellPlus Configuration is to be shipped.
  
3. **Indemnity.** Buyer accepts responsibility for, and agrees to indemnify and hold Dell harmless from, any and all liability, damages, claims, or proceedings arising out of (i) the failure of Buyer to obtain the appropriate license or other intellectual property rights to support any SOW signed by the parties or the installation of the DellPlus Configuration, including the right to make any copies or reproductions of the software or (ii) any inaccurate representations regarding the existence of an export license or the eligibility for export of software without a license.
  
4. **NO WARRANTIES.** DELL MAKES NO WARRANTIES RELATING TO THIRD PARTY HARDWARE OR SOFTWARE PRODUCTS INCLUDED IN ANY DELLPLUS CONFIGURATION. DELL DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO SUCH THIRD PARTY PRODUCTS.

## **SCHEDULE B**

### **LEASING**

This Schedule ("Schedule") will confirm the understanding between Dell and Buyer regarding Leasing. Dell and Buyer hereby agree as follows:

1. In addition to the outright purchase of Products, licenses for software, and Dell S&P under the Agreement, Buyer/Buyer has the option to lease such items, subject to the approval of Dell Financial Services L.P. ("DFS"), an independent entity
2. Should Buyer/Buyer enter into such lease with DFS, DFS will fund the purchase of the equipment, the license fees for the software and other associated financed items and take title to the equipment. DFS will be entitled to receive all payments of rent and any purchase option or lease renewal payments under the lease. Such right to receive payments and title to the equipment may be assigned by DFS to a third party for financing purposes, provided, however, Buyer/Buyer's lease will continue to be administered by DFS throughout the term of the lease, including the exercise of any end-of-term options under the lease.
3. Notwithstanding any provisions to the contrary in the Agreement, in the event of assignment of a lease to an Assignee, DFS or its assignee shall be bound only to the obligations of the lessor as specified in the lease and shall not be responsible for any other representations, warranties, covenants, or obligations of Dell as provided in this Agreement or any other agreement between Dell and the Buyer/Buyer.

All provisions of the Agreement and previous addenda not directly amended by this Schedule remain fully valid and in effect and are incorporated herein. This Schedule is effective as of the Effective Date of the Agreement.

## SCHEDULE C

### FACULTY, STAFF & STUDENT PURCHASES

19.15.

Faculty, staff and students (FSS) may purchase products for personal use at the prices set forth herein. In addition, Dell may offer special promotional bundles directly to faculty, staff and students. All FSS purchases are subject to applicable taxes with all shipping and handling being the responsibility of the buyer. All personal use FSS purchases are subject to Dell's Standard Terms of Sale as listed on [www.dell.com](http://www.dell.com) in lieu of the terms and conditions of this Agreement.

The FSS purchases will require the purchaser to be qualified for the purchase in accordance with our credit and payment policies, that is that we will not be looking to the university to cover those purchases. Should a FSS Purchaser's credit card or other financing institution not qualify the person for the credit requested, we will accept cashier's checks drawn on a valid financial institution for the full invoice amount. As to the installment purchase option, the purchaser will have to qualify for this under the DFS credit qualification. The Buyer acknowledges and agrees that Dell is not required to fulfill any order from an FSS Purchaser if the individual does not qualify for the credit requested and fails to otherwise provide acceptable payment for their purchase in advance of shipment.

#### **Order & Delivery Options**

While faculty, staff and students can place telephone orders directly through Dell, Dell recommends they utilize a dedicated FSS Premier Page for such transactions. This allows the Buyer the option to specify offerings as well as designate a central location for communication. Both phone and online orders can be tracked to monitor how many students have ordered systems and when they will arrive, with tracking reports available upon request.

#### **Financing Options**

Dell Financial Services LP (DFS) offers a number of manufacturer-direct business leasing programs featuring competitive rates, full integration with the Dell order process, fewer administrative hassles, faster deployment and technology refresh options to minimize obsolescence. DFS also offers Master Lease, SNAP Lease and Purchase Order programs and works with schools to choose the right lease contract based on technology and financial requirements. Students can pay by credit card, e-check or a personal purchase plan which gives them the opportunity to stretch payments over 36, 48 or 60 months with no prepayment penalty. If the faculty member, staff member or student qualifies for a personal purchase plan, a separate personal purchase plan agreement must be signed between DFS and that individual.