

**CONTRACT NAME: AGREEMENT BETWEEN M&S
TECHNOLOGIES AND DAVIS JOINT UNIFIED SCHOOL
DISTRICT**

BRIEF DESCRIPTION OF CONTRACT: This is an agreement between M&S Technologies and DJUSD and is a renewal of our Endpoint Security software that provides computer anti-virus and anti-malware protection, as well as application control to prevent unwanted programs from running in our computing environments.

This is a three-year agreement at a cost of \$27,476 per year. The cost of the service is included in the District's budget for technology.

Installment Payment Agreement



Financial Leasing, Inc. | 800 Walnut, 4th floor | Des Moines, Iowa 50309 | Phone: 800-247-5083

Customer Information:

Customer's Full Legal Name ("You" and "Your"):
Davis Joing Unified School District

Address:

526 B St

City/State/Zip Code:

Davis CA 95616

Telephone Number:

(530) 757-5300

Federal Tax ID#:

County:

Product Information:

☐ See Attached Schedule

Licensor and Supplier Name(s) & Address(es):

M&S Technologies, 14175 Proton Road Dallas TX 75244

Description of Product Agreements:

3 Years Sophos Central & Intercept 3100 users, 3 Year Server Protection Advanced 40 Users

Term And Payment Information:

"License Fee" Owed by Customer Under Product Agreement(s): **\$82,426.68**

Term: 36 months

Date Term Begins:

Periodic Payment: **\$2,475.56**

Origination Fee: **\$ 85.00**

Payment Period is "Monthly" unless otherwise noted here: Annual

Total Number of Payments: 3

You acknowledge and agree that this agreement (as amended from time to time, the "IPA") represents the complete and exclusive agreement between You and Us regarding the subject matter herein and supersedes any other oral or written agreements between You and Us regarding such matters. This IPA can be changed only by a written agreement between You and Us. Other agreements not stated herein (including, without limitation, those contained in any purchase order or agreement between You and a Supplier) are not part of this IPA. To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify and record information that identifies each person (individuals or businesses) who opens an account. What this means for You: When You open an account or add any additional service, We will ask You for Your name, address, federal employer identification number and other information that will allow Us to identify You. We may also ask to see other identifying documents.

1. FUNDING AUTHORIZATION; PAYMENTS. You acknowledge having entered into one or more license, subscription and/or product agreements described above (each a "Product Agreement") with the above-referenced licensor(s) and/or supplier(s) (each a "Supplier") pursuant to which You obtained the right to use the software, goods and/or other products referenced therein and/or receive certain services covered under the Product Agreement(s) (collectively, the "Software Products"). Pursuant to the terms of the Product Agreement(s), You are obligated to pay to the Supplier(s) the License Fee amount set forth above on account of the Software Products. You hereby choose to finance the License Fee through Us over a period of time instead of paying the License Fee in cash presently pursuant to the terms and conditions of this IPA.

This IPA is binding on You as of the date You sign it (the "Effective Date"). By Your execution of this IPA, You hereby request Us to pay to the Supplier(s) an amount necessary to satisfy Your License Fee obligations to the Supplier(s). You acknowledge that the amount so remitted by Us to the Supplier(s) may be net of any discounts or other financial arrangements or accommodations granted by the Supplier(s) to Us, with any such discount, financial arrangement or accommodation reflected in the Periodic Payment. Each Payment Period, You hereby unconditionally agree to pay to Us the Periodic Payments by the due date set forth on Our invoice to You. In addition, You agree to pay a per-diem charge (based on the Periodic Payment amount prorated based on a 30 day month) as reasonably calculated by Us for the period from the Effective Date through the day preceding the commencement of the Term. If requested by Us, You agree to sign and return a certificate of acceptance with respect to the Software Products. In addition, You agree to pay a one-time origination fee in the amount set forth above (the "Origination Fee"). The Periodic Payments shown below are exclusive of taxes. You shall be solely responsible for the payment of all applicable fees, taxes and governmental charges, of any nature, imposed upon or relating to any of the Software Products.

If We do not receive a Periodic Payment in full on or before its due date, then You shall pay a late fee equal to the greater of 10% of the amount that is late or \$29.00 (or the highest amount permitted by law if less). If any check or draft is returned or dishonored, You shall pay Us a fee of \$20.00. You agree that the fees set forth in this IPA may include a profit to us and/or a Supplier. In the event You pay any Periodic Payment in whole or in part prior to the due date thereof, You agree that the entire amount paid will be applied by Us to the next-due installment(s). **This IPA is non-cancelable for the full Term.**

2. CUSTOMER REPRESENTATIONS AND ACKNOWLEDGMENTS. You hereby represent and warrant to Us that: (i) this IPA has been duly authorized, executed and delivered by You and constitutes a legal, valid and binding obligation of You enforceable against You in accordance with its terms, except as enforcement may be limited by bankruptcy or other insolvency-related laws; (ii) the execution, delivery and performance of this IPA will not violate or create a default under any law, regulation, judgment, order, instrument, agreement or organizational document binding on You; (iii) any and all information furnished to Us by You or on Your behalf is true and correct in all material respects; and (iv) You have entered into this IPA solely for commercial purposes and not for personal, family or household purposes.

You hereby acknowledge and agree that: (a) this IPA constitutes a discreet financing agreement, and is separate and distinct from the Product Agreement(s); (b) no breach by any Supplier under a Product Agreement shall relieve You of Your obligations under this IPA; (c) You selected each Supplier and the Software Products and negotiated the

BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES RECEIPT OF PAGE 2 OF THIS AGREEMENT AND AGREES TO THE TERMS ON BOTH PAGES 1 & 2

Customer: (identified above)		M&S Technologies, Inc. ("We," "Us" and "Our")	
By:	Date: ____ / ____ / ____	By:	Date: ____ / ____ / ____
Print name:	Title:	Print name:	Title:
		Agreement Number:	

License Fee based on Your own judgment and expressly disclaim any reliance on statements made by Us or Our agents; (d) Your obligations hereunder are absolute, unconditional and irrevocable despite any failure of, or Your dissatisfaction with, any of the Software Products; and (e) Your obligation to make the Periodic Payments under this IPA shall not be subject to any abatement, setoff, claim, counterclaim, adjustment, reduction or defense of any kind.

3. NO WARRANTIES. WE MAKE NO WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE SOFTWARE OR ANY SERVICES, GOODS OR OTHER PRODUCTS COVERED BY THE PRODUCT AGREEMENT(S), INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. YOU WAIVE ANY CLAIM (INCLUDING ANY CLAIM BASED ON STRICT OR ABSOLUTE LIABILITY IN TORT) THAT YOU MAY HAVE AGAINST US FOR ANY LOSS, DAMAGE (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF DATA OR SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGE) OR EXPENSE CAUSED BY THE SOFTWARE OR ANY SERVICES, GOODS OR OTHER PRODUCTS COVERED BY THE PRODUCT AGREEMENT(S), EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, LOSS, EXPENSE OR COST. YOU ACKNOWLEDGE THAT WE DID NOT MANUFACTURE, DISTRIBUTE, OR LICENSE THE SOFTWARE, GOODS OR OTHER PRODUCTS COVERED BY THE PRODUCT AGREEMENT(S). YOUR OBLIGATIONS UNDER THIS IPA ARE COMPLETELY INDEPENDENT OF THE DELIVERY, PERFORMANCE OR QUALITY OF THE SOFTWARE OR ANY SERVICES, GOODS OR OTHER PRODUCTS COVERED BY THE PRODUCT AGREEMENT(S).

4. TRANSFER OF SOFTWARE PRODUCTS. In consideration of and to secure Your full and timely payment of Your obligations hereunder, You hereby irrevocably transfer and assign to Us all of Your rights and interests (but not any of Your obligations) in, to and under the Product Agreement(s), including all of Your rights to use and/or receive the Software Products, and to suspend, cancel and/or terminate Your license for any software, goods or other products and rights to receive any services included in such Software Products. This is a present grant to Us, but may be acted upon by Us only after a default by You under the terms of this IPA. You and We each acknowledge that Our rights to use and receive the Software Products may be subject to the provisions of the related Product Agreement and rights of the Supplier thereunder, but, as between You and Us, after a default by You under the terms of this IPA and upon Our written exercise of Our rights hereunder, there shall be a total relinquishment of Your rights in the Software Products to Us. Our rights under this Section 4 shall be referred to as the "Transfer of Rights".

5. EVENTS OF DEFAULT. You will be in default hereunder if: (1) You fail to pay any amount due hereunder within 15 days of the due date; (2) You breach or attempt to breach any other term, representation or covenant herein or in any other agreement now existing or hereafter entered into with Us or any Assignee; (3) an event of default occurs under any obligation You may now or hereafter owe to any affiliate of Us or any Assignee; (4) You and/or any guarantors or sureties of Your obligations hereunder (i) die, (ii) go out of business, (iii) commence dissolution proceedings, (iv) merge or consolidate into another entity, (v) sell all or substantially all of Your or their assets, or there is a change of control with respect to Your or their ownership, (vi) become insolvent, admit Your or their inability to pay Your or their debts, (vii) make an assignment for the benefit of Your or their creditors (or enter into a similar arrangement), (viii) file, or there is filed against You or them, a bankruptcy, reorganization or similar proceeding or a proceeding for the appointment of a receiver, trustee or liquidator, or (ix) suffer a material adverse change in Your or their financial condition; and/or (5) Your license to use any software component of the Software Products is canceled, terminated, suspended or materially restricted or limited.

6. REMEDIES. If You default under the terms of this IPA, We may do any or all of the following: (A) require You to pay to Us, on demand, an amount equal to the sum of (i) all Periodic Payments and other fees and charges then due and past due, if any, (ii) all Periodic Payments to become due in the future through the remainder of the Term, discounted (if applicable) to present value calculated using the simple interest method and a per annum rate equal to 3% (or the lowest rate permitted by law, if higher), and (iii) interest on the amounts specified in clauses "i" and "ii" at the rate of 1.5% per month (or the maximum amount permitted by law if less) from the date of demand to the date paid, (B) cancel, terminate, suspend or cause the cancellation, termination, suspension or withholding of Software Products, (C) exercise any rights under any Product Agreement which have been granted to Us by a Supplier, (D) exercise the Transfer of Rights in Software Products as provided in Section 4 above, (E) render the Software unusable by requiring You to remove the Software from any computer or other equipment, (F) exercise any other remedy available to Us under any security agreement securing this IPA, and/or (G) exercise any other remedy available to Us at law or in equity. Upon Our instructions after a default by You under the terms of this IPA, You agree to immediately cease using the Software Products, to deinstall and delete all copies of licensed Software Products from any computer systems owned or controlled by You or used for Your benefit, destroy all written manuals and materials provided with the Software Products, and provide Us with a certificate signed by an officer who is responsible for Your information systems, attesting to such cessation of use and maintenance, deinstallation, deletion, delivery and destruction. We or Our designees will have full and unrestricted access to Your records, computer systems, service provider systems (if any) and facilities to verify Your cessation of use, deinstallation, deletion and destruction. Our remedies hereunder are cumulative and non-exclusive, may be exercised concurrently or successively, and may be specifically enforced. You agree to pay all costs of collection and enforcement of this IPA, including, without limitation, reasonable attorneys' fees, court costs and other reasonable expenses relating directly or indirectly to collection and enforcement. No delay or omission by Us in Our exercise of any right hereunder shall operate as a waiver thereof.

7. ASSIGNMENT. You shall not assign or delegate Your obligations under this IPA, without Our prior written consent, and any such assignment or delegation shall be invalid and of no effect. We may, without notice to You, sell, assign or otherwise transfer Our interests in this IPA, in whole or in part, to a third party (an "Assignee"), in which case the Assignee will, to the extent of such sale, assignment or transfer, have all of Our rights and benefits hereunder but will not have to perform any of Our obligations (if any). Any assignment by Us will not relieve Us of Our obligations hereunder. If We assign this IPA, You further acknowledge and agree that (i) You will not assert against the Assignee any claim, defense or offset that You may have against Us or any predecessor in interest, (ii) neither We nor any Supplier are agents of the Assignee, (iii) the Assignee shall not be responsible for the obligations of any Supplier under a Product Agreement, (iv) no statement, representation or warranty by Us or any Supplier is binding on the Assignee, and (v) neither We nor any Supplier will have any authority to waive or alter any term of this IPA.

8. ENFORCEMENT. This IPA shall be deemed fully executed and performed in the state of Iowa and shall be governed and construed in accordance with the laws of the state of Iowa. If We or any Assignee shall bring any judicial proceeding in relation to any matter arising under this IPA, You hereby irrevocably agree that any such matter may be adjudged or determined in any court or courts in the state of Iowa or the state of Our or any Assignee's principal place of business, or in any other court or courts having jurisdiction over You or Your assets, all at the sole election of Us or Our Assignee. You hereby irrevocably submit generally and unconditionally to the jurisdiction of any such court so elected by Us or an Assignee in relation to such matters and irrevocably waive any defense of an inconvenient forum to the maintenance of any such action or proceeding. **YOU AND WE EACH HEREBY WAIVE YOUR AND OUR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY LEGAL ACTION ARISING FROM OR RELATED TO THIS IPA.** If any amount charged or collected under this IPA is greater than the amount allowed by law, then any excess amount charged but not yet paid, will be waived by Us and any such excess amount collected will be refunded to You or applied to any other amount then due hereunder. Each provision hereof shall be interpreted to the maximum extent possible to be enforceable under applicable law. If any provision is construed to be unenforceable, such provision shall be ineffective only to the extent of such unenforceability without invalidating the remainder hereof.

9. MISCELLANEOUS. You shall furnish Us or an Assignee with current financial statements upon request by Us or an Assignee. You authorize Us or an Assignee to (a) obtain credit reports or make credit inquiries in connection with this IPA, and (b) provide Your credit application, information regarding Your account to credit reporting agencies, potential Assignees, Suppliers and parties having an economic interest in this IPA. This IPA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document; provided, however, only the counterpart which is marked "Original" and is in Our possession shall constitute chattel paper under the UCC. You acknowledge that You have received a copy of this IPA and agree that a facsimile or other copy containing Your faxed, copied or electronically transmitted signature may be treated as an original and will be admissible as evidence of this IPA. You waive notice of receipt of a copy of this IPA with Our original signature.

Non-Appropriation Addendum

Financial Services | 800 Walnut, 4th floor | Des Moines, Iowa 50309

Title of lease, rental or other agreement: _____ (the "Agreement")

Lessee/Renter/Customer: Davis Joint Unified School District ("Customer")

Lessor/Lender/Owner: M&S Financial ("Company")

This Addendum (this "Addendum") is entered into by and between Customer and Company. This Addendum shall be effective as of the effective date of the Agreement.

1. INCORPORATION AND EFFECT. This Addendum is hereby made a part of, and incorporated into, the Agreement as though fully set forth therein. As modified or supplemented by the terms set forth herein, the provisions of the Agreement shall remain in full force and effect, provided that, in the event of a conflict between any provision of this Addendum and any provision of the Agreement, the provision of this Addendum shall control.

2. GOVERNMENTAL PROVISIONS. Customer hereby represents, warrants and covenants to Company that: (a) Customer intends, subject only to the provisions of this Addendum, to remit to Company all sums due and to become due under the Agreement for the full term; (b) Customer's governing body has appropriated sufficient funds to pay all payments and other amounts due during Customer's current fiscal period; (c) Customer reasonably believes that legally available funds in an amount sufficient to make all payments for the full term of the Agreement can be obtained; and (d) Customer intends to do all things lawfully within its power to obtain and maintain funds from which payments due under the Agreement may be made, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable law. If Customer's governing body fails to appropriate sufficient funds to pay all payments and other amounts due and to become due under the Agreement in Customer's next fiscal period ("Non-Appropriation"), then (i) Customer shall promptly notify Company of such Non-Appropriation, (ii) the Agreement will terminate as of the last day of the fiscal period for which appropriations were received, and (iii) Customer shall return the Equipment to Company pursuant to the terms of the Agreement. Customer's obligations under the Agreement shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements concerning Customer's creation of indebtedness, nor shall anything contained herein constitute a pledge of Customer's general tax revenues, funds or monies. Customer further represents, warrants and covenants to Company that: (a) Customer has the power and authority under applicable law to enter into the Agreement and this Addendum and the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder, (b) Customer has duly authorized the execution and delivery of the Agreement and this Addendum by appropriate official action of its governing body and has obtained such other authorizations, consents and/or approvals as are necessary to consummate the Agreement and this Addendum, (c) all legal and other requirements have been met, and procedures have occurred, to render the Agreement and this Addendum enforceable against Customer in accordance with their respective terms, and (d) Customer has complied with all public bidding requirements applicable to the Agreement and this Addendum and the transactions contemplated hereby and thereby.

3. INDEMNIFICATION. To the extent Customer is or may be obligated to indemnify, defend or hold Company harmless under the terms of the Agreement, any such indemnification obligation shall arise only to the extent permitted by applicable law and shall be limited solely to sums lawfully appropriated for such purpose in accordance with Section 2 above.

4. REMEDIES. To the extent Company's remedies for a Customer default under the Agreement include any right to accelerate amounts to become due under the Agreement, such acceleration shall be limited to amounts to become due during Customer's then current fiscal period.

5. GOVERNING LAW. Notwithstanding anything in the Agreement to the contrary, the Agreement and this Addendum shall be governed by, construed and enforced in accordance with the laws of the state in which Customer is located.

6. MISCELLANEOUS. This Addendum, together with the provisions of the Agreement not expressly inconsistent herewith, constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings and commitments regarding such matters. This Addendum may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to constitute one and the same agreement. Customer acknowledges having received a copy of this Addendum and agrees that a facsimile or other copy containing Customer's faxed, copied or electronically transmitted signature may be treated as an original and will be admissible as evidence of this Addendum.

Customer (identified above):		Company (identified above):	
By: _____	Date: ____ / ____ / ____	By: _____	Date: ____ / ____ / ____
Print name: _____	Title: _____	Print name: _____	Title: _____
Agreement Number: _____			
Master Agreement Number (if applicable): _____			