



MASTER COMMERCIAL CUSTOMER AGREEMENT

	Between	
Dell Marketing L.P. One Dell Way Round Rock, TX 78682 ("Dell")	and	City of Long Beach Police Department 400 W Broadway Long Beach, CA 90802 ("Customer")

34163

THIS MASTER COMMERCIAL CUSTOMER AGREEMENT ("MCCA") is entered into by Customer and Dell as of 2/1/16 (the "Effective Date"). This MCCA together with any executed Schedules hereto govern the relationship between Customer and Dell with regard to the purchase and sale of Solutions.

References to "Customer" shall include any affiliate of Customer that expressly agrees to the terms hereunder, or is otherwise legally bound to such terms, and references to "Dell" shall include any affiliate of Dell that expressly agrees to the terms hereunder or is otherwise legally bound to such terms. Dell and Customer are each referred to individually as a "party," and collectively as the "parties." Dell and Customer agree to the following terms and conditions:

1. Scope.

A. **Introduction.** Dell's sale of Solutions, as well as its performance of Services and Customer's use of the Software are subject to and governed by the terms of this MCCA. Purchases of Products, Software licenses, or Services under this MCCA shall be solely for Customer's own internal use and not for resale purposes. In instances where Customer purchases through a reseller or distributor, final prices and terms and conditions of sale will be as agreed between Customer and the third party from which Customer makes such purchases; however, the terms set forth herein are applicable to Customer's use of Dell Software and the performance of Dell Services.

B. Definitions.

- i. **"Deliverables"** means the tangible and intangible materials, including reports, studies, base cases, drawings, findings, software, manuals, procedures and recommendations that are prepared by Dell or its subcontractors uniquely and exclusively for use by Customer and that are specifically identified in a Statement of Work as Deliverables.
- ii. **"Products"** means computer hardware, related devices and other accessories and products, including standard components embedded therein, as provided by Dell hereunder.
- iii. **"Schedule(s)"** means the Dell Product Schedule, Services Schedule, Software License Schedule and/or any other schedules executed by the parties under this MCCA, as well as any attachments to such Schedule(s).
- iv. **"Services"** means any and all services provided by Dell hereunder.
- v. **"Software"** means any software, library, utility, tool, or other computer or program code, each in object (binary) code form, as well as the related media, printed materials, online and electronic documentation and any copies thereof, as provided by Dell hereunder. Software includes without limitation standalone software, software provided in connection with Products, software provided in connection with Services, software locally installed on Customer's systems, and software accessed by Customer through the Internet or other remote means (such as websites, portals, and "cloud-based" solutions).
 - a) **"System Software"** means Software that provides basic hardware functionality and provides a platform for applications to run (e.g., firmware and BIOS software), and any Software specifically designated by Dell as System Software the purpose of which is to operate and manage the Products in which it is embedded.
 - b) **"Application Software"** means computer programs that are designed to perform specialized data processing tasks for the user and any Software specifically designated by Dell as Application Software.
- vi. **"Solutions"** means the Products, Services (including Deliverables), Software licenses or any combination thereof provided by Dell under this MCCA.
- vii. **"Statement of Work" or "SOW"** means any mutually agreed document describing the Solution to be provided by Dell to Customer, including without limitation, "Service Descriptions", "Specification Sheets", and any other such documents executed under the terms of a Services Schedule hereto or otherwise available at www.Dell.com/servicecontracts/US.

- viii. **"Third-Party Products"** means any products, software, or services that are manufactured, created or performed by a party other than Dell.
- C. **Additional Agreements.** This MCCA, together with the applicable Schedules, form a legally binding contract between Customer and Dell. The Schedules, if executed, shall apply in the following manner:
- i. Customer's purchase of Products is further subject to the additional terms of the **"Product Schedule."**
 - ii. Dell's performance of Services are further subject to the additional terms of the **"Services Schedule."**
 - iii. Customer's use of Software is subject solely to the separate software license terms provided with the Software, included with the Software media packaging, or presented to Customer during the installation or use of the Software. Customer agrees that Customer will be bound by such license agreement. If no license terms accompany the Dell-branded Software, then Customer's use of such Software is subject to the additional terms of the **"Software License Schedule."** If no such schedule has been executed by the parties, then use of Dell-branded Application Software is subject solely to the Dell End User License Agreement – Type A located at www.Dell.com/AEULA, and use of Dell-branded System Software is subject solely to the End User License Agreement — Type S located at www.Dell.com/SEULA. International purchases of eligible licenses are provided under Dell's International Sales Agent Agreement ("ISSA") (provided upon request).
- D. **Order of Precedence.** In the event of a conflict between agreements, the terms will be interpreted in the following order of precedence: (1) SOWs; (2) Schedules; and (3) this MCCA.

2. Ordering and Payment.

- A. **Quotes and Orders.** Customer must identify Dell's quotation (if any), the Dell Contract Code assigned to the Agreement (if any), and the Solutions ordered, the requested shipment dates, and shipping and invoice addresses on all orders. All orders are subject to acceptance by Dell. Orders for Third-Party Products are subject to availability. Customer shall place all orders in the country where the Products and Software are to be shipped and where Services are to be performed, and payment of the corresponding price and costs shall be made in the currency identified by Dell in its invoice. Each accepted order will be interpreted as a single acceptance, independent of any other orders. Neither Dell nor Customer is bound by any terms on orders or transactional documents that are not signed by both parties. Payment to Dell in respect of Products, Software licenses and Services, as applicable, shall be made to the account indicated by Dell (as may be amended from time to time). Dell cannot ship Products and Software or perform Services outside of the country in which the applicable order is accepted. This MCCA will apply to any on-line quote from a web-site personalized by Dell for use by Customer, if available, and any quote received by Customer directly from Customer's Dell sales representative.
- B. **Invoices and Payment.** Invoices are due and payable net thirty (30) days from the date of the invoice, subject to continuing credit approval by Dell. Payment of charges shall be made in the currency identified in Dell's quote. Dell may invoice parts of an order separately or combine separate orders into one invoice. Unless Customer and Dell have agreed to a different discount structure, Dell's standard pricing policy for Dell-branded Solutions includes Products, Software licenses and Services in one discounted price, and allocates the discount off list price applicable to the Services portion of the Solution to be equal to the overall percentage discount off list price of the entire Solution. Dell reserves the right to charge Customer a late penalty of 1.5% or the maximum rate permitted by law, whichever is less, per month applied against undisputed overdue amounts. Late penalties will be recalculated every thirty (30) days thereafter based on Customer's current outstanding balance. Dell may suspend or terminate any or all Solutions and refuse additional orders from Customer, with no liability to Customer, until Dell's receipt of all overdue amounts.
- C. **Taxes.** Unless Customer provides Dell with a valid and accurate tax-exemption certificate or other appropriate documentary proof of exemption applicable to Customer's purchase and ship-to location, Customer is responsible for all sales tax and any other taxes or governmental fees associated with Customer's order. The charges stated in the order or any invoice shall be inclusive of all duties, levies and any similar charges and shall exclude VAT and equivalent sales and use tax. Unless otherwise specified in writing by Dell, Customer shall pay all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes). In the event that Customer is required by law to make a withholding or deduction in respect of the price payable to Dell, Customer will make the relevant payments to Dell net of the required withholding or deduction. Customer will supply to Dell evidence (e.g., official withholding tax receipts), to the reasonable satisfaction of Dell, that Customer has accounted to the relevant authority for the sum withheld or deducted. If such evidence is not provided to Dell within 60 days of remittance to the applicable tax authority, Customer will be liable for such amount of the withholding imposed on that particular transaction.
- D. **Prices.** The prices charged for Solutions purchased under this MCCA shall be the amounts set forth on Dell's website or other quotation provided to Customer, except as otherwise expressly agreed to by the parties. Quoted prices will remain in effect only until the expiration date of the quote (or thirty days if there is no expiration date), Dell's withdrawal of the quote or Dell's acceptance of Customer's order, whichever occurs first. Such prices are subject to shortages in materials or resources, increases in the cost of manufacturing, or other factors.
- E. **Changed or Discontinued Products, Software, or Services.** A change in a Product, Software or Service may occur after a Customer places an order but before Dell ships the Product or Software, or performs the Service. As a result, Products,

Software, and Services that Customer receives may display minor differences from the Products, Software, and Services Customer ordered, but they will meet or exceed all material specifications of such Products, Software or Services ordered.

3. Term; Termination.

- A. **Term; Auto-Renewal.** This MCCA commences on the Effective Date and continues for a period of one (1) year, with two (2) one-year optional renewals upon mutual agreement by both parties.
- B. **Termination.** Either party may terminate this MCCA at any time by providing at least sixty (60) days prior written notice to the other party. Either party may terminate this MCCA if the other party commits a material breach and the breach is not cured within thirty (30) days of receipt of written notice from the injured party. Either party may terminate this MCCA, any Schedules and/or any SOWs immediately if the other party (1) fails to make any payment when due; (2) is acquired by or merged with a competitor of the terminating party; (3) declares bankruptcy or is adjudicated bankrupt; or (4) has a receiver or trustee appointed to it for all or substantially all of its assets. Upon termination of this MCCA, all rights and obligations of the parties under this MCCA will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination. Termination of the MCCA will terminate all Schedules. Any active SOW, unless earlier terminated, will continue for the term stated in such SOW and be subject to the terms of this MCCA and the applicable Schedule(s). Termination of one or more Schedules or SOWs will not, by itself, terminate this MCCA.

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

5. Important Additional Information.

A. Limited Warranty.

- i. WARRANTIES FOR SOLUTIONS SHALL BE PROVIDED AS INDICATED IN THE SCHEDULES. EXCEPT AS EXPRESSLY STATED IN THE SCHEDULES OR IN THE APPLICABLE SOLUTION DOCUMENTATION, DELL (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS, AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, AND OFFICERS), ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS (COLLECTIVELY, THE "DELL PARTIES") MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS, SOFTWARE, DELIVERABLES OR SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY (a) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; (b) RELATING TO THIRD-PARTY PRODUCTS; OR (c) RELATING TO THE RESULTS OR PERFORMANCE OF THE SOLUTION, INCLUDING THAT THE SOLUTION WILL BE PROVIDED WITHOUT INTERRUPTION OR ERROR.
- ii. WARRANTIES DO NOT COVER DAMAGE DUE TO EXTERNAL CAUSES, SUCH AS ACCIDENT, ABUSE, PROBLEMS WITH ELECTRICAL POWER, SERVICE NOT PERFORMED OR AUTHORIZED BY DELL (INCLUDING INSTALLATION OR DE-INSTALLATION), USAGE NOT IN ACCORDANCE WITH THE DOCUMENTATION, NORMAL WEAR AND TEAR, OR USE OF PARTS AND COMPONENTS NOT SUPPLIED OR INTENDED FOR USE WITH THE SOLUTION. WARRANTIES DO NOT APPLY TO THIRD-PARTY PRODUCTS. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER.
- iii. NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT DELL'S WARRANTY OR LIABILITY FOR LOSSES THAT MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT, BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. SOME JURISDICTIONS DO NOT ALWAYS ENFORCE CLASS ACTION OR JURY WAIVERS, AND MAY LIMIT FORUM SELECTION CLAUSES AND STATUTE OF LIMITATIONS PROVISIONS, AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO CUSTOMER IN CUSTOMER'S JURISDICTION WILL APPLY TO CUSTOMER, AND DELL'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

- B. **High-Risk Disclaimer.** Dell shall not be liable to the Customer for use of the Solution in hazardous or high-risk environments requiring fail-safe performance, in which the failure or malfunction of the Solution could lead directly to death, personal injury, or severe physical or property damage. Such use is at Customer's own risk, even if Dell knows of such use, and Dell expressly disclaims any express or implied warranty of fitness for such high-risk activities.

C. Limitation of Liability

- i. EXCEPT FOR AN UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION, INFRINGEMENT/MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR AS OTHERWISE SET FORTH IN THE APPLICABLE SCHEDULES, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR FOR ANY (a) LOSS OF REVENUE, INCOME, PROFIT, SAVINGS OR BUSINESS OPPORTUNITY; (b) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF A SYSTEM OR NETWORK, OR THE RECOVERY OF SUCH; (c) BUSINESS INTERRUPTION OR DOWNTIME; (d) LOSS OF GOODWILL OR REPUTATION; (e) PRODUCTS, SOFTWARE OR DELIVERABLES NOT BEING AVAILABLE FOR USE; OR (f) THE PROCUREMENT OF SUBSTITUTE SOLUTIONS; ARISING OUT OF OR IN CONNECTION WITH THE SOLUTIONS PROVIDED HEREUNDER.
- ii. EXCEPT FOR CUSTOMER'S BREACH OF ITS PAYMENT OBLIGATIONS, AN UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL INFORMATION, INFRINGEMENT/MISAPPROPRIATION OF INTELLECTUAL PROPERTY OR AS OTHERWISE SET FORTH IN THE APPLICABLE SCHEDULES, NEITHER PARTY'S TOTAL LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY PRODUCTS, SOFTWARE OR SERVICES PROVIDED HEREUNDER WILL EXCEED THE TOTAL AMOUNT RECEIVED BY DELL DURING THE PRIOR 12 MONTHS OF THIS MCCA FOR THE SPECIFIC PRODUCT, SOFTWARE OR SERVICE GIVING RISE TO SUCH CLAIM(S).
- iii. THESE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS SHALL APPLY TO ALL CLAIMS FOR DAMAGES, WHETHER BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE, TO THE EXTENT PERMITTED BY APPLICABLE LAW. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THESE LIMITATIONS OF LIABILITY ARE AGREED ALLOCATIONS OF RISK CONSTITUTING IN PART THE CONSIDERATION FOR DELL PROVIDING PRODUCTS, SOFTWARE, OR SERVICES TO CUSTOMER, AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES OR FAILURES.
- D. **Confidentiality.** In connection with this MCCA, each party may have access to or be exposed to information of the other party that is not generally known to the public, such as software, product plans, pricing, marketing and sales information, customer lists, "know-how," or trade secrets, which may be designated as confidential or which, under the circumstances surrounding disclosure, would be treated as confidential by a reasonable person (collectively, "**Confidential Information**"). Confidential Information may not be shared with third parties unless such disclosure is to the receiving party's personnel, including employees, agents, and contractors who are subject to legally binding obligations of confidentiality no less restrictive than those herein and who have a business need for such access to perform hereunder on the receiving party's behalf, and so long as the receiving party is responsible for the breach of these confidentiality obligations by such personnel. Each party agrees to take the necessary precautions to maintain the confidentiality of the other party's Confidential Information by using at least the same degree of care as such party employs with respect to its own Confidential Information of a similar nature, but in no case less than a commercially reasonable standard of care to maintain confidentiality. The foregoing obligations shall not apply to information that (1) was known by one party prior to its receipt from the other or is or becomes public knowledge through no fault of the recipient; (2) is rightfully received by the recipient from a third party without a duty of confidentiality, or (3) is required by a court or government agency to disclose Confidential Information, so long as the recipient provides advance notice to the other party before making such disclosure. The obligations with respect to Confidential Information shall continue for two years from the date of disclosure, except with regard to trade secrets, in which case such obligations shall not expire. Dell's privacy practices are located at www.Dell.com/Privacy.
- E. **Indemnification.** Dell shall defend and indemnify Customer against any third-party claim or action of infringement or misappropriation of that third party's U.S. patent, copyright, trade secret, or other intellectual property rights, to the extent arising from Dell's performance or delivery of the Solutions (excluding Third-Party Products and open source software) (an "**Indemnified Claim**"). In addition, if Dell receives prompt notice of an Indemnified Claim that, in Dell's reasonable opinion, is likely to result in Dell's inability to continue providing or performing the Solution, then Dell shall at its option, (1) obtain a right for Customer to continue using such Products, Deliverables or Software or allow Dell to continue performing the Services; (2) modify such Products, Software, Services or Deliverables to make them non-infringing; (3) replace such Products, Software, Services, or Deliverables with a non-infringing substitute; or (4) refund any pre-paid fees for the allegedly infringing Services that have not been performed or provide a reasonable depreciated or pro rata refund for the allegedly infringing Product, Deliverables, or Software. Notwithstanding the foregoing, Dell shall have no obligation under this Indemnification Section for any claim resulting or arising from (1) use or modifications of the Solution that were not performed by Dell; (2) the combination of the Dell Product, Dell Software, Dell Service or Deliverables with a Third-Party Product (the combination of which causes the claimed infringement); (3) Dell's compliance with Customer's written specifications or directions, including the incorporation of any software or other materials or processes provided by or requested by Customer or (4) Customer's failure to incorporate free Software updates or upgrades that would have avoided the alleged infringement (collectively, the "**Excluded Claims**"). Dell's duty to indemnify and defend under this Indemnification Section is contingent upon: (1) Dell receiving prompt written notice of the third-party claim or action for which Dell must indemnify Customer, (2) Dell having the right to solely control the defense and resolution of such claim or action, and (3) Customer's full cooperation with Dell in defending and resolving such claim or action. This Indemnification Section states Customer's sole and exclusive remedies for any damages arising from a third-party intellectual property claim or action, and nothing in this MCCA or elsewhere will obligate Dell to provide any greater indemnity to Customer.

Customer shall defend and indemnify Dell against any third-party claim or action arising out of (1) Customer's failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications, or approvals associated with

technology or data provided by Customer, or associated with non-Dell software or other components directed or requested by Customer to be accessed, installed or integrated as part of the Solution; (2) Customer's breach of Dell's proprietary rights as stated in this MCCA or applicable Schedule(s) or SOW(s); (3) any inaccurate representation regarding the existence of an export license, failure to provide information to Dell to obtain an export license or any allegation made against Dell due to Customer's violation or alleged violation of applicable export laws, regulations, or orders; (4) Customer providing (or providing access to) Excluded Data to Dell and (5) the Excluded Claims.

Each party shall defend and indemnify the other party against any third-party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or willful misconduct in the course of performing its obligations under this MCCA.

- F. **Independent Contractor Relationship; Assignment; Subcontracting.** The parties are independent contractors. No provision of this MCCA will or shall be deemed to create an association, trust, partnership, joint venture or other entity or similar legal relationship between Dell and Customer, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to such entities. Neither party will have any rights, power, or authority to act or create an obligation, express or implied, on behalf of another party except as specified in this MCCA. Dell has the right, with prior notice to City of Long Beach Police Department, to subcontract or delegate the performance of its obligations under this MCCA in whole or in part, or any rights, duties, obligations or liabilities under this MCCA, by operation of law or otherwise, provided that Dell shall remain responsible for the performance of its obligations under this MCCA. Otherwise, neither party may, whether voluntarily, by contract or by merger (whether that party is the surviving or disappearing entity), consolidation, dissolution, through government action or order, or otherwise, assign, delegate or transfer any of its rights or obligations under this MCCA to any third party without the other party's prior written consent, except in connection with a merger, consolidation or dissolution of all or substantially all of such party's assets or business, provided that such party's successor entity assumes in writing all of such party's obligations under this MCCA and agrees in writing to be bound by this MCCA. Any attempted assignment, transfer or delegation in violation of the foregoing will be null and void. Any assignment by Customer of its purchase order to a third-party financing company (other than Dell Financial Services, LLC) must be approved in advance in writing by Dell.
- G. **Excused Performance.** Neither party shall be liable to the other for any failure to perform any of its obligations (except payment obligations) under this MCCA during any period in which such performance is delayed by circumstances beyond its reasonable control, such as fire, flood, failure of the Internet, war, embargo, strike, riot, or governmental intervention (an "Excused Event"). The delayed party's time for performance will be excused for the duration of the Excused Event, but if the Excused Event lasts longer than thirty (30) days, then the other party may immediately terminate, in whole or in part, this MCCA or the applicable Schedule or SOW by giving written notice to the delayed party.
- H. **Compliance with Laws.** Each party agrees to comply with all laws and regulations applicable to such party in the course of performance of its obligations under this MCCA. Customer acknowledges that the Solutions provided under this MCCA, which may include technology, authentication and encryption, are subject to the customs and export control laws and regulations of the United States ("U.S."); may be rendered or performed either in the U.S., in countries outside the U.S., or outside of the borders of the country in which Customer or its systems are located; and may also be subject to the customs and export laws and regulations of the country in which the Solution is rendered or received. Each party agrees to abide by those laws and regulations applicable to such party in the course of performance of its obligations under this MCCA. Customer also may be subject to import or re-export restrictions in the event Customer transfers the Products, Software or Deliverables from the country of delivery and Customer is responsible for complying with applicable restrictions. If any software provided by Customer and used as part of the Solution contains encryption, then Customer agrees to provide Dell with all of the information needed for Dell to obtain export licenses from the U.S. Government or any other applicable national government and to provide Dell with such additional assistance as may be necessary to obtain such licenses. Notwithstanding the foregoing, Customer is solely responsible for obtaining any necessary permissions relating to software that it exports. Dell also may require export certifications from Customer for Customer-provided software. Dell's acceptance of any order for a Solution is contingent upon the issuance of any applicable export license required by the U.S. Government or any other applicable national government. Dell is not liable for delays or failure to deliver Solutions resulting from Customer's failure to obtain such license or to provide such certification. **Regulatory Requirements.** Dell is not responsible for determining whether any Third-Party Product to be used in the Solution, satisfies the local regulatory requirements of the country to which such Solution is to be delivered or performed, and Dell shall not be obligated to provide any Solution where the resulting Solution is prohibited by law or does not satisfy the local regulatory requirements.
- J. **Data.** Customer acknowledges that no part of the Solution is designed with security and access management for the processing and/or storage of the following categories of data unless expressly otherwise stated in a particular SOW or Schedule: (1) data that is classified and/or used on the U.S. Munitions list, including software and technical data; (2) articles, services and related technical data designated as defense articles and defense services; (3) ITAR (International Traffic in Arms Regulations) related data; and (4) personally identifiable information that is subject to heightened security requirements as a result of Customer's internal policies or practices, industry-specific standards or by law (collectively referred to as "Excluded Data"). Customer hereby agrees that Customer is solely responsible for reviewing data that it will provide to Dell (or to which Dell will have access) to ensure that it does not contain Excluded Data. In Dell's performance of the Solution, Dell may obtain information related to Customer's use of the Solution. Customer agrees that Dell may use such information in an aggregated, anonymized form to assist in improving and optimizing various aspects of the Solution or in support of generic marketing activities related to the Solution.
- K. **Entire MCCA; Severability.** This MCCA, together with the Schedules, is the entire agreement between Customer and Dell with respect to its subject matter and supersedes all prior oral and written understandings, communications, or agreements

between Customer and Dell, including any agreements with auto-renewal clauses. No amendment to or modification of this MCCA, in whole or in part, will be valid or binding unless it is in writing and executed by authorized representatives of both parties. If any provision of this MCCA, or any Schedule or SOW should be found to be void or unenforceable, such provision will be stricken or modified, but only to the extent necessary to comply with applicable law, and the remainder of this MCCA, or the affected Schedule or SOW, will remain in full force and will not be terminated. No rights may arise by implication or estoppel, other than those expressly granted herein.

- L. **Governing Law.** This MCCA, any Schedule, and ANY CLAIM, DISPUTE, OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT AND EQUITABLE CLAIMS) arising from or relating to this MCCA, its interpretation, or the breach, termination or validity thereof, the relationships which result from this MCCA (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories to this MCCA), Dell's advertising, or any related transaction or engagement (a "Dispute") shall be governed by the laws of the State of California, without regard to conflicts of law. The parties agree that the UN Convention for the International Sale of Goods will have no force or effect on this MCCA. Furthermore, the parties agree that the provisions of the Uniform Computer Information Transactions Act ("UCITA"), as it may have been or hereafter may be in effect in any jurisdiction, shall not apply to this MCCA, and the parties waive any and all rights they may have under any laws(s) adopting UCITA in any form.
- M. **Venue.** The parties agree that any Dispute shall be brought exclusively in the state or federal courts located in California. Customer and Dell agree to submit to the personal jurisdiction of the state and federal courts located within California, and agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.
- N. **No Class Actions.** NEITHER CUSTOMER NOR DELL SHALL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS, OR PURSUE ANY CLAIM AS A REPRESENTATIVE OR CLASS ACTION OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.
- O. **Limitation Period.** NEITHER PARTY SHALL BE LIABLE FOR ANY CLAIM BROUGHT MORE THAN FOUR YEARS AFTER THE CAUSE OF ACTION FOR SUCH CLAIM FIRST AROSE.
- P. **Dispute Resolution.** Customer and Dell will attempt to resolve any Dispute through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mediator agreed to by the parties, rather than through litigation. The existence or results of any negotiation or mediation will be treated as Confidential Information. Notwithstanding the foregoing, either party will have the right to seek from a state or federal court in the State of California a temporary restraining order, preliminary injunction, or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within thirty (30) days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or in equity.
- Q. **INDEPENDENT CONTRACTOR.** In performing its services, Consultant is and shall act as an independent contractor and not an employee, representative or agent of City. Consultant shall have control of Consultant's work and the manner in which it is performed. Consultant shall be free to contract for similar services to be performed for others during this Agreement; provided, however, that Consultant acts in accordance with Section 9 and Section 11 of this Agreement. Consultant acknowledges and agrees that (a) City will not withhold taxes of any kind from Consultant's compensation; (b) City will not secure workers' compensation or pay unemployment insurance to, for or on Consultant's behalf; and (c) City will not provide and Consultant is not entitled to any of the usual and customary rights, benefits or privileges of City employees. Consultant expressly warrants that neither Consultant nor any of Consultant's employees or agents shall represent themselves to be employees or agents of City.
- R. **INSURANCE.**
- A. As a condition precedent to the effectiveness of this Agreement, Consultant shall procure and maintain, at Consultant's expense for the duration of this Agreement, from insurance companies that are permitted to write insurance in California and have ratings of or equivalent to A minus:V by A.M. Best Company the following insurance:
- (a) Commercial general liability insurance (equivalent in scope to ISO form CG 00 01 11 85 or CG 00 01 10 93) in an amount not less than \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This coverage shall include but not be limited to broad form contractual liability, cross liability, independent contractors liability, and products and completed operations liability. City, its boards and commissions, and their officials, employees and agents shall be named as additional insureds by blanket endorsement as respects insurable liabilities assumed by Consultant under this Agreement. This policy shall state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- (b) Workers' Compensation insurance as required by the California Labor Code and employer's liability insurance in an amount not less than \$1,000,000. This policy shall state that the insurer waives its right of subrogation against City, its boards and commissions, and their officials, employees and agents.
- (c) Professional liability or errors and omissions insurance in an amount not less than \$1,000,000 per claim.
- (d) Commercial automobile liability insurance (equivalent in scope to ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount not less than \$500,000 combined single limit per accident.

B. Any self-insurance program, self-insured retention, or deductible shall protect City, its officials, employees and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

C. Each insurance policy where additional insured status is granted shall be primary and not contributing to any other insurance or self-insurance maintained by City, and shall be endorsed to state that coverage maintained by City shall be excess to and shall not contribute to insurance or self-insurance maintained by Consultant.

D. If this coverage is written on a "claims made" basis, it must provide for an extended reporting period of not less than one hundred eighty (180) days, commencing on the date this Agreement expires or is terminated, unless Consultant guarantees that Consultant will provide to City evidence of uninterrupted, continuing coverage for a period of not less than three (3) years, commencing on the date this Agreement expires or is terminated.

E. Consultant shall require that all subconsultants or contractors that Consultant uses in the performance of these services maintain similar insurance.

F. Prior to the start of performance, Consultant shall deliver to City certificates of insurance. In addition, Consultant shall furnish to City certificates of insurance and endorsements evidencing renewal of the insurance as soon as practicable following renewal of such policies.

G. Any modification or waiver of these insurance requirements shall only be made with the approval of City's Risk Manager or designee. Not more frequently than once a year, City's Risk Manager or designee may reasonably require that Consultant change the amount, scope or types of coverages required in this Section if the amount, scope or types of coverages are not adequate.

H. The procuring or existence of insurance shall not be construed or deemed as a limitation on liability relating to Consultant's performance or as full performance of or compliance with the indemnification provisions of this Agreement.

S. NONDISCRIMINATION.

A. In connection with performance of this Agreement and subject to applicable rules and regulations, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. Consultant shall ensure that applicants are employed, and that employees are treated during their employment, without regard to these bases. These actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. It is the policy of City to encourage the participation of Disadvantaged, Minority and Women-Owned Business Enterprises in City's procurement process, and Consultant agrees to use its best efforts to carry out this policy in its use of subconsultants and contractors to the fullest extent consistent with the efficient performance of this Agreement. Consultant may rely on written representations by subconsultants and contractors regarding their status. Consultant shall report to City in May and in December or, in the case of short-term agreements, prior to invoicing for final payment, the names of all subconsultants and contractors hired by Consultant for this Project and information on whether or not they are a Disadvantaged, Minority or Women-Owned Business Enterprise, as defined in Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

T. TAX REPORTING. As required by federal and state law, City is obligated to and will report the payment of compensation to Consultant on Form 1099- Misc. Consultant shall be solely responsible for payment of all federal and state taxes resulting from payments under this Agreement. Consultant shall submit Consultant's Employer Identification Number (EIN), or Consultant's Social Security Number if Consultant does not have an EIN, in writing to City's Accounts Payable, Department of Financial Management. Consultant acknowledges and agrees that City has no obligation to pay Consultant until Consultant provides one of these numbers.

U. ADVERTISING. Consultant shall not use the name of City, its officials or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City Manager or designee.

V. Intentionally left blank.

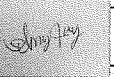

W. Notices. Notice to Dell under this MCCA or any related Schedule must be in writing and sent by postage prepaid first-class mail or receipted courier service to the address below or to such other address (including facsimile or e-mail) as specified in writing, and will be effective upon receipt.

To Dell:	To Customer (if different from above):
Dell Marketing L.P. Attention: Contracts Manager One Dell Way (Mail Stop RR3-40) Round Rock, TX 78682	

By their signatures below, Dell and Customer indicate their agreement to the terms and conditions set forth in this MCCA.

DELL MARKETING L.P.	CUSTOMER NAME
---------------------	---------------

Assistant City Manager

By:	 Digitally signed by Amy Ivy DN: cn=Amy Ivy, o=Dell, ou, email=Amy_Ivy@Dell.com, c=US Date: 2016.01.11 11:16:23 -06'00'	By:	
Printed Name:	Amy Ivy	Printed Name:	Patrick H. West
Title:	Contracts Manager	Title:	City Manager
Date:	1/11/16	Date:	1/27/16

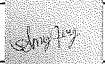

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

APPROVED AS TO FORM
January 11, 2016
CHARLES PARKIN, City Attorney
By Gary J. Anderson
GARY J. ANDERSON
PRINCIPAL DEPUTY CITY ATTORNEY

Product Schedule to Master Commercial Customer Agreement

1. **General.** This Product Schedule ("Schedule"), in addition to the Master Commercial Customer Agreement dated 2/1/16 ("MCCA"), which is hereby incorporated, set forth the terms of all purchases of Products by Customer from Dell. In the event of a conflict between this Schedule and the MCCA, the terms of this Schedule shall take precedence. Unless otherwise defined in this Schedule, capitalized terms herein shall have the meaning defined in the MCCA.
2. **Prices.** The prices charged for Products purchased under this Agreement shall be the fixed price for Standard Configurations as specified in Exhibit A to this Schedule.
3. **Shipping Charges; Title; Risk of Loss.** Taxes and shipping and handling charges are not included in Product prices unless expressly indicated by Dell at the time of sale. Title to Products passes from Dell to Customer upon shipment to Customer (except title to any Software included with the Products remains with the applicable licensors). 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 Customer is Customer's responsibility. Shipping and delivery dates are provided as estimates only. Customer must notify Dell within twenty-one (21) days of the date of its invoice or acknowledgement if Customer believes any part of its order is missing, wrong, or damaged.
4. **Returns, Exchanges and Repairs.** Return of Products is subject to the policy at www.Dell.com/ReturnPolicy, which is available in hard copy from Dell upon request. Before returning or exchanging a Product, Customer must contact Dell directly to obtain an authorization number to include with Customer's return. Customer must return Products to Dell in their original or equivalent packaging, and Customer is responsible for risk of loss, as well as shipping and handling fees. Additional fees, including up to a 15% restocking fee, may apply. If Customer fails to follow the return or exchange instructions provided by Dell, Dell will not be responsible for any loss, damage, or modification of a Product, or processing of a Product for disposal or resale. Credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing associated with Customer's original purchase. Parts used in repairing or servicing Products may be new, equivalent-to-new, or reconditioned.
5. **Cancellation of Order.** Customer may change or cancel an order for Dell-branded Products only up until the time Dell begins manufacturing the Products. Otherwise, Customer may change or cancel an order as set forth in the applicable Dell quote or as expressly agreed by both parties.
6. **Termination.** Either party may terminate this Schedule at any time by providing at least thirty (30) days prior written notice to the other party. Upon termination of this Schedule, all rights and obligations of the parties under this Schedule will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.
7. **Limited Warranty.** THE LIMITED WARRANTIES FOR DELL-BRANDED PRODUCTS CAN BE FOUND AT www.Dell.com/Warranty OR IN THE DOCUMENTATION DELL PROVIDES WITH SUCH PRODUCTS. SUCH DOCUMENTS ARE AVAILABLE IN HARD COPY FROM DELL UPON REQUEST.

By their signatures below, Dell and Customer indicate their agreement to the terms and conditions set forth in this Product Schedule and the MCCA.

DELL MARKETING L.P.		CUSTOMER NAME	
By:		By:	
Printed Name:	Amy Ivy	Printed Name:	Patrick H. West
Title:	Contracts Manager	Title:	City Manager
Date:	1/11/16	Date:	1/27/16

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.


APPROVED AS TO FORM
January 11, 20 16
CHARLES PARKIN, City Attorney
 By 
GARY J. ANDERSON
 PRINCIPAL DEPUTY CITY ATTORNEY

Exhibit A to Product Schedule



QUOTATION

Quote #: 722463553
 Customer #: 140642061
 Contract #: WN03AGW
 Customer Agreement #: 7-15-70-34-003
 Quote Date: 01/07/2016
 Date: 1/7/2016 Customer Name: CITY OF LONG BEACH

Thanks for choosing Dell! Your quote is detailed below; please review the quote for product and informational accuracy. If you find errors or desire certain changes please contact your sales professional as soon as possible.

Sales Professional Information			
SALES REP:	CATHERINE LAMBRIGHT-WEBER	PHONE:	1800 - 5713355
Email Address:	Catherine_L_Weber@Dell.com	Phone Ext:	5138194

SOFTWARE & ACCESSORIES		GROUP TOTAL	
Product	Quantity	Unit Price	Total
ANDROID DEVICE FOR BODYWORN SYSTEM (A8239234)	110		
1YR VIDEO STORAGE 1TB (A8334188)	43		
BODYWORN VIDEO REC NFC HOLSTER REQ MOTOX PURCHASED SEPARATELY (A8080809)	100		
1YR ULTIMATE WITNESS AVAIL WEB SAAS & HW WARRANTY/INSURANCE (A8239240)	100		
Utility The Rocket Vehicle Router - 1yr HW Warranty (A8080822)	12		
ROCKET HW INSTAL STD VEHICLE (A8080847)	12		
DESIGN CONFIG PROJ MGMT TRAINING 2DAY MIN (A8080849)	7		
DESIGN CONFIG PROJ MGMT TRAINING 2DAY MIN (A8080849)	15		

COMMENT

ENHANEMENT TO I/O RO
UTILITY AVAILWEB 1YR

*Total Purchase Price:	
Product Subtotal:	
Tax:	
Shipping & Handling:	
State Environmental Fee:	
Shipping Method:	

(* Amount denoted in \$)

Order this quote easily online through your Premier page, or if you do not have Premier, using Quote to Order
Statement of Conditions

The information in this document is believed to be accurate. However, Dell assumes no responsibility for inaccuracies, errors, or omissions, and shall not be liable for direct, indirect, special, incidental, or consequential damages resulting from any such error or omission. Dell is not responsible for pricing or other errors, and reserves the right to cancel orders arising from such errors.

Dell may make changes to this proposal including changes or updates to the products and services described, including pricing, without notice or obligation.

Terms of Sale

This quote is valid for 30 days unless otherwise stated. Unless you have a separate written agreement that specifically applies to this order, your order will be subject to and governed by the following agreements, each of which are incorporated herein by reference and available in hardcopy from Dell at your request:

If this purchase is for your internal use only: Dell's Commercial Terms of Sale (www.dell.com/CTS), which incorporate Dell's U.S. Return Policy (www.dell.com/returnpolicy) and Warranty (www.dell.com/warrantyterms).

If this purchase is intended for resale: Dell's Reseller Terms of Sale (www.dell.com/resellerterms).

If this purchase includes services: in addition to the foregoing applicable terms, Dell's Service Terms (www.dell.com/servicecontracts/global).

If this purchase includes software: in addition to the foregoing applicable terms, your use of the software is subject to the license terms accompanying the software, and in the absence of such terms, then use of the Dell-branded application software is subject to the Dell End User License Agreement - Type A (www.dell.com/AEULA) and use of the Dell-branded system software is subject to the Dell End User License Agreement - Type S (www.dell.com/SEULA).

You acknowledge having read and agree to be bound by the foregoing applicable terms in their entirety. Any terms and conditions set forth in your purchase order or any other correspondence that are in addition to, inconsistent or in conflict with, the foregoing applicable online terms will be of no force or effect unless specifically agreed to in a writing signed by Dell that expressly references such terms.

Additional Terms for Public Customers

If you are a department, agency, division, or office of any district, state, county or municipal government within the United States ("Public Customer"), the following terms ("Public Customer Terms") apply in addition to the foregoing terms: A. If any portion of the foregoing terms and conditions (or any terms referenced therein) is prohibited by law, such portion shall not apply to you. Notwithstanding anything to the contrary, the End User License Agreements shall take precedence in all conflicts relevant to your use of any software. B. By placing your order, you confirm that (1) you are a contracting officer or other authorized representative of Public Customer with authority to bind the Public Customer to these terms and conditions, and (2) you have read and agree to be bound by these terms and conditions.

Pricing, Taxes, and Additional Information

All product, pricing, and other information is valid for U.S. customers and U.S. addresses only, and is based

on the latest information available and may be subject to change. Dell reserves the right to cancel quotes and orders arising from pricing or other errors. Sales tax on products shipped is based on your "Ship To" address, and for software downloads is based on your "Bill To" address. Please indicate any tax-exempt status on your PO, and fax your exemption certificate, including your Customer Number, to the Dell Tax Department at 800-433-9023. Please ensure that your tax-exemption certificate reflects the correct Dell entity name: Dell Marketing L.P. Note: All tax quoted above is an estimate; final taxes will be listed on the invoice. If you have any questions regarding tax please send an e-mail to Tax_Department@dell.com.

For certain products shipped to end-users in California, a State Environmental Fee will be applied to your invoice. Dell encourages customers to dispose of electronic equipment properly.

All information supplied to CITY OF LONG BEACH for the purpose of this proposal is to be considered confidential information belonging to Dell.

About Dell

Dell Inc. listens to customers and delivers innovative technology and services they trust and value. Uniquely enabled by its direct business model, Dell is a leading global systems and services company and No. 34 on the Fortune 500. For more information, visit www.dell.com.

Privacy Policy



Dell respects your privacy. Across our business, around the world, Dell will collect, store, and use customer information only to support and enhance our relationship with your organization, for example, to process your purchase, provide service and support, and share product, service, and company news and offerings with you. Dell does not sell your personal information. For a complete statement of our Global Privacy Policy, please visit dell.com/privacy.

Services Schedule to Master Commercial Customer Agreement


1. **General.** This Services Schedule ("Schedule"), in addition to the Master Commercial Customer Agreement dated 2/1/16 ("MCCA"), which is hereby incorporated, and any SOWs executed hereunder, set forth the terms of all Services performed by Dell for Customer. Unless otherwise defined in this Schedule, capitalized terms herein shall have the meaning defined in the MCCA. For purposes of this Schedule, each SOW will be interpreted as a single agreement, independent of any other SOW, so that all of the provisions are given as full effect as possible.
2. **Additional Charges.** Additional charges will apply if Customer requests Services that are performed outside of contracted hours or are beyond the normal coverage for the particular Service.
3. **Termination of Services.** Either party may terminate this Schedule for convenience by providing at least thirty (30) days prior written notice to the other. Termination of this Schedule will not terminate any outstanding SOW that provides for a specific term over which the Services are to be provided. In such case, the terms of this Schedule, as incorporated into the SOW, and the SOW itself will remain in effect for the remainder of the specified term. Any licenses to Software provided as part of the Services shall terminate at the termination of the applicable SOW, unless otherwise stated in the SOW. Upon termination of this Schedule, all rights and obligations of the parties under this Schedule will automatically terminate except for rights of action accruing prior to termination, payment obligations, and any obligations that expressly or by implication are intended to survive termination.
4. **Deliverables.** Dell and its applicable suppliers and licensors will retain exclusive ownership of all Deliverables, and will own all intellectual property rights, title and interest in any ideas, concepts, know-how, documentation, and techniques associated with such Deliverables. Subject to payment in full for the applicable Services, Dell grants Customer a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the country or countries in which Customer does business, solely for Customer's internal use, and solely as necessary for Customer to enjoy the benefit of the Services as stated in the applicable SOW.
5. **Suspension or Modification of Software or Services.** Dell may suspend, terminate, withdraw, or discontinue all or part of the Services or Customer's access or one or more users' access to the Software (and third-party software) upon receipt of a subpoena or law-enforcement request, or when Dell reasonably believes, that Customer (or its users) have breached any term of this Schedule or an applicable SOW, or are involved in any fraudulent, misleading, or illegal activities.
6. **Updates.** With respect to Software provided or otherwise made available to Customer by Dell in connection with Services, it may be necessary for Dell to perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Software, which may temporarily degrade the quality of the Services or result in a partial or complete outage of the Software. Dell may provide advance notification of such activities, Dell provides no assurance that the Software or Services will be uninterrupted or error-free, and any degradation or interruption in the Services or related Software shall not give rise to a refund or credit of any fees paid by Customer.
7. **Availability of Online Services.** CUSTOMER AGREES THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOFTWARE PROVIDED AS PART OF THE SERVICES, INCLUDING TELEPHONE, COMPUTER NETWORKS, AND THE INTERNET, OR TO TRANSMIT INFORMATION, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF SUCH SOFTWARE. DELL SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF CUSTOMER'S ACCESS TO OR USE OF THE SOFTWARE.
8. **Limited Warranty.** THE SERVICES WILL BE PROVIDED IN A GOOD AND WORKMANLIKE MANNER.
9. **Support Services.**
 - a. **Customer Responsibilities.** When Services consist of repair of Dell-branded systems, such Services shall be those repair services that are necessary to fix a defect in materials or workmanship of such systems or any standard system component covered by this Schedule. Preventive maintenance is not included. Repairs necessitated by software problems, or as a result of alteration, adjustment, or repair by anyone other than Dell (or its representatives) are not included under this Schedule. Unless otherwise expressly provided in a SOW, Services do not include repair of any system or system component that has been damaged as a result of (1) accident, misuse, or abuse of the system or component (such as use of incorrect line voltages or fuses, use of incompatible devices or accessories, improper or insufficient ventilation, or failure to follow operating instructions) by anyone other than Dell (or its representatives); (2) the moving of the system from one geographic location or entity to another; or (3) an act of nature such as lightning, flooding, tornado, earthquake, or hurricane.
 - b. **Customer Authorization for Provision of Services.** Some warranties or service contracts for Third-Party Products may become void if Dell or anyone other than an authorized service provider provides services for or works on such hardware or software (such as providing maintenance or repair services for the Third-Party Products). DELL DOES NOT TAKE RESPONSIBILITY FOR ANY EFFECT THAT THE DELL SERVICES MAY HAVE ON THOSE WARRANTIES OR SERVICE CONTRACTS.

Customer authorizes Dell to use or otherwise access any and all Customer-provided Third-Party Products as necessary or as requested by Customer in Dell's performance of the Services, including copying, storing, and reinstalling backup systems or data. Customer shall defend, indemnify, and hold Dell harmless from any third-party claim or action arising out of Customer's failure to properly provide such authorization (such as obtain appropriate licenses, intellectual-property rights, or any other permissions, regulatory certifications, or approvals associated with technology, software, or other components).
10. **Customer to Back up Data.** Unless otherwise stated in an SOW, it is Customer's responsibility to back up its data on Customer systems and to carry out any equipment and technology upgrades, refreshes and replacements on its systems.

By their signatures below, Dell and Customer indicate their agreement to the terms and conditions set forth in this Services Schedule to the MCCA.

DELL MARKETING L.P.		CUSTOMER NAME	
By:	 Digitally signed by Amy Ivy DN: cn=Amy Ivy, o=Dell, ou, email=Amy_Ivy@Dell.com, c=US Date: 2016.01.11 11:11:51 -06'00'	By:	
Printed Name:	Amy Ivy	Printed Name:	Patrick H. West Assistant City Manager
Title:	Contracts Manager	Title:	City Manager
Date:	1/11/16	Date:	1/27/16

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

APPROVED AS TO FORM
January 11, 2016
CHARLES PARKIN, City Attorney
By 
GARY J. ANDERSON
PRINCIPAL DEPUTY CITY ATTORNEY

Software License Schedule to Master Commercial Customer Agreement

1. **General.** This Software License Schedule ("Schedule"), in addition to the Master Commercial Customer Agreement dated 2/1/16 ("MCCA"), which is hereby incorporated, set forth the terms of use for the Dell-branded Software provided by Dell. In the event of a conflict between this Schedule and the MCCA, the terms of this Schedule shall take precedence. Unless otherwise defined in this Schedule, capitalized terms herein shall have the meaning defined in the MCCA.
2. **License.** Provided that Customer timely pays amounts due and complies with the terms, conditions and restrictions of this Schedule (as a condition to the grant below), Dell hereby grants Customer a limited, personal, nonexclusive, nontransferable, non-assignable license, without rights to sublicense, to (A) install or have installed, display and use the Software (in object code only) solely for internal business purposes, and (B) only on as many computers, devices and/or in such configurations as expressly permitted by Dell. The terms and conditions of this Schedule will govern use of the Software and any upgrades, updates, patches, hotfixes, modules, routines, feature enhancement and/or additional versions of the Software provided by Dell, at Dell's sole discretion, that replace and/or supplement the original Software (collectively, "Update"), unless such Update is accompanied by or references a separate license agreement, in which case the terms and conditions of that agreement will govern. If this Schedule governs Customer's use of an Update, such Update shall be considered Software for purposes of this Schedule. Unless earlier terminated as provided herein, the term of each individual license granted under this Schedule begins on the date of execution by Customer of this Schedule, and continues only for such period as expressly permitted by Dell and continues only for such period as Customer has purchased, in the case of a term license, and is perpetual if no term is specified. Customer may use only portions of Software for which it has paid the applicable license fee.
3. **License Limitations.** Customer may not copy the Software except for a reasonable number of copies solely as needed for backup or archival purposes or as otherwise expressly permitted in Section 2 "License" above. Customer may not modify or remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary notices or markings on or in the Software. The rights granted herein are limited to Dell's and its licensors' and suppliers' intellectual property rights in the Software and do not include any other third party's intellectual property rights. If the software was provided to Customer on removable media (e.g., CD, DVD, or USB drive), Customer may own the media on which the Software is recorded but Dell, Dell's licensor(s) and/or supplier(s) retain ownership of the Software itself and all related intellectual property rights. Customer is not granted any rights to any trademarks or service marks of Dell. This Schedule does not apply to any third party software that is not included as part of the Software. The use of any other software, including any software package or file, whether licensed to Customer separately by Dell or by a third party, is subject to the terms and conditions that come with or are associated with such software.
4. **Rights Reserved.** THE SOFTWARE IS LICENSED, NOT SOLD. Except for the license expressly granted in this Schedule, Dell, on behalf of itself and its licensors and suppliers, retains all right, title, and interest in and to the Dell-branded Software and in all related content, materials, copyrights, trade secrets, patents, trademarks, derivative works and any other intellectual and industrial property and proprietary rights, including registrations, applications, renewals, and extensions of such rights (the "Works"). The rights in these Works are valid and protected in all forms, media and technologies existing now or hereinafter developed and any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, adaptations, translation, display, republication or performance of the Works, except as specifically permitted herein, is strictly prohibited. Dell, on behalf of itself and its licensors and suppliers, retains all rights not expressly granted herein.
5. **Restrictions.** Except as otherwise provided herein or expressly agreed by Dell, Customer may not, and will not allow a third party to: (A) sell, lease, license, sublicense, assign, distribute or otherwise transfer or encumber in whole or in part the Software; (B) provide, make available to, or permit use of the Software in whole or in part by, any third party, including contractors, without Dell's prior written consent, unless such use by the third party is solely on Customer's behalf, is strictly in compliance with the terms and conditions of this Schedule, and Customer is liable for any breach of this Schedule by such third party (a "Permitted Third Party"); (C) copy, reproduce, republish, upload, post, or transmit the Software in any way; (D) decompile, disassemble, reverse engineer, or otherwise attempt to derive source code (or underlying ideas, algorithms, structure or organization) from the Software program, in whole or in part; (E) modify or create derivative works based upon the Software (except as set forth in Section 16 – Development Tools); (F) use the Software on a service bureau, rental or managed services basis or permit other individuals or entities to create Internet "links" to the Software or "frame" or "mirror" the Software on any other server or wireless or Internet-based device; or (G) use the Software to create a competitive offering. Customer may not, and will not allow a Permitted Third Party to, use the Software in excess of the number of licenses expressly authorized by Dell. In addition, Customer may not share the results of any benchmarking of the Software without Dell's prior written consent.
6. **Liability.** Despite anything to the contrary in the MCCA, any liability by Customer for misappropriation or infringement of intellectual property; breach of the License, Limitations, Reserved Rights or Restrictions sections herein; or breach of confidentiality obligations as it relates to the Software shall not be limited in any manner whatsoever.
7. **Compliance.** Customer will certify in writing, upon reasonable request by Dell, that all use of Software is in compliance with the terms of this Schedule, indicating the number of Software licenses deployed at that time. Customer grants Dell, or an agent selected by Dell, the right to perform a reasonable review of Customer's compliance with this Schedule during normal business hours. Customer agrees to cooperate and provide Dell with all records reasonably related to Customer's compliance with this Schedule. If, as a result of the audit, a deficiency of greater than five percent (5%) is found in the license fees paid, then Customer shall bear the total cost of the audit, in addition to any other liabilities Customer may have.
8. **Limited Warranty.** Dell has the right to grant the licenses to the Software, and such Software will substantially conform in material respects to the functional specifications and current documentation provided by Dell with the Software. This limited warranty is not transferable and extends only for thirty (30) days from the date of delivery of the Software. This limited warranty does not cover




damages, defects, malfunctions or failures caused by any unauthorized modification by Customer, or its agents, of the Software; any abuse, misuse or negligent acts of Customer; modification by Customer of any interfaces or any software or hardware interfacing with the Software; or any failure by Customer to follow Dell's installation, operation or maintenance instructions. DELL DOES NOT WARRANT THAT THE FUNCTIONS OF THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ASSUMES RESPONSIBILITY FOR SELECTING THE SOFTWARE AND THE RESULTS ACHIEVED. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND DELL'S ENTIRE LIABILITY FOR BREACH OF THE WARRANTIES PROVIDED HEREIN, IS FOR DELL, AT ITS SOLE DISCRETION, TO EITHER USE COMMERCIALY REASONABLE EFFORTS TO REMEDY ANY NON-CONFORMANCE OR TO PROVIDE A REFUND OF THE LICENSE FEES PAID BY CUSTOMER TO DELL FOR THE SOFTWARE. THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND CUSTOMER MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED -- ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THE SOFTWARE. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER.

9. **Support and Subscription Services Not Included.** Dell does not provide any maintenance or support services under this Schedule. Maintenance and support services, if any, are provided under a separate agreement. Additionally, this Schedule, in and of itself, does not entitle Customer to any Updates at any time in the future.
10. **Termination.** Dell may terminate this Schedule immediately and without prior notice if Customer fails to comply with any term or condition of this Schedule or if Customer fails to timely pay for the licenses to the Software. In addition, Dell may terminate any license to Software distributed for free at any time in its sole discretion. Either party may terminate this Schedule at any time by providing at least thirty (30) days prior written notice to the other party. In the event of termination of this Schedule, all licenses granted hereunder shall automatically terminate and Customer must immediately cease use of the Software and destroy all copies of the Software. The parties recognize and agree that their obligations under Sections 3, 4, 5, 6, 8, 10, 12, 15 and 16 of this Schedule, as well as obligations for payment, shall survive the cancellation, termination, and/or expiration of this Schedule, and/or the license(s) granted hereunder.
11. **Export, Import and Government Restrictions.** Customer is advised that the Software is subject to U.S. export laws as well as the laws of the country where it is delivered or used. Customer agrees to abide by these laws. Under these laws, the Software may not be sold, leased, or transferred to restricted countries (currently Cuba, Iran, North Korea, Sudan and Syria), restricted end-users, or for restricted end-uses. Customer specifically agrees that the Software will not be used for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, or nuclear weapons, missiles or support of missile projects, or chemical or biological weapons. Customer understands that certain functionality of the Software such as encryption or authentication may be subject to import restrictions in the event Customer transfers the Software from the country of delivery and Customer is responsible for complying with applicable restrictions.


The software and documentation are "commercial items" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the software and documentation with only those rights set forth herein. Contractor/manufacturer is Dell Products L.P., One Dell Way, Round Rock, Texas 78682.
12. **Open Source and Third Party Software.** The Software may come bundled or otherwise be distributed with open source software, which is subject to the terms and conditions of the specific license under which the open source software is distributed. THIS OPEN SOURCE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SCHEDULE, AS IT RELATES TO ANY AND ALL CLAIMS TO THE EXTENT ARISING OUT OF OPEN SOURCE SOFTWARE, DELL SHALL HAVE NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. Under certain open source software licenses, Customer is entitled to obtain the corresponding source files. Customer may find corresponding source files for the Software at <http://opensource.Dell.com> or other locations that may be specified to Customer by Dell.
13. **System Software.** Despite anything to the contrary in this Schedule or the MCCA, Customer may use the System Software only on Dell computers or devices, with the exception of mobile device application software specifically designed by Dell to be run on non-Dell hardware. Customer may transfer the System Software and all accompanying materials on a permanent basis as part of a sale or transfer of the Product on which it was preloaded by Dell, where applicable, only if Customer retains no copies and the recipient agrees to the terms located at www.Dell.com/SEULA. Any such transfer must include the most recent update and all prior versions of the System Software.
14. **Warranty, Indemnity and Liability on Evaluation and System Software.** DESPITE ANYTHING TO THE CONTRARY IN THIS SCHEDULE OR THE MCCA, ANY SYSTEM SOFTWARE IS PROVIDED TO CUSTOMER "AS IS" WITHOUT INDEMNITY OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. DELL BEARS NO LIABILITY FOR ANY DAMAGES WHATSOEVER RESULTING FROM USE (OR ATTEMPTED USE) OF THE SYSTEM SOFTWARE AND HAS NO DUTY TO PROVIDE SUPPORT OF SUCH SOFTWARE TO CUSTOMER.
15. **Development Tools.** If the Software includes development tools, such as scripting tools, APIs, or sample scripts (collectively "Development Tools"), customer may use such Development Tools to create new scripts and code for the purpose of customizing Customer's use of the Software (within the parameters set forth in this Schedule and within the parameters set forth in the Development Tools themselves) and for no other purpose. Notwithstanding anything to the contrary set forth in this Schedule, no warranty, indemnity or technical support is provided for and Dell accepts no liability with regard to such sample scripts contained in such Development Tools or scripts or other code written by Customer or any third party.

16. **Hosted and Internet-Accessible Software.** Some or all of the Software may be remotely hosted or accessible to Customer through the Internet ("Hosted Software"). In such case, Dell may suspend, terminate, withdraw, or discontinue all or part of the Hosted Software or Customer's access to the Hosted Software upon receipt of a subpoena or law-enforcement request, or when Dell reasonably believes, , that Customer has breached any term of this Schedule or are involved in any fraudulent, misleading, or illegal activities. Dell may modify the Hosted Software at any time with or without prior notice to Customer. Dell may perform scheduled or unscheduled repairs or maintenance, or remotely patch or upgrade the Hosted Software installed on its and Customer's system(s), which may temporarily degrade the quality of the Hosted Software or result in a partial or complete outage of the Hosted Software. Updates, patches or alerts may be delivered from Dell servers, which may be located outside of Customer's country. Dell provides no assurance that Customer will receive advance notification of such activities or that Customer's use of the Hosted Software will be uninterrupted or error free.

By their signatures below, Dell and Customer indicate their agreement to the terms and conditions set forth in this Software License Schedule to the MCCA.

DELL MARKETING L.P.		CUSTOMER NAME	
By:	 <small>Digitally signed by Amy Ivy DN: cn=Amy Ivy, o=Dell, ou, email=Amy_ivy@Dell.com, c=US Date: 2016.01.11 11:11:05 -0500</small>	By:	
Printed Name:	Amy Ivy	Printed Name:	Assistant City Manager 
Title:	Contracts Manager	Title:	City Manager
Date:	1/11/16	Date:	1/27/16

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.

APPROVED AS TO FORM
January 11, 2016
CHARLES PARKIN, City Attorney
By 
GARY J. ANDERSON
PRINCIPAL DEPUTY CITY ATTORNEY