

**BOARD OF EDUCATION OF BALTIMORE COUNTY
Towson, Maryland 21204**

AGREEMENT (Contract # MWE-807-14)

HARDWARE, SOFTWARE AND SERVICES TO PROVIDE A 1:1 STUDENT DEVICE PROGRAM

This Agreement is made and entered into this 12th day of March 2014 (the "Agreement") by and between the Board of Education of Baltimore County, Maryland (hereinafter the "Board" or "BCPS") and Daly Computers, Inc., 22521 Gateway Center Drive, Clarksburg, MD 20871 (hereinafter the "Award Vendor"), which is authorized, to do business in the State of Maryland. In consideration of the mutual premises contained herein, the parties agree as follows:

1.0 Incorporation of Bid Documents

- 1.1 The terms and conditions set forth in the solicitation for the Request for Proposal: Hardware, Software, and Services to Provide a 1:1 Student Device Program, Bid # MWE-807-14 which was issued on January 2, 2014 and opened on January 23, 2014, including any Addenda thereto, the proposal/bid of the Vendor, and any Purchase Order(s) subsequently issued (collectively, the "Solicitation/Bid Documents") are incorporated in this agreement.

2.0 Order of Precedence

In the event of conflict between this Agreement and the Bid Documents, the terms of this Agreement shall govern. If the conflict cannot be resolved by reference to the substantive terms of this Agreement, the parties intend that the following order of precedence shall apply in interpreting their Agreement:

- 2.1 This Agreement;
- 2.2 HP Master Lease Purchase Agreement documents (incorporated as Attachment A)
- Master Lease Purchase Agreement
Master Lease Purchase Agreement Incumbency Certification Ratification
Advance Price Agreement Master Lease Purchase Agreement
Master Lease Purchase Agreement Opinion
Master Lease Purchase Agreement Tech Refresh
- 2.3 The BCPS Solicitation for bid; then
- 2.4 Any BCPS Purchase Order.

3.0 Responsibilities of the Vendor

For the purposes of this contract the Award Vendor shall:

- 3.1 Provide all commodities and/or materials per the requirements as set forth in the "Solicitation/Bid Documents".
- 3.2 Deliver all products per the requirements as set forth in the "Solicitation/Bid Documents".
- 3.3 Provide for the purchase and delivery of all parts and material ordered to the identified locations as required.
- 3.4 The Award Vendor will honor all pricing as proposed in the pricing proposal version 7, dated February 27, 2014 (Attachment B).

- 3.5 Provide a minimum of 14% of the contract value from Small and/or Minority Business Enterprise Participation when possible.
- 3.6 Honor the solicitation specifications for all services, terms and conditions.

4.0 Compensation

In consideration of the products and/or services to be provided by the Vendor, BCPS shall pay the Vendor in accordance with the pricing set forth within the Vendor's "Pricing Proposal" response. Vendor shall receive compensation only for products and/or services officially ordered, received and accepted by BCPS.

These prices and/or mark-ups will remain in effect throughout the initial term of the contract and for all exercised option years unless adjustments are justified and granted through Consumer Price Index changes, in accords with sub-section 18 of part II of the solicitation documents.

5.0 Term of Contract

The duration of this Agreement will be from time of contract execution to June 30, 2024 and all terms and conditions shall remain in effect. BCPS reserves the right to extend the terms of this contract for two additional five year periods.

6.0 Insurance

In the event that the award vendor, as part of the award, is also responsible for delivery of the product and/or product demonstration, the award vendor shall be responsible for hiring personnel to perform such services at its own cost. Such personnel will be considered employees of the award vendor and are under its control and direction. The award vendor shall maintain Worker's Compensation in the statutory amount in accordance with the laws of the state in which the work of this contract is to be performed.

The award vendor shall also maintain Employer's Liability Insurance with a limit of at least \$100,000 for each occurrence to cover diseases and injuries excluded under the Workers Compensation Act.

Prior to the commencement of any work, the award vendor may be required to submit a certificate of insurance evidencing Worker's Compensation and Employer Liability Insurance in the amounts required above. This certificate shall indicate the amounts of insurance carried by the award vendor of the following types: Comprehensive General Liability Insurance, Comprehensive Automobile Insurance, Excess Liability Insurance, and any other insurance coverage maintained by the award vendor. The Certificates of Insurance will state that such insurance is in force and cannot be canceled or released except upon thirty (30) days prior written notice to the Board of Education of Baltimore County.

The Certificate of Insurance must name the Board of Education of Baltimore County as an additional insured.

All required insurance coverage must be underwritten by insurers allowed to do business in the State of Maryland and acceptable to the Board. The insurers must also have a policyholders' rating of "B" or better, and a financial size of "Class VII" or better in the latest evaluation by A.M. Best Company. The Board hereby grants specific approval for the acquisition of workers compensation and employer's liability insurance from the Injured Worker's Insurance Fund of Maryland.

7.0 Termination

Termination for Non-Appropriation of Funds: BCPS may terminate this contract, in whole or in part due to insufficient funding with written notice to award Vendor. BCPS shall pay for all of the purchases, if any, incurred up to the date of the termination notice.

Termination for Default: When award Vendor has not performed or has unsatisfactorily performed and the 30 day cure period has expired the contract payment shall be withheld at the discretion of BCPS. Failure on the part of award Vendor to fulfill contractual obligations shall be considered just cause for termination of the contract, and award Vendor is not entitled to any costs incurred by it up to the date of termination.

Termination for Convenience: BCPS has the right to withdraw from the terms of the contract, without showing cause, by providing thirty (30) calendar days written notice to award Vendor. BCPS shall pay all reasonable costs incurred by award Vendor up to the date of termination. Award Vendor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Award Vendor shall not have a mutual right of termination.

8.0 Notices

Any notices required to be given under this Agreement shall be given, in writing, to the attention of the person identified below. Notice will be deemed to have been given when: it has been hand delivered and placed in the hands of the Vendor, or it has been placed in the U.S. Mail (postage prepaid, certified and return receipt requested), or it is delivered by overnight carrier.

Vendor

Ryan Yu, President
Daly Computers, Inc.
22521 Gateway Center Drive
Clarksburg, MD 20871
Phone: 301-670-0381

BCPS

Manager of Purchasing
Baltimore County Public Schools
6901 N. Charles Street, Building E
Towson, MD 21204
Phone: 410-887-4334

9.0 Indemnification

Award Vendor will, at its sole cost and expense, indemnify and hold BCPS and the Board of Education of Baltimore County, its agents, employees, attorneys and representatives harmless from all claims, liens or demands that result in losses, liabilities, defense costs and expenses (including, but not limited to reasonable attorneys' fees and costs of litigation) arising out of the terms, conditions and performance under the contract except Vendor shall have no obligation to indemnify any claims, liens, or demands arising solely as a result of BCPS' gross negligence or willful misconduct.

10.0 Waiver of Jury Trial

The Vendor and Board hereby waive trial by jury in any action or proceeding to which the board and/or the Vendor are parties arising out of or in any way pertaining to this Agreement. It is agreed and understood that this waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this Agreement. This waiver is knowingly, willingly and voluntarily made by the Board and the Vendor and the board and the Vendor hereby represent and warrant that no representations of fact or opinion have been made by an individual to induce this waiver of trial by jury or to in any way modify or nullify its effect. The Board and the Vendor further represent and warrant that they have been represented or have had the opportunity to be represented, in the signing of this Agreement and in the making of this waiver by legal counsel, selected of their own free will, and that they have had the opportunity to discuss this waiver with counsel.

11.0 Governing Law and Venue

This agreement is subject to and will be construed and interpreted under the laws of the State of Maryland. All lawsuits arising out of this Agreement must be filed in the appropriate State Court located in Baltimore County, Maryland.

12.0 Representation Regarding Review of Contract

The Vendor hereby warrants and represents that it has read and understood the terms and conditions of this Agreement and the incorporated Bid Documents, including but not limited to those terms and conditions governing termination, indemnification, insurance, governing law, and venue.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

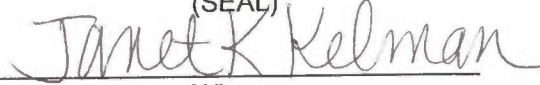
Accepted by:

DALY COMPUTERS, INC.:


Signature Owner/Partner/Corporate Officer

RYAN Yu, President
Typed/Printed Name and Title

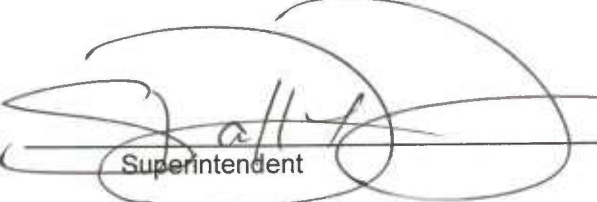
3/20/2014
Date

(SEAL)

Witness

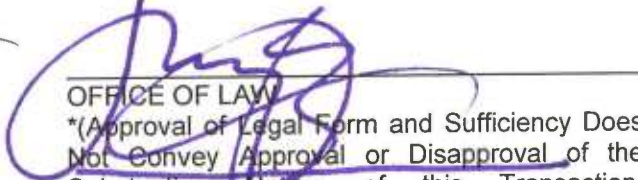
Accepted by:

BOARD OF EDUCATION OF BALTIMORE COUNTY


President of the Board


Superintendent

Reviewed for Legal Form and Sufficiency*
(Subject to Execution by the duly authorized Superintendent and President of the Board of Education of Baltimore County.)


OFFICE OF LAW

*(Approval of Legal Form and Sufficiency Does Not Convey Approval or Disapproval of the Substantive Nature of this Transaction. Approval is based upon Typeset Document: All Modifications Require Re-Approval.)



hp financial services

200 Connell Drive, Suite 5000
Berkeley Heights, NJ 07922

March 21, 2014

Board of Education of Baltimore County
6901 N. Charles Street
Baltimore, MD 21204
ATTN: Richard L. Gay, Purchasing Manager**RE: STATE AND LOCAL GOVERNMENT MASTER LEASE PURCHASE AGREEMENT NO.: 4468077474**

Thank you for selecting Hewlett-Packard Financial Services Company ("HPFS") to provide financing for your technology acquisition. As per the request of your HPFS representative, we have prepared the following the lease documents for review and execution:

BASE DOCUMENTS **Incumbency Certificate**

This document certifies to HPFS that the individual(s) signing the Lease Agreement, the Equipment Schedule and the Acceptance Certificate is (are) authorized to execute such documents and that such individual(s) is (are) currently holding the office or title specified in such documents.

 State and Local Government Master Lease Purchase Agreement ("MLPA" Lease Agreement) with Exhibits

- Exhibit A to MLPA – Schedule
- Attachment A – Amortization Schedule
- Exhibit B to MLPA - Acceptance

The Lease Agreement contains the terms and conditions of the lease arrangement between the Customer and HPFS. All of such terms are incorporated by reference into each Equipment Schedule.

 Opinion of Counsel.**ADVANCE PRICING AGREEMENT** **State and Local Government Master Lease Purchase Agreement Advance Pricing Agreement ("APA")**

This agreement amends the Lease Agreement to provide for the periodic roll-up of Equipment Schedules into a single Consolidated Lease Schedule.

- **Exhibit 1 to APA – Interim Acceptance Certificate ("ICOA")**

This document confirms that the Customer has received the Equipment, is satisfied with it and Approved Lessor to Pay Vendor/Reseller for invoices listed.

- **Exhibit 2 to APA – Consolidating Schedule**

The Lease Agreement contains the terms and conditions of the lease arrangement between the Customer and HPFS. All of such terms are incorporated by reference into each Schedule.

 Officer's Delegation of Authority

This document certifies to HPFS that the individual(s) signing the Advance Pricing Agreement, Equipment Schedule and Acceptance Certificate is (are) authorized to execute such documents and that such individual(s) is (are) currently holding the office or title specified in such documents.

Please request that the appropriate authorized officers execute (or initial) where indicated by the red arrows and return to HPFS as soon as possible, together with :

- i. Federal Tax ID Number (FEIN): 52-6000886
- ii. Copy of Sales and Use Tax Exempt Certificate

Should you have any questions or comments regarding the enclosed documents or the procedure outlined above, please do not hesitate to contact the person listed in the box below.

Sincerely,

Financial Area Manager Sean Capria Phone: 315-317-0668 Email: Sean.capria@hp.com	Public Sector Customer Delivery Specialist Donna Donovan Phone: 908-898-4637 Fax: 908-898-4817 Email: Donovan@hp.com
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Sincerely,

Public Sector Engagement Manager
Email: jasmine.barbour@hp.com



hp financial services

INCUMBENCY CERTIFICATE

(State and Local Government Master Lease Purchase Agreement)

I, the undersigned being the duly appointed and acting Secretary or Clerk of Board of Education of Baltimore County ("Lessee"), **DO HEREBY CERTIFY** that (i) I have custody of the records of Lessee; and (ii) based on an examination of such records of Lessee as of the date set forth below, the following persons in the respective capacities indicated opposite their names have been authorized to execute, with full authority to bind the Lessee to the State and Local Government Master Lease Purchase Agreement between Lessee and Hewlett-Packard Financial Services Company as lessor ("Master Agreement"), and all other agreements, documents and instruments executed and delivered and to be executed and delivered in connection therewith, including without limitation, the Master Agreement, any Schedules and Acceptance Certificates (as such terms are defined in the Master Agreement; collectively referred to as the "Documents"); and (iii) the signature set forth opposite such individual's name and title/office is the true and authentic signature of that individual; and, (iv) each such individual has (and had on the date each such individual affixed his or her signature to the Documents) the authority to enter into the Documents on behalf of the Lessee.

<u>Name</u>	<u>Title/Office</u>	<u>Signature</u>
<u>Lawrence E. Schmidt, Esq.</u>	<u>President, Board of Education</u>	
<u>S. Dallas Dance, Ph.D.</u>	<u>Superintendent</u>	

On behalf of Lessee, I hereby certify the due and effective ratification, approval, and confirmation of all such acts and things that any of the above-referenced persons has done or may do in connection with the matters outlined above prior or subsequent to the date of this Certificate. I do further certify that the foregoing authority shall remain in full force and effect, and Hewlett-Packard Financial Services Company shall be entitled to rely upon same, until written notice of the modification, rescission or revocation of same, in whole or in part, has been delivered to Hewlett-Packard Financial Services Company, but no such modification, rescission or revocation shall, in any event, be effective with respect to any documents executed or actions taken in reliance upon the foregoing authority prior to the delivery to Hewlett-Packard Financial Services Company of said written notice of said modification, rescission or revocation. The execution and delivery of the Documents for and on behalf of Lessee is not prohibited or in any manner restricted by any law, ordinance or regulation.

9th IN WITNESS WHEREOF, I have duly executed this Incumbency Certificate and affixed Lessee's seal hereto this ___ day of April, 2014.

Secretary/Clerk or duly elected or appointed and acting officer (or duly authorized designee of such officer) of

SEAL

BOARD OF EDUCATION OF BALTIMORE COUNTY

Signature: Richard L. Gay

Print Name: Richard L. Gay

Title: Purchasing Manager

[PLEASE NOTE: THE GENERAL PURPOSE OF THIS DOCUMENT IS TO AUTHORIZE INDIVIDUALS TO SIGN THE LEASE DOCUMENTS. CONSEQUENTLY, THE PERSON PROVIDING THE AUTHORIZATION CANNOT HIM OR HERSELF BE ONE OF THE SIGNERS OF THE LEASE DOCUMENTS. - I.E. CANNOT AUTHORIZE HIM OR HERSELF].



Lessee's Organization Number _____
Lessee's Tax Identification Number 52-6000886
Lessee's UCC Section 9-307 Location _____

STATE AND LOCAL GOVERNMENT MASTER LEASE PURCHASE AGREEMENT

This State and Local Government Master Lease Purchase Agreement (together with Exhibits A and B attached hereto and hereby made a part hereof, (this "Master Agreement"), dated as of 3/12, 2014, is entered into by and between Hewlett-Packard Financial Services Company,¹ a Delaware corporation ("Lessor"), and Board of Education of Baltimore County, an agency, department or political subdivision in the State of Maryland ("Lessee"). Capitalized terms used in this Master Agreement without definition have the meanings ascribed to them in Section 31.

1. PURPOSE OF MASTER AGREEMENT. The purpose of this Master Agreement is to set forth the general terms and conditions upon which Lessor shall lease to Lessee, and Lessee shall lease from Lessor, items of Hardware, Software or both (the "Equipment"). In connection with its execution of this Master Agreement, Lessee shall deliver to Lessor an Officer's Certificate in form and substance acceptable to Lessor, executed by a duly authorized officer of Lessee and certifying as to, among other things, Lessee's authority to enter into this Master Agreement, and the authority of Lessee's officers or representatives specified therein to execute this Master Agreement and an opinion of Lessee's counsel in form and content satisfactory to Lessor.

2. COMMENCEMENT PROCEDURES. Subject to the other terms and conditions contained in this Master Agreement and the applicable Schedule, Lessee shall enter into individual Leases (hereinafter defined) with Lessor as follows:

(a) **Execution of Schedule.** Lessor and Lessee mutually agree to enter into a Lease by executing a Schedule in the form of Exhibit A with such changes as Lessor and Lessee shall have agreed to as conclusively evidenced by their execution thereof. Each such Schedule shall specifically identify (by serial number or other identifying characteristics) the items of Equipment to be leased under such Schedule. Each Schedule, when executed by both Lessee and Lessor, together with this Master Agreement, shall constitute a separate and distinct lease ("Lease"), enforceable according to its terms. In the event of any conflict between the terms of this Master Agreement and such Schedule, the provisions of the Schedule shall govern.

(b) **Acceptance; Term of Leases.** Lessee shall accept the Equipment subject to a Lease in accordance with Section 3. The Term of each Lease shall begin on the Acceptance Date of the Equipment subject to such Lease and shall continue for the period described in the applicable Schedule unless a Non-appropriation shall have occurred.

(c) **Adjustments to Schedule.** Lessee acknowledges that the Total Cost of Equipment and the related Rent payments set forth in any Schedule may be estimates, and if the final invoice from the Seller attached to the related Acceptance Certificate(s) specifies a Total Cost that is less than the estimated Total Cost set forth in the Schedule, Lessee hereby authorizes Lessor to reduce the applicable Total Cost and Rent payment on the Schedule by up to ten percent (10%) to reflect such final invoice amount (the "Final Invoice Amount"). All references in this Master Agreement and any Schedule to Total Cost and Rent shall mean the amounts thereof specified in the applicable Schedule, as adjusted pursuant to this paragraph.

(d) **Payment by Lessor.** Within 30 days after Lessee's delivery to Lessor of a properly completed and executed Acceptance Certificate and all other documentation necessary to establish Lessee's acceptance of such Equipment under the related Lease and Lessor's acceptance of such Acceptance Certificate, Lessor shall pay for the Equipment. Lessor shall not accept the Acceptance Certificate until it has received from Lessee (1) evidence of insurance with respect to the Equipment in compliance with Section 14 hereof, (2) a completed and executed original Form 8038-G or 8038-GC, as applicable, or evidence of filing thereof with the Internal Revenue Service in the manner required by Code Section 149(e), (3) an opinion of Lessee's counsel, if required by Lessor, in form and substance reasonably satisfactory to Lessor and (4) any other documents or items reasonably required by Lessor. Notwithstanding the foregoing, Lessor shall not be obligated to pay for the Equipment if a Lessee Default has occurred or an event has occurred and is continuing that with the passage of time or provision of notice would constitute a Lessee Default. Lessor and Lessee acknowledge that the date the Lessor pays for the Equipment shall be the issue date of the obligation for federal income tax purposes in accordance with the Code and no Rent shall accrue prior to such date.

3. ACCEPTANCE OF EQUIPMENT. (a) **Inspection of Equipment.** Lessee agrees to inspect all Equipment as soon as reasonably practicable after the delivery thereof to Lessee.

(b) **Acceptance Certificate.** Upon the satisfactory inspection of the Equipment by Lessee, or if acceptance requirements for such Equipment are specified in the applicable Purchase Documents, as soon as such requirements are met, Lessee shall unconditionally and irrevocably accept the Equipment by executing and delivering to Lessor a properly completed Acceptance Certificate in substantially the form of Exhibit B.

4. RENT; LATE CHARGES. As rent ("Rent") for the Equipment under any Lease, Lessee agrees to pay the amounts specified in the applicable Schedule on the due dates specified in the applicable Schedule. Lessee agrees to pay Lessor interest on any Rent payment or other amount due hereunder that is not paid within 10 days of its due date, at the rate of 1-1/2% per month (or such lesser rate as is the maximum rate allowable under applicable law). Lessee will make provision for such payments in budgets submitted to its governing body for the purpose of obtaining funding for the payments.

5. TRANSFER OF EQUIPMENT ON EXPIRATION OF LEASE TERM. If Lessee has paid all Rent and all other amounts due under the Lease and has satisfied all other terms and conditions of the Lease, the Lease shall terminate and, except as provided in Section 28, Lessee shall be relieved of all of its obligations in favor of Lessor with respect to the Equipment and Lessor shall transfer all of its interest in such Equipment to Lessee "AS IS, WHERE IS," without any warranty, express or implied, from Lessor, other than the absence of any liens or claims by or through Lessor.

6. LEASES NON-CANCELABLE; NET LEASES; WAIVER OF DEFENSES TO PAYMENT. IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT EACH LEASE HEREUNDER SHALL BE NON-CANCELABLE (EXCEPT AS SET FORTH IN SECTION 7 HEREOF), AND THAT EACH LEASE HEREUNDER IS A NET LEASE SO THAT AMONG OTHER THINGS LESSEE SHALL PAY IN ADDITION TO THE RENT, TAXES, INSURANCE AND MAINTENANCE CHARGES RELATED TO THE EQUIPMENT. LESSEE AGREES THAT IT HAS AN ABSOLUTE AND UNCONDITIONAL OBLIGATION TO PAY ALL RENT AND OTHER AMOUNTS WHEN DUE. LESSEE HEREBY WAIVES ANY RECOUPMENT, CROSS-CLAIM, COUNTERCLAIM OR ANY OTHER DEFENSE AT LAW OR IN EQUITY TO ANY RENT OR OTHER AMOUNT DUE WITH RESPECT TO ANY LEASE, WHETHER ANY SUCH DEFENSE ARISES OUT OF THIS MASTER AGREEMENT, ANY SCHEDULE, ANY CLAIM BY LESSEE AGAINST LESSOR, LESSOR'S ASSIGNEES OR SUPPLIER OR OTHERWISE. IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, DOES NOT OPERATE OR INTEGRATE AS REPRESENTED OR WARRANTED BY SUPPLIER OR IS UNSATISFACTORY FOR ANY REASON WHATSOEVER, LESSEE

¹ Authorized to do business in the name of Hewlett-Packard Financial Services Company, Inc. in the states of Alabama and New York.