

Texas Department of Information Resources
Contract Number: DIR-TSO-3763
Appendix G
E-RATE AGREEMENT

E-RATE AGREEMENT FOR EQUIPMENT AND SERVICES



Customer Name: Customer Address: Customer Contract/ RFP # (if applicable): Dell Quotation No(s):
Period of (Check one) <input type="checkbox"/> <i>Recurring Services</i> or <input type="checkbox"/> <i>Non-Recurring Services</i> (defined in Section 2, SCOPE: Beginning: _____ and Ending: _____
Not to exceed Price ("NTE"): Location of Equipment: Effective Date:

1) INTRODUCTION

This E-Rate Agreement ("Agreement"), effective as the date above ("Effective Date"), is made between the Customer identified above ("Customer") and Dell Marketing L.P., One Dell Way, Round Rock, Texas 78682 ("Dell"). This document constitutes a legally binding agreement between Customer and Dell, as required by the Federal Communications Commission for compliance purposes under the Universal Service Support Mechanism for Schools and Libraries, commonly referred to as the "E-rate Program" or "Program". Dell and Customer (each a "Party," and collectively, the "Parties") agree to the following terms and conditions:

2) SCOPE

Customer has selected Dell as a supplier of E-rate eligible equipment and/or services, and warrants that it has (i) done so in accordance with all of the E-rate Program's competitive bidding requirements and (ii) complied with the Program's rules in all other respects. Customer further acknowledges that it is solely responsible for applying for all funding under the E-rate Program. In reliance on these warranties and acknowledgements by Customer and subject to the Department of Information Resources (DIR) Contract Number DIR-TSO-3763 and the E-rate Program's rules and the conditions set forth herein, Customer may purchase computer hardware and related products, including software licensing arrangements ("Products") and/or related services ("Services") as specified in Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3763 and Attachment 1 of this Agreement, which is incorporated by this reference, in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3763 and using the E-rate discounts approved by USAC as described in paragraph 4 below, and Dell shall be entitled to rely on Customer's representations relating to those discounts in connection with these purchases. Purchases of Products and Services under this Agreement shall be governed by the terms and conditions of DIR Contract Number DIR-TSO-3763, To the extent there is any conflict between DIR Contract Number DIR-TSO-3763 and this Agreement, the terms of DIR Contract Number DIR-TSO-3763 shall govern. (Notwithstanding the foregoing, the payment term in DIR Contract Number DIR-TSO-3763 may be modified (extended to 60 days from the invoice date) for purposes of orders under

the E-rate Program only if the funding arrangements applicable to Customer do not support payment in accordance with the payment term in DIR Contract Number DIR-TSO-3763.) Except as expressly agreed by the Parties in a separate Contract, this Agreement also incorporates the terms of the limited warranties applicable to Dell-branded hardware Products, which can be found at www.dell.com/warranty or in the documentation Dell provides with the Product.

Customer is submitting the proposed amount for E-Rate eligible Products and Services to the Schools and Libraries Division of the Universal Service Administrative Company ("USAC") for approval and acknowledgement of the funding requested under the E-rate program. Pending USAC approval, all Products and Services work shall be performed during the period beginning and ending as either Recurring or Non-Recurring listed on Page 1 of this Agreement. The deadline for Services is defined as the Service Delivery Deadline. Customer may request and be approved for an extension by USAC for additional time to complete any particular project, in which case, the terms of this Agreement shall continue to apply to such project until completion. Dell agrees to use commercially reasonable efforts to deliver and, if required, install all eligible Products and Services ordered before the Customer's E-rate Service Delivery Deadline. If the Customer's complete order is placed less than 45 days before the Service Delivery Deadline, however, or due to other circumstances beyond Dell's control, Dell cannot meet the Service Delivery Deadline, and the Customer is unable to (or fails to) extend the Service Delivery Deadline, Customer/ Dell reserve the right to cancel all or part of its order for the delayed products and/or services or pay Dell in full for whatever products and/or services it decides to order.

Customer reserves the right to propose modifications, or to reduce or eliminate items specified for purchase from Attachment 1 of this Agreement or to terminate the proposal entirely, based on the levels of E-Rate funding received. Should Customer seek such changes in the specifications for the Products and/or Services, Customer shall notify Dell of the proposed changes as soon as reasonably practicable and the Parties will determine mutually acceptable amendments to the proposal. No changes will be final unless made in writing in an addendum to this Agreement signed by both parties. Within thirty (30) days of filing its E-rate application for discounts on Dell products and/or services, Customer will deliver to Dell a copy of the Item 21 Description of Services in which those products and/or services are described.

3) PRICES

Subject to the provisions of DIR Contract Number DIR-TSO-3763 and this Agreement, Customer agrees to purchase and Dell agrees to provide the Products and /or Services as described in Dell Quotation No(s) listed above and/or Statement of Work, as detailed in Attachment 1 of this Agreement, for the Not to Exceed Price (as defined above). Customer represents and warrants that it has complied with all applicable laws and regulations concerning the procurement of these Products and/or Services and has obtained all necessary approvals and authorizations needed to enter into this Agreement.

4) USAC PROCEDURE

(1) In a Funding Commitment Decision Letter ("FCDL"), USAC will designate Customer's approved discount rate or rates along with the amount(s) of funding approved;

(2) Customer will then submit the FCC Form 486 to USAC. USAC will subsequently issue a Form 486 Receipt Notification Letter to both Customer and Dell. Customer will separately notify Dell when to begin to provide Services and/or ship Products. Form 486 cannot be filed before receipt of the FCDL from USAC. Upon approval of Form 486, Dell will ship the Products and/or provide the Services.

(a) Both Parties acknowledge that some Products or Services may be used for a combination of eligible and ineligible functions. If Customer deploys Products or Services in a partially ineligible manner, Customer understands that applicable E-rate funding requests must be cost-allocated according to FCC regulations. The Item 21 Description of Services and any modifications to it that Customer files with USAC, the FCDL, and any USAC or FCC adjustments to funding, including but not limited to those included in correspondence received from USAC during the application review process and in USAC's FRN explanatory notes, will be used to determine eligibility or percentage of eligibility.

(3) When Customer is ready to submit a Purchase Order to Dell, the following documentation is required for order placement: 1) Purchase Order to Dell for the Products and/or Services included in the Notice, 2) Copy of the original Item 21 Description of Services and any subsequent modifications to it, 3) Correspondence and documentation from USAC and/or the FCC, if any, adjusting or proposing to adjust the amount or nature of the funding commitment, 4) Copy of the Form 486, and 5) copy of the FCDL(s). Dell will ship the agreed-upon Products and/or provide the agreed upon Services, resulting in an invoice to Customer and USAC.

5) TERMS AND CONDITIONS

Appendix A, Standard Terms and Conditions of DIR Contract Number DIR-TSO-3763 shall take precedence over any Terms and Conditions listed in this Appendix G, E-Rate Agreement and any additional Terms and Conditions listed here shall not diminish any Terms and Conditions in Appendix A of DIR-TSO-3763. (Notwithstanding the foregoing, the payment term in DIR Contract Number DIR-TSO-3763 may be modified (extended to 60 days from the invoice date) for purposes of orders under the E-rate Program only if the funding arrangements applicable to Customer do not support payment in accordance with the payment term in DIR Contract Number DIR-TSO-3763.)

6) PAYMENT AND INVOICES

Upon request Dell can support customers using the Service Provider Invoice (SPI) method. Dell can provide supplemental documentation that includes a breakout of the FRN number being billed, the USAC portion and the Customer/ Applicant portion. As Services are performed and/or Products are shipped to Customer, Dell shall submit invoices and supporting documentation to Customer and USAC. Based on the Item 21 Description of Services, the Dell order will be placed exactly as stated on the Dell quotation(s). Should a product on the Dell quotation(s) reach its end of life before the order is placed, the product will be substituted with a similar product as indicated on the global product/service substitution form. If the Products and/or Services are not on the Item 21 Description of Services, the Customer/ Applicant will be invoiced for those items in full and the Customer's/ Applicant's portion will be adjusted accordingly. Customer understands and agrees that: Customer shall be liable for any discounted amount that Dell submits to USAC for payment if Dell is not at fault for USAC's refusal to pay; Customer is required to pay the non-discounted portion of all eligible discounted invoices in accordance with payment terms stipulated in this Agreement. Customer understands that all goods and services deemed ineligible by USAC at any time and for any reason are to be paid in full by customer.

Compensation shall be based on actual Services provided in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3763 during the term of this Agreement. Customer shall process invoices and make payments within sixty (60) days from the date of invoice. Purchase orders may be terminated at any time prior to the time that manufacturing begins for Products or resources have been committed for Services.

7) SERVICE CERTIFICATIONS

Customer agrees to sign and submit any required service certifications within the time proscribed by USAC. If Customer disputes the information contained in the service certification, Customer agrees to notify Dell within one calendar day of receipt.

8) PRODUCT/ SERVICE SUBSTITUTIONS

Customer agrees to submit product/ service substitution requests for any and all desired changes to product/service delivery from Customer's original Item 21 Description of Products/ Services documentation, unless USAC has already approved a "global" substitution request for the product or service. Vendor shall not be required to deliver any products or services that deviate from the original Description of Products/ Services attachment until product/ service substitution approval has been obtained.

9) SERVICE PROVIDER IDENTIFICATION NUMBER ("SPIN") CHANGES

Customer may not submit a SPIN change request to the E-Rate program administrator without prior written consent from Dell.

10) ELIGIBLE USERS AND LOCATIONS

Customer understands that discounted equipment and services may only be deployed at eligible locations and used by eligible users. Dell will not install discounted equipment and/or services in ineligible locations or configurations, nor in any configuration that deviates from the originally stated purpose in Customers' Item 21 Attachment or PIA correspondence. Dell will not be held liable for penalties assessed by the E-rate program administrator if Customer moves or reconfigures discounted equipment or services in an ineligible manner.

If at any time and for any reason, the E-rate program administrator determines any products or services to be ineligible for E-rate discounts, Customer will be charged in full for any such items delivered under the Contract in accordance with Appendix C, Pricing Index of DIR Contract Number DIR-TSO-3763.

11) REGULATORY COMPLIANCE

Customer certifies that it has complied with all applicable laws, orders and regulations of any governmental authority with jurisdiction over its activities in connection with this Agreement, including, but not limited to gift and entertainment rules applicable to the E-Rate program.

12) TERMINATION

Either party may terminate this Agreement in accordance with Section 11 of Appendix A, Termination, of DIR Contract Number DIR-TSO-3763. The terms and conditions of DIR Contract Number DIR-TSO-3763 and this Agreement will control the acceptance and shipment of any such orders.

13) MISCELLANEOUS

The use of preprinted forms, such as purchase orders, will be for convenience only, and all preprinted terms and conditions stated on such forms will not apply to the Agreement or to goods or services purchased or provided under the Agreement. Dell and Customer acknowledge that Products licensed or sold under this or any resulting Agreement are subject to the export control laws and regulations of the United States or those of other countries in which they are used and agree to abide by those laws and regulations.

Limitation of Liability shall be in accordance with Section 10.K of Appendix A to DIR Contract Number DIR-TSO-3763. DIR Contract Number DIR-TSO-3763 and this Agreement are the exclusive statements of the understanding between Dell and Customer regarding this subject matter and supersedes any prior or oral agreements between the parties.

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

Dell Marketing, L.P.	Customer
Signature:	Signature:
Name:	Name:
Position:	Position:
Date:	Date:

Attachment 1

[Attach if applicable, a Statement of Work].