

## PARTICIPATING ADDENDUM

### COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES MASTER PRICE AGREEMENT NUMBER A85627

SUN MICROSYSTEMS, INC.

#### Georgia Technology Authority (GTA) on behalf of the State of Georgia

##### 1. Scope

For purposes of this contract and participating addenda, GTA's jurisdiction includes participation by all departments, agencies, authorities, boards, commissions and political sub-divisions of the State of Georgia who elect to make purchases via this WSCA agreement in accordance with GTA's policies, procedures, terms and conditions and any participating entities' local ordinances, policies, practices, procedures, terms and conditions.

##### 2. Changes By The Participating Entity:

###### a. Section 6B(2), Payment Provisions, Payment of Invoice, paragraph 2.

Delete the paragraph entirely and replace with the following:

Each using entity agrees to pay Contractor for all undisputed amounts within thirty (30) days of receipt of invoice, provided that Equipment and Services have been accepted by the Agency as provided in section 6A of the Agreement.

###### b. Section 6C., paragraph 2, Payment of Taxes: Delete Paragraph 2 in its entirety and replace with the following:

Taxes. All fees payable to Contractor hereunder shall be net of any and all taxes that the Contractor may be required by law to collect in connection with the provision of the Equipment and Services hereunder. Contractor shall be solely responsible for the payment of any and all taxes lawfully imposed upon it, including but not limited to taxes on property owned, leased or used by Contractor; franchise or privilege taxes on Contractor's business; gross receipts taxes to which Contractor is subject; and income taxes. By this paragraph, GTA makes no representation whatsoever as to the liability or exemption from liability of Contractor to any tax imposed by any governmental entity. In regard to State of Georgia sales tax, see attached "Sales and Use Tax Certification of Exemption" which applies to all State of Georgia Government entity users (purchasers) using this Agreement.

###### c. Section 7 Agreement Term. Delete paragraph in its entirety and replace with the following:

Term: The Agreement shall be effective upon the date of final execution by GTA and will continue on a month to month basis until December 30, 2006. The PA can be renewed on a month to month basis until June 30, 2008 unless terminated pursuant to the terms of Master Agreement.

**d. 12 A (2) add the following:**

“...provided that such defense or settlement of any claim shall be subject to the prerogatives of the Georgia Attorney General.”

**e. 12. Add new section D-Contractor's obligation to indemnify will survive the expiration or termination of this Agreement for any reason.**

**f. Section 17.A., paragraph 8. Takeback/Recycling Programs:** State of Georgia users must use the Department of Administrative Services (DOAS) Surplus Property program, if required, or if not required/eligible, agencies may use the WSCA participating contractors program, as they deem appropriate, upon authorization from DOAS Surplus Property.

**g. Section 20. Records and Audits:** Delete references to Min. Stat and replace with the following:

Record Retention and Audit Rights. Contractor shall, and shall cause each of its subcontractors to, maintain accurate books, records, documents and other evidence concerning Contractor's financial status, costs, expenses, provision of Equipment and performance of Services under this Agreement (collectively, "Records") for the latter of: (a) five (5) years after the final payment under this Agreement, (b) for such period (if any) as is required by applicable statute. Contractor's accounting procedures and practices shall conform to generally accepted accounting principles ("GAAP") and the costs properly applicable to this Agreement shall be readily ascertainable therefrom. The State of Georgia, by and through the GTA or State Auditor, shall have the right, exercisable at any reasonable time during normal business hours, to inspect and audit any Records. Upon request, Contractor shall deliver the required documentation and records on the date and at the location specified by GTA or State Auditor or other duly authorized officer of the State of Georgia.

**h. Add Section 24 Tort Claims Act.**

If and to the extent such damage or loss as covered by this Indemnification provision is covered by the State of Georgia Tort Claims Fund (the "Fund"), Contractor agrees to reimburse the Fund. To the full extent permitted by the Constitutions and the laws of the State of Georgia and the terms of the Fund, Contractor and its insured waive any right of subrogation against the State of Georgia, the Indemnitees and the Fund and insurers participating hereunder, to the full extent of this indemnification.

**i. Add to Section 31.** The foregoing limitation shall not apply to losses arising out of the willful misconduct or negligence of Contractor or any of its subcontractors.

**j. Section 35, Data Practices**

**Paragraph A. Add:** The Contractor must comply with the Georgia Technology Authority's Enterprise Information Security Policy, effective 9/10/02, Revised: 6/2/04 as found on [www.gta.ga.gov](http://www.gta.ga.gov), procurement, policy, Enterprise Information Security Policy.

**Paragraph B. Add:** Requests for information related to the State of Georgia must be in compliance with the Georgia Open Records Act.

**k. Add Section 58 Vendor Lobbyist Certification.** Contractor hereby certifies that, as of the Effective Date of this Agreement, any lobbyist employed by Contractor has registered with the Georgia State Ethics Commission and complied with the requirements of the Executive Order dated October 1, 2003 ("Providing for the Registration and Disclosure of Lobbyists Employed or Retained by Vendors to State Agencies"). This Agreement may be declared void at GTA's sole discretion, if it is determined that Contractor has made false certification hereinabove or has violated such certification by failure to carry out the requirements of such Executive Order.

**l. Add Section 59 Non-exclusivity.** This Addendum is entered into solely for the convenience of the State of Georgia, and in no way precludes GTA, the State or any Agencies from obtaining like goods from other suppliers upon prior approval of the GTA. Such approval shall be made at the sole discretion of the GTA, and shall be conclusive. Such approval shall only be granted when it is deemed to be in the best interest of the State to do so.

**3. Primary Contact:**

The primary Participating Entity contact for this Participating Addendum is as follows:

**Name:** Nanci Glazer Gay  
**Participating Entity Name:** Georgia Technology Authority, Internal Business Support  
**Address:** 200 Piedmont Ave, Suite 1580, Atlanta, Georgia 30334  
**Telephone:** 404-463-6539  
**Fax:** 404-651-5333  
**E-mail:** [nggay@gta.ga.gov](mailto:nggay@gta.ga.gov)

The primary Contractor contact for this Participating Addendum is as follows:

**Name:** Jack Nichols, Manager, State and Local Government Contracts  
**Contractor:** Sun Microsystems, Inc.  
**Address:** 1775 Wiehle Ave., Mailstop URSN03  
Reston, VA 20190

**Telephone:** 571-203-8116  
**Fax:** 571.203.8020  
**Email:** jack.nichols@Sun.com

**4. Servicing Subcontractors:**

Only Sun Microsystems's authorized Partners that have been approved by Sun and the Participating entity are eligible to support the Master Price Agreement. These approved Partners will be identified on the individual website for the Participating Entity. Sun's WSCA Partners will be responsible for performing all aspects of the WSCA contract including taking Purchase Orders direct, fulfilling Purchase Orders, invoicing and receiving payment as identified on the individual website for the Participating Entity. As the prime WSCA Contract holder Sun Microsystems will be responsible for any reports and/or sales rebates that the Participating Entity requires at sets forth under Paragraph 2 above.

**5. Orders and Payments:**

Unless otherwise named and identified to the Participating Entity pursuant to Paragraph 4 above of this Participating Addendum orders and payments are to be issued to:

**Orders:**

Sun Microsystems, Inc.  
7777 Gateway Blvd.  
Newark, CA 94560  
Attention: Judy Ledyard  
Fax: 510.217.6040  
Email: [judy.ledyard@Sun.com](mailto:judy.ledyard@Sun.com)

**Payments:**

(Participating Entity to select the nearest Payment Office):

- Sun Microsystems, Inc.  
c/o Bank of America  
Dept. 1489  
P.O. Box 61000  
San Francisco, CA 94161
- Sun Microsystems, Inc.  
Bank of America  
Drawer CS 198330  
Atlanta, GA 30384-8330
- Sun Microsystems, Inc.  
c/o Northern Trust Company  
P.O. Box 75640  
Chicago, IL 60674-5640

The NASPO/WSCA Master Price Agreement Number A85627 must be shown on all

Purchase Orders.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

**IN WITNESS WHEREOF**, the parties have executed this Participating Addendum as of the date of execution by Contractor below.

**One Behalf of:**

**By: Signature(s) as required by State Statutes, Rules or Policies**

*David J. Hightower*

Name: \_\_\_\_\_

Title: David J. Hightower

Date: Sr. Technology Planning Officer

Date: 8/30/06

**On Behalf of Sun Microsystems, Inc.**

**By:** *Robert Lavine*

Name: ROBERT LAVINE

Title: DIRECTOR, STATE & LOCAL GOVT

Date: 8/22/2006