

WESTERN STATES CONTRACTING ALLIANCE
MASTER PRICE AGREEMENT
for
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

Number B27175

This Agreement is made and entered into by Sun Microsystems, Inc., 4150 Network Circle, Santa Clara, CA 95054 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities.

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desire to sell; and,
WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. Delivery, support, warranty, and maintenance may be provided by the Contractor using subcontractors. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished under this Agreement. The Contractor is responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by individual Participating Entities, who have the sole discretion to determine if they will accept services from a subcontractor.

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process, and if the Contractor submitted copies of its lease agreements with its response to the RFP. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. The agreements are located in **Exhibit C, Value-Added Services**.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage (SANs, etc.) should not exceed \$300,000 each. Desktop per unit/configuration costs

should not exceed \$100,000. Printers of all types and monitors per unit/configuration costs should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. Definitions

“Announced Promotional Price” are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

“Consumables” those items that are required for the operation of the Equipment offered or supplied which are consumed over time with the purchaser’s use of the equipment are included – printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

“Configuration” in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

“Contract” means a binding agreement for the procurement of items of tangible personal property or services. Contract and Master Price Agreement (Agreement”) are used interchangeably in this document.

“Contractor” means the successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof. For the purposes of this Contract, the term Contractor and Contract Vendor are synonymous.

“CPV Member” is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota’s Cooperative Purchasing Venture (CPV) program.

“CPV Program.” The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the commissioner of Administration to “enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1.” Based on this authority, the

commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

"Cumulative Volume Discount" means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of the Master Price Agreement.

"Documentation" refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

"E-Rate" is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

"Educational Discount Price" means the price offered in a nationally announced promotion, which is limited to educational customers only.

"Equipment" means workstations, desktop, laptop (includes Tablet PC's), handheld (PDA) devices, projectors, servers, printers, monitors, computing hardware, including upgrade components such as memory, storage drives, and spare parts. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in this RFP or subsequent contracts. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item.

"FCC" means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

"General Price Reduction Price" means the price offered to consumer, business or governmental purchasers at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

"Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this Master Price Agreement, the Lead State is Minnesota.

"Mandatory" The terms "must" and "shall" identify a mandatory item or factor.

"Manufacturer" means a company that, as its primary business function, designs, assembles, owns the trademark/patent and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer must provide direct un-infringed unlimited USA OEM warranties on the products. The manufacturer's name(s) shall appear on the computer equipment. The Contractor(s) shall

provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Master Price Agreement” means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of the Contractor’s products and/or services by Purchasing Entities. The “Master Price Agreement” is a permissive price agreement. In order for a Purchase Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

“Materials Management Division” or “MMD” means the procurement official for the State of Minnesota or a designated representative.

“NASPO” means the National Association of State Procurement Officials

“Participating Addendum” or “Participating Addenda” means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the Master Price Agreement. Additional terms and conditions, including but not limited to payment terms, may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One digitally formatted, executed copy of the Participating Addendum must be submitted to the WSCA/NASPO Contract Administrator PRIOR to any orders being processed.

“Participating State” or “Participating Entity” means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement.

“PDA” means a Personal Digital Assistant and refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA’s usually can store phone numbers, appointments, and to-do lists. PDA’s can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which is later entered into a larger computer. NOTE: For this procurement, all Tablet PC’s are NOT considered PDA’s. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Peripherals” means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software, as defined in the RFP, is not considered a peripheral. Adaptive/Assistive

technology devices are included as well as configurations for education. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the WSCA/NASPO Contract Administrator. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in the contract. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Permissive Price Agreement” means that placement of orders through the Price Agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the Price Agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the Price Agreement as long as applicable procurement statutes and rules are followed.

“Per Transaction Multiple Unit Discount” means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

“Political Subdivision” means local public governmental subdivisions of a state, as defined by that state’s statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

“Price Agreement/Master Price Agreement” means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

“Procurement Manager” means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

“Product(s)” means personal computer equipment, peripherals, LAN hardware, pre-loaded Software, and Network Storage devices, but not unrelated services. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

“Products and Services Schedule Prices” or **“PSS”** refers to a complete list, grouped by major product and/or service categories, of the Products and services provided by the contractor that consists of an item number, item description and the Purchasing Entity’s price for each Product or Service. All such Products and services shall be approved by the WSCA/NASPO Contract Administrator prior to being listed on a Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty service and maintenance for all equipment listed on the PSS on a Master Price Agreement as well as a Takeback Program.

“Purchase Order” means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services

pursuant to a Price Agreement.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

“Refurbished Products” are products that may have been powered on or used by another customer that have been fully retested, defective parts replaced, and repackaged to meet original factory specifications.

“Services” are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

“Servicing Subcontractor/Subcontractor/Reseller Agent” means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor’s Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided for in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor’s providing products and services, as well as warranty service and maintenance for equipment the subcontractor has provided on a Master Price Agreement as well as the Takeback Program.**

“Standard Configurations” or **“Premium Savings Configurations”** means deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. Any entity, at any time, that commits to purchasing the standard configuration adopted by other Purchasing Entities shall receive the same price from the contract awardees. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

“State Procurement Official” means the director of the central purchasing authority of a state.

“Storage Solution/Auxiliary Storage” means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS) and Storage Area Networks (SAN). **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

“Takeback Program” means the Contractor’s process for accepting the return of the equipment or other products at the end of life—as determined by the State utilizing the Master Price Agreement.

“Trade In” refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

“Travel” means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

“Universal Resource Locator” or “URL” means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

“WSCA” means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

“WSCA/NASPO Contract Administrator” means the person or designee authorized by MMD to manage all actions related to the Master Price Agreements on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

2. Scope of Work

The Contractor, or its approved subcontractor, shall deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a “Master Price Agreement”. Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid “Purchase Orders”. Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor’s PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor’s PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official.

The Contractor is required to provide and/or agree to take legal responsibility for the warranty and maintenance of all proposed equipment, including peripherals. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon receipt of payment by the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document; and
- F. Contractor's proposal including best and final offer.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

A. Acceptance

A Purchasing Entity shall determine whether Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within fifteen (15) days from the date of delivery of the Product or completion of the Service that the Products and/or Services are accepted. After fifteen (15) days the Product and/or Service will be deemed accepted.

B. Payment of Invoice

- 1. Payments shall be submitted to the Contractor at the address shown on the invoice, or in the Participating Addendum, as long as the

Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address.

2. For Minnesota, per Minn. Stat. § 16A.124 payment shall be made within 30 days following receipt of an undisputed invoice, Product or Service, whichever is later. The ordering entity is not required to pay the Contractor for any products and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all products and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card".

3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Invoices shall match the line items on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2012. The Agreement may be mutually renewed for two (2) additional one-year terms, or one additional two-year term, unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

A. Termination for Convenience

At any time, the State may terminate this Agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate

this Agreement, in whole or in part, by giving the WSCA/NASPO Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and Services accepted prior to the effective termination date.

D. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and Services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Unless provided for under Paragraph 8 above, such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

10. Shipment and Risk of Loss

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance in accordance with Paragraph 6 above, when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or intentional misconduct of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all Products shall be shipped within 5 to 10 days after receipt of a purchase order, by a reliable and insured shipping company.

11. Warranties

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished through this Agreement. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process, and respond to those calls or subcontract these services out while remaining legally responsible for these services, and be legally liable for and pay for those warranty and maintenance (under warranty) activities..

In general, the Contractor warrants that:

1. The Product conforms to the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
2. The Product will meet mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
3. The Product will be suitable for the ordinary purposes for which such Product is used,
4. The Product has been properly designed and manufactured for its intended use, and
5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
6. The Product is in the legal possession of the Purchasing Entity, as defined in Article 10 Shipment and Risk of Loss, before any warranty period

begins.

7. **Exhibit A** contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in **Exhibit A**. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor, or the use of a Product in conjunction or combination with other products or software unless expressly authorized in writing by the Contractor. or the use of a Product in conjunction or combination with other products or software. The following is a list of the warranties attached as **Exhibit A**:

- a) SunSpectrum Platinum Support (Mission-Critical)
- b) SunSpectrum Gold Support (Business-Critical)
- c) SunSpectrum Silver Support (Basic Warranty)
- d) SunSpectrum Bronze Support (Self-Maintenance)

B. Contractor may modify the warranties described in **Exhibit A** from time to time. In the event of a change Contractor will notify the WSCA/NASPO Contract Administrator as soon after as is reasonably possible. Warranty changes will also be posted to Contractor's WSCA approved website at: www.sun.com/wsca.

C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

D. The Contractor will provide the basic warranty listed for each product in its PSS. Extended (including multi-year) warranty packages and options can be purchased on a per month basis up to the maximum limits offered by Contractor for that particular product, Warranty options are located at Contractor's WSCA approved website at: www.sun.com/wsca. All products listed will be EPEAT (bronze minimum) and Energy Star compliant, to the extent applicable.

12. **Patent, Copyright, Trademark and Trade Secret Indemnification**

A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Lead State or Purchasing Entity for all court costs, reasonable attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:

- 1. Give the Contractor prompt written notice of any claim;
- 2. Allow the Contractor to control the defense or settlement of the claim; and

3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim, and
 4. Not compromise or settle the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Obtain for the Purchasing Entity the right to continue using such Products or Services;
 2. Replace or modify the Products or Services in such a way that (i) they become non-infringing and non-misappropriating and (ii) they substantially perform in the same manner or substantially provide the same results, or there is no material adverse effect in their overall performance; or
 3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's designs, specifications, or instructions;
 2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
 3. Product modifications by the Purchasing Entity or a third party;
 4. Product use prohibited by Specifications or related application notes;
 5. Use of an allegedly infringing version of such provided materials and/or services, if the alleged infringement could have been avoided by the use of a different version made available to the Indemnified Party;
 6. Product use with products that are not the Contractor branded;
 7. A violation of Contractor's license grant, or
 8. Any separate or component hardware, software or other materials to the extent it comprises any third party open source or freeware technology, or any derivatives or other adaptations thereof, and any combination that includes any of the foregoing.

This Paragraph 12 is excluded from the provisions of Paragraph 24 Indemnification, Hold Harmless and Limitation of Liability of this Agreement, and states the entire liability of the Contractor and the exclusive remedies of each

party for any proceedings or claims that any Products infringe or misappropriate a third party's intellectual property.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price (Applies to Education Customers that are Participating Entities only), General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit Discount that the Contractor offers under the Master Price Agreement, Only General Price Reduction price decreases for a particular product will apply to all subsequent Purchase Orders accepted by Contractor after the date of the General Price Reduction price for that product.

The initial base-line, Cumulative, and Per Transaction Multiple Unit Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the product category discount levels on file with WSCA/NASPO Contract Administrator for the following Products:
 - Band 1 – Servers
 - Band 2 – Workstations (desktops, laptops, tablet PCs)
 - Band 4 – Storage
 - Operating Systems
 - LAN Devices
- B. The Contractor may change the price of any Product or Service at any time, but the guaranteed discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the WSCA/NASPO Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Paragraph 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable discount levels approved by the WSCA/NASPO Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.

- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA/NASPO Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the WSCA/NASPO Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the Contractor during a product warranty period or during a support agreement.

17. Takeback and Other Environmental Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in the following paragraphs.

A. Takeback/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are list on the web site.

B. Environment: Compliance with the following standards, to the extent applicable: Blue Angel, EcoLogo, Energy Star, EPEAT (by level), Green Guard, Nordic Swan, and TCO.

C. Product labeling of compliance with Items B & C above, as well as a identification of such information on the web site.

18. Product Delivery

Contractor agrees to deliver Products to Purchasing Entities within 10 to 15 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is

prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract or transaction must be made available and subject to examination by the contracting agency or its agents, the Legislative Audit and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or participating entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by such subcontractors. The Contractor is required to pay interest of

1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontract that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay such subcontractors any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to such a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property rights and ownership sections of this Contract. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification, Hold Harmless and Limitation of Liability

A. The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to a maximum of \$2,000,000.00. The foregoing limitation does not apply to Paragraph 12 and 24.B of this Agreement or to damages resulting from personnel injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement, however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, or the use of the Products or Services purchased by the Participating Entity, hereunder. This indemnification does not include liabilities caused by the State's gross negligence, or intentional wrong doing of the State.

B. The Contractor shall indemnify, protect, save and hold harmless the Lead State, Participating Entities, and its representatives and employees, from any and all claims, suits, actions, liabilities and costs, including all legal fees incurred by the State arising from the performance of the Contract by the Contractor or its agents, employees, or subcontractors for personal injury or damage to real property or tangible personal property arising from the negligence or willful acts or omissions of the Contractor, its agents, employees or subcontractors. The Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entities, and its representatives and employees. For real property or tangible property damage claims, the limitation of liability provided for in Paragraph 24.A above, shall apply. This

clause shall not be construed to bar any legal remedies the Contractor may have with the State's or Participating Entities' failure to fulfill its obligations pursuant to the Contract.

25. Amendments

Contract amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Contract is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

28. Enforcement of Agreement/Waivers

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Contract shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- c. Neither party's failure to exercise any of its rights under this Contract will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and

other aids described in the RFP, and/or in accordance with instructions provided by the WSCA/NASPO Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.

- B. The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A. above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reports.
- D. Once the website is approved, the Contractor may not make changes to the website without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes.

30. Equal Opportunity Compliance

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Contract.

31. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in

any Contractor key personnel, in writing, and in advance if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

33. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Data Practices

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (and where applicable, if the state contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor in accordance with this Contract that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contractor or the State.
- C. Subject to Paragraph 24 of this Agreement, and to the extent not prohibited by Paragraph 34 of this Agreement, the Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

35. Organizational Conflicts of Interest

A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
- the Contractor's objectivity in performing the work is or might be otherwise impaired; or
- the Contractor has an unfair competitive advantage.

B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "WSCA/NASPO Contract Administrator" modified appropriately to preserve the State's rights.

36. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be manufacturer-certified refurbished parts carrying USA OEM warranties.

37. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

38. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

39. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Contract or any portion hereof, or of any right, title, or interest herein without the prior written consent of the State's authorized agent which shall not be unreasonably withheld. The Contractor shall make reasonable efforts to provide written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment or other disposition of the Contract. This

consent requirement includes reassignment of this Contract due to a change in ownership, merger, or acquisition of the Contractor or its subsidiaries and/or affiliated corporations.

40. WSCA/NASPO Contract Administrator

The State shall appoint an WSCA/NASPO Contract Administrator whose duties shall include but not be limited to the following:

- A. The WSCA/NASPO Contract Administrator may provide instructions concerning the contents of the Contractor's website.
- B. The WSCA/NASPO Contract Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the State for resolution.
- C. The WSCA/NASPO Contract Administrator shall promote and support the use of this Agreement by NASPO members and other Participating Entities.
- D. The WSCA/NASPO Contract Administrator shall advise the State regarding the Contractor's performance under the terms and conditions of this Agreement.
- E. The WSCA/NASPO Contract Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- F. The WSCA/NASPO Contract Administrator shall periodically verify the Product and Service prices in the PSS conform to the Contractor's volume price and other guarantees. The WSCA/NASPO Contract Administrator may require the Contractor to perform web site audits to accomplish this task.
- G. The WSCA/NASPO Contract Administrator shall conduct annual Contractor performance reviews.
- H. The WSCA/NASPO Contract Administrator shall maintain an Agreement administration website containing timely and accurate information.

41. Survival

The following rights and duties of the State and Contractor will survive the expiration or cancellation of the resulting Contract. These rights and duties include, but are not limited to Paragraph 12. Patent, Copyright, Trademark and Trade Secret Indemnification; Paragraph 20. Records and Audit; Paragraph 24. Indemnification, Hold Harmless, and Limitation of Liability; Paragraph 31, Governing Law; Paragraph 34. Data Practices; and Paragraph 52. Right to Publish.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

- A. If one party is required to give notice to the other under the Contract, such

notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisitions Supervisor
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996
Email: bernie.kopischke@state.mn.us

To Contractor

Sun Microsystems Federal, Inc.
Jack D. Nichols
Manager, Government Contracts
7900 Westpark Drive, Suite A110
McLean, VA 22102
Fax: 703-208-5830
Email: jack.nichols@Sun.com

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide monthly utilization reports to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th of March; etc.). The report shall be in the format developed by the Lead State and supplied to the Contractor.
2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor. Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due Date</u>
June 30	July 31
September 30	October 31

December 31
March 31

January 31
April 30

3. The Contractor agrees to include all Reseller Agent sales in the monthly utilization reports described above. In addition, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the utilization report the environmental information shown in the report format provided; as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the WSCA/NASPO Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed format. Such request shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The WSCA/NASPO Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. Purchasing Entities will be encouraged to use the reporting format developed by the lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.

3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
 1. Nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 1. Exercise any remedy provided by law or equity;
 2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 3. Impose liquidated damages, as specified in a Participating Addendum;
 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.
 5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor.
- D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

46. Audits

A. Website Pricing Audit

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on the requirements described in the Vendor Mandatory meeting presentation.

The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the WSCA/NASPO Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

B. Sales Audit

The Contractor further agrees to provide sales audit reports based on the formulas described in the Vendor Mandatory meeting presentation. These presentations were held the week of March 30-April 3, 2009.

- C.** Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for products or services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

49. Ownership

- A. Ownership of Documents/Copyright.** Each party retains its own pre-existing intellectual property rights, and any enhancements, modifications, derivatives thereto or improvements thereof ("Pre-existing IP). Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of Sun and all such material shall be remitted to Sun by the State upon completion, termination or cancellation of the Contract. Except as permitted under Paragraph 49.B below,
- B. Rights, Title and Interest.** Except with respect to Pre-Existing IP, all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Contract, will be the property of Sun and are, by the Contract, assigned to Sun along with ownership of any and all copyrights in the copyrightable material. Nothing in this Contract shall be construed as transferring any right, title, or interest in any of the Contractor's or its third party confidential information, Pre-existing IP, trademarks, copyrights, intellectual property or other proprietary interest. Sun shall grant a non-exclusive, non-

transferable license to use any intellectual property, rights or portions thereof for which the Lead State purchases under this Contract. Both parties are free to use any ideas, concepts, know-how, or techniques which are developed or provided by the other party or jointly by both parties during a project. Both parties are free to enter into similar contracts with others and to develop and provide Products and Services which are like or similar to those provided under this Contract.

50. Prohibition Against Gratuities

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

52. Right to Publish

- A. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the WSCA/NASPO Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Contract, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury).

55. Customer Satisfaction/Complaint Resolution

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will survey its customers in each Participating State approximately two (2) months prior to the annual meeting with the Contract Administrator using, at a minimum, the survey questions provided by the State.

56. Value Added Services

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**.

57. E-Rate Program

The Contractor supports the E-Rate program through its authorized partner community (Sun's Partner Advantage Program) in the education industry.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

58. License Terms for Software Products

For the convenience of any Participating Entity, the Contractor's Master Software License Agreement is included as **Exhibit D**. It is the responsibility of each Participating Entity to review the terms and conditions and to determine whether those terms and conditions are acceptable. Discussions regarding the terms and conditions, and the acceptance and execution thereof, are between the Participating Entity and the Contractor and are independent and not a part of this Agreement.

59. Export Laws

Products, Services, Technology, materials, tools, and technical data delivered by or to Contractor may be subject to U.S. export controls or the trade laws of other countries. Lead State and Contractor agree to comply with all export control

regulations and acknowledge that they have the responsibility to obtain such licenses to export, re-export or import as may be required. Lead State and Contractor agree not to export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws. Lead State and Contractor will not use or provide Products, Services, Technology, materials, tools, and technical data for nuclear, missile, or chemical and biological weaponry end uses.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the State of Minnesota Commissioner of Administration, below.

1. SUN MICROSYSTEMS, INC.

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: *Leslie Woodin*
Title: *Region Executive*
Date: *8/6/2009*
Kristin Woodin

By:

Title:

Date:

2. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: *Bernadette Kopuschke*

Title: Acquisitions Supervisor

Date: 8/10/09

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: *Brenda Willard*

Date: 8/10/09

EXHIBIT A – ADDITIONAL WARRANTIES

SunSpectrum offers a complete range of flexible solutions that covers system and interoperability support.

SunSpectrum Platinum Support (Mission-Critical), our premier service offering, is for enterprises that demand maximum system coverage. Designed to support mission-critical server solutions, this custom-care offering focuses on 24/7 rapid response, year-round technical service planning and failure prevention.

SunSpectrum Gold Support (Business-Critical) is for customers who need personalized service to help manage key business systems. It combines proactive service with outstanding responsiveness to technical issues.

SunSpectrum Silver Support (Basic) provides basic hardware and software support services for customers wishing to take advantage of Sun's industry-leading expertise. It includes basic telephone and online support, on-site hardware service and access to new software releases.

SunSpectrum Bronze Support (Self-Maintenance) is a highly affordable support solution for self-sufficient customers who primarily need back-up assistance and parts replacement.

See Binder 3 for datasheets titled "SunSpectrum Service Plans" and Sun System Service Plans for Windows OS."

EXHIBIT B – COMPLAINT RESOLUTION

A. Service Complaint Resolution Procedures

All service issues related to Sun Products and Support are handled directly by Sun. The following outlines how to initiate a support request and details the processes that are followed depending on the level of service support contracted with Sun.

To ensure consistent high-quality support, all support requests, problems and complaints can be coordinated through a toll-free call (1-800-USA-4SUN) to the Sun Services Customer Care Center (CCC) or through the Online Support Center (OSC) at: <https://osc-amer.sun.com/>. The Sun Customer Care Center takes the initial call for service. Should this problem or complain fail to be resolved it is forwarded to the Sun Escalation Center.

Sun Escalation Center

Escalations at Sun are handled based on a combination of rules, service levels and case-by-case severity. The process is designed to match the appropriate level of response to the customer's particular situation. Depending on the service level contracted by the customer (e.g., SunSpectrum Platinum, Gold or Silver service levels), customers benefit from an escalation process whereby complex or urgent problems are more rapidly escalated to Sun's senior support engineers. See Binder 2 Attachment B, "Sun Marketing Information" for service product descriptions for warranty and post-warranty support services.

An overview of the process:

1. WSCA's service request is recorded and assigned to the appropriate Sun technical specialist.
2. To maintain consistency of service and help ensure quality, the assigned specialist is given a limited period of time to isolate the exact problem and reach resolution.
3. If resolution is not achieved within the set period. WSCA's case is automatically escalated to a senior support engineer for resolution.
4. In the unlikely event there is a need for further escalation, the case is sent to a unique team of developers and engineers assembled specifically for WSCA's case in order to reach resolution.
5. The Service Account Manager can compile a call history from the escalation tools maintained by the Customer Care Center and the field organizations. The Service Account Manager will develop a post-mortem report detailing actions taken to resolve the issue to the customer's satisfaction. Under Platinum or Gold service, and at the request of WSCA, the Service Account Manager will visit the customer site to discuss and evaluate the actions taken during the service call to define ways to improve future service delivery. WSCA Members who have subscribed to either Gold or Platinum service support can expect the following additional services: STAR Escalation Team and Time Based Notification Services.

B. Billing Complaints Resolution Procedures

All Sun inquiries will include the name of a Sun Financial Representative and phone number. The Sun Financial Representative will be the initial point of contact to resolve any billing complaints.

If the Sun Financial Representative is unable to resolve the billing complaint, then the WSCA Member should contact their Sun Account Manager. If at this time, the WSCA member feels the situation warrants it, the matter is escalated to the WSCA Program Manager for resolution.

C. Order and Equipment Complaint Issues

All order and equipment issues can be resolved by calling Sun's Customer Services Support representative at 1.800.USA4Sun and enter prompt 5, then prompt 3, for State and Local Support Representative or prompt 4 for a Sun Educational Representative. These customer support representatives have processes and procedures in place to respond to customer issues within 24 hrs. If unsatisfied with the Customer Support Representative's response, a customer can escalate either to the Customer Support Team Lead or directly to the WSCA program office for resolution.

It is important to note that the "entry point" for complaint resolution may be different depending on whether the WSCA member is being serviced directly through Sun or being serviced indirectly through a Sun Value Added Reseller (VAR); however, if the issue needs to be elevated, final resolution will always be resolved by Sun.

D. Issue Complaints Procedures

In the event of a customer complaint issue, the customer's first point of contact is normally the local Sun Account Manager. This individual is empowered to engage the necessary resources in the local service area. Most issues are resolved readily at the local level. If necessary, the situation is elevated to executive management through the WSCA Program Office.

EXHIBIT C – VALUE ADDED SERVICES

Managed Services

Sun Managed Services offers a dynamic portfolio of complex, IT infrastructure capabilities, with proven ability to provide heterogeneous management. Our ITIL-certified staff is dedicated to helping you enhance the business value of your IT investment through improved operational efficiency and service levels. Combined with some of our other services such as assessment workshops, new data center builds, or SunSpectrum hardware support, Sun provides holistic solutions to operate and manage IT environments in a very focused way, allowing our customers to maintain choice, flexibility, and control.

Installation Services

Sun Services can provide installation services to help WSCA customers quickly and effectively install hardware, build interfaces to other systems, consolidate server workloads, and migrate applications and data to a new environment.

Detailed Installation Services descriptions can be found at

<http://www.sun.com/service/consulting/installintegrate/index.html>.

Customer Ready Systems (CRS)

Sun Customer Ready Systems (CRS) program helps with design validation, integration and testing of Sun and third-party components. These integrated systems leave the Sun factory ready-to-deploy, allowing you to get more done with less risk, less overhead, while speeding deployments and the return on IT assets. The CRS program delivers solutions built in Sun's factories based on customer specifications. Additionally, the Sun CRS program offers a broad range of services to deliver complete life cycle management of the infrastructure.

Upgrade Assistance Program (UAP)

UAP allows the customer to trade their system in at any time ** so they get investment protection throughout the lifecycle of the computing asset. UAP also provides value when moving from non-Sun equipment to the latest Sun products. The process is fast and simple.

For example, Sun is offering a current promotion until March 2006 for an extra 20% off an Opteron X2100, X4100, or X4200 when the customer trades in either a Dell, IBM, or HP x86 system.

** System must be owned by original purchaser for a minimum of ninety days

Educational Services

The focus of Sun Educational Services is to enable an enterprise to stay ahead of constantly changing technologies through the education and training of an enterprise's most valuable asset, its people. Training categories include, but are not limited to; Sun Java System middleware, Sun Java System Studio, Solaris OE development and administration. Web services, XML, Perl, Java technology, networking, security, storage, and professional development. When looking for the best in Sun Education, please engage the organization that writes the courses, Sun Educational Services.

Professional Services including the following:

Enterprise Computing Infrastructure

Internet/Java Technology/ERP

Sun Leasing Information

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process.

Leasing - Sun ValuePlus Tax-exempt Financing Program for State and Local Government and Educational Entities

Sun Microsystems FinanceSM created Sun ValuePlusSM Tax-Exempt financing programs specifically tailored for qualifying state and local government entities, including public universities, hospitals and school districts.



EXHIBIT D

MASTER SOFTWARE LICENSE AGREEMENT

Sun Agreement No. _____

This Master Software License Agreement is made as of the ___ day of _____, 200__ (“Effective Date”) between Sun Microsystems, Inc., a Delaware corporation with its address at 4150 Network Circle, Santa Clara, CA 95054 USA (“Sun”) and _____, with its address at _____ (“You” or “Your”).

1. **Definitions.**

- a) **“Affiliated Companies”** means any entity which: i) is owned 50% or more by You; ii) owns 50% or more of You; iii) You exercise management control over; or iv) is under common control with You.
- b) **“Agreement”** means this Master Software License Agreement and any attachments or schedules thereto.
- c) **“Confidential Information”** means any information disclosed by one party to another under this Agreement that is, prior to or at the time of disclosure, identified in writing as confidential.
- d) **“Entitlement”** means the authorized scope of use of Software and Service information, if any, set out in attachment(s) “A-[n]”.
- e) **“Licensed Units”** means the unit of measure by which your use of the Software is licensed. (i.e. per copy, per CPU, per seat, etc). The Licensed Unit is specified in the applicable Entitlement and will depend on the type of Software and licensing model.
- f) **“Permitted Use”** means one or more of the licensed Software use(s) as specified in Your Entitlement:
 - i) **“Commercial Use”**: Software may be used internally for Your own commercial purposes;
 - ii) **“Individual Use”**: You may use the Software internally for personal, individual use;
 - iii) **“Research and Instructional Use”**: You may use the Software internally to design, develop and test, and also to provide instruction on such uses;
 - vi) **“Service Provider Use”**: You may make Software functionality accessible (but not by providing Software itself or through outsourcing services) to Your end users in an extranet deployment, but not to Your Affiliated Companies or to government agencies.The Permitted Use for any bundled Sun software not specified in the Entitlement(s) will be internal evaluation purposes only for a period of 90 days from date of first use.
- g) **“Service”** means the support service(s) that Sun or its delegate will provide, if any, as specified in the Entitlement, subject to the additional terms in Attachment “B”, and as further described in the applicable support service listing (**“Service Listing”**) found at the following URL: www.sun.com/service/servicelist.
- h) **“Software”** means: (i) the Sun software programs in binary form as listed in Your Entitlement(s), (ii) any Updates, and (iii) any related user manuals or other documentation.
- i) **“Updates”** means subsequent releases and error corrections for Software, if any, provided under a valid Service contract or made available to You by Sun at no cost.

2. **License Grant and Entitlement.** Subject to the terms of the Entitlement, Sun grants You a non-exclusive, non-transferable limited license (the **“License”**) to:

- a) use the Software for its Permitted Use for the term identified in the Entitlement; and
- b) make copies of the Software for back-up and archival purposes.

Software is deemed accepted by You upon delivery.

3. **Restrictions.**

- a) The copies of Software provided to You under this Agreement are licensed, not sold, to You by Sun. Sun reserves all rights not expressly granted.

- b) Subject to section 2b) above or to any documentation accompanying the Software, You may not copy, modify, or distribute Software.
 - c) You may not rent, lease, lend or encumber Software.
 - d) Unless prohibited by applicable law, You may not decompile or reverse engineer Software.
 - e) This Agreement will apply to any Updates, unless such Updates contain a separate license.
 - f) You may not publish or provide the results of any benchmark or comparison tests run on Software to any third party without the prior written consent of Sun.
 - g) Unless otherwise specified, if Software is delivered with embedded or bundled software that enables functionality of such Software, You may not use such software on a stand-alone basis or use any portion of such software to inter-operate with any programs(s) other than Software.
 - h) Software may contain programs that perform automated collection of system data and/or automated software updating services. System data collected through such programs may be used by Sun, its subcontractors, and its service delivery partners for the purposes of providing You with remote system services as applicable, and/or improving Sun's software and systems.
4. **Java Compatibility and Open Source.**
- a) Software may contain java technology. You may not create additional classes to, or modification of, the java technology, except under compatibility requirements available under a separate agreement available at the following URL: www.java.net.
 - b) Portions of Software may be provided with open source code (and related notices) licensed from the global community of open source developers and third parties. Such open source licenses and notices govern the use of those portions of the Software. Any licenses granted hereunder do not alter any rights and obligations You may have under such open source licenses, however, the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all Software provided hereunder.
5. **Term and Termination.** The License term and Service term are set forth in the applicable Entitlement. Your rights under this Agreement will terminate immediately upon written notice from Sun if You commit a non-remediable material breach or take any action in derogation of Sun's and/or its licensor's rights to Software. Either party may terminate this Agreement immediately if the other party fails to cure a remediable material breach within thirty (30) days of receiving notice of such breach. Subject to its obligations under section 9 of this Agreement, Sun may terminate this Agreement should any Software become, or in Sun's reasonable opinion is likely to become, the subject of a claim of intellectual property infringement or trade secret misappropriation. Upon termination, You will cease use of, and destroy the Software and confirm compliance in writing to Sun. Sections 6, 10, 11, 12, 13, and 14 will survive termination of the Agreement.
6. **Pricing and Payment Arrangements.**
- a) Where You have appropriate credit arrangements with Sun, You must pay all invoices within thirty (30) days of the date of invoice. You are not required to pay the disputed portion of any invoice, pending resolution so long as written notice of the dispute has been provided to Sun within fifteen (15) days of receipt of the invoice.
 - b) Software License fees shall be as set forth in the applicable Sun quotation. Software License fees are non-refundable upon delivery of the Software (except as per Section 9) and are not contingent upon nor dependent on any further deliverables from Sun, including, but not limited to, professional services. Fees are exclusive of all sales and other taxes based upon the value of the Software and Services (for which You are responsible).
 - c) All payments will be made in U.S. currency.
7. **Compliance Records.**
- a) You agree to maintain records of Your compliance with the licenses granted by Sun under this Agreement. You also agree to maintain records of its compliance with U.S. trade laws and other applicable export and trade laws as well as the following: (i) identification and serial numbers of any Sun Software or other Sun technologies exported and re-exported (actual or planned); (ii) origination and destination entities and locations with respect to the actual or planned exports and re-exports and the dates thereof.
 - b) Sun or its independent audit firm may, upon reasonable notice, request, access, examine and audit Your systems, facilities and records to ensure compliance with any License granted by Sun including the compliance records described in the above paragraph (no more than once per year

unless Sun has evidence indicating You are in breach or are non-compliant) to the extent necessary to determine Your compliance with Sun's license grants and Your compliance with U.S. trade laws. Any audit will be conducted during Your regular business hours, and in a manner that avoids unreasonable interference with Your business operations. All information obtained by Sun under this section will be subject to Section 12 of this Agreement and any other confidentiality, security and privacy obligations to which You are legally bound (which must be made available in hard copy to Sun).

8. Limited Warranty.

- a) When properly installed and under normal use, Sun warrants that for 90 days from the date of delivery, the Software will contain the features described in the applicable users manual. Sun also warrants that for a period of 90 days from the date of purchase, the media on which Software is furnished (if any) will be free of defects under normal use. Otherwise, the Software is provided "AS IS".
- b) Your exclusive remedy and Sun's entire liability under this warranty will be:
 - i) with respect to the Software media warranty, to replace the applicable Software media; or
 - ii) with respect to the Software warranty, to replace or repair the Software, at Sun's option acting reasonably.

Some states do not allow limitations on certain implied warranties, so the above may not apply to You. This limited warranty gives You specific legal rights. You may have other rights, which vary from state to state.

- c) UNLESS SPECIFIED IN THIS AGREEMENT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE DISCLAIMED, EXCEPT TO THE EXTENT THAT ANY OF THESE DISCLAIMERS ARE HELD TO BE LEGALLY INVALID.

9. Intellectual Property Indemnification.

- a) Sun will defend or settle, at its option and expense, any legal proceeding brought against You to the extent that it is based on a claim by a third party that Software or Services as provided by Sun to You infringe such third party's patent or copyright or misappropriate such third party's trade secret ("IP Claim"), and will indemnify You against all damages and costs attributable exclusively to such claim awarded by the court finally determining the case, provided that You:
 - i) give written notice of the IP Claim to Sun promptly after learning of the IP Claim;
 - ii) give Sun sole control of the defense and settlement of the IP Claim;
 - iii) provide to Sun, at the expense of Sun, all available information and assistance; and
 - iv) do not compromise the IP Claim.
- b) If the Software or Services are found to infringe or misappropriate pursuant to an IP Claim, or in the reasonable opinion of Sun are likely to be the subject of an IP Claim, Sun will at its option:
 - i) obtain for You the right to use such Software or Services;
 - ii) replace or modify such Software or Services in such a way that: (a) they become non-infringing and non-misappropriating; and (b) they substantially perform in the same manner or substantially provide the same results, or there is no material adverse effect in their overall performance; or
 - iii) if neither i) nor ii) is reasonably achievable, remove such Software or Services and refund to You the original price paid therefore less net benefits realized by You through accumulated depreciation or expensing thereof, up until the date of removal.
- c) Notwithstanding anything to the contrary, and for the avoidance of doubt, sections 9a) and 9b) do not apply to, and Sun shall not have any obligation or liability of any kind for, any IP Claim arising from:
 - i) compliance by Sun with Your designs or specifications;
 - ii) modification of such Software or Services that are not specifically authorized by a written authorization signed by a Vice President of Sun;
 - iii) use of an allegedly infringing version of such Software or Services, if the alleged infringement could have been avoided by the use of a different version made available to You;
 - iv) a combination comprising such Software or Services in combination with any third party services, hardware, software, data, or other materials;
 - v) a violation of the Sun's License grant; or

- vi) any separate or component Software or Services to the extent it comprises any third party open source or freeware technology, or any derivatives or other adaptations thereof, and any combination that includes any of the foregoing.
- d) This Section 9 is excluded from the Limitation of Liability provision below and states the entire liability of Sun and Your exclusive remedy for any proceedings or claims that any Software or Services infringe or misappropriate a third party's intellectual property.

10. Limitation of Liability.

a) Except for a party's liability arising from:

- i) death or personal injury resulting from negligent acts or omissions;
- ii) claims for non-payment; or
- iii) a breach of any applicable License grant

and to the extent not prohibited by applicable law, each party's maximum aggregate liability for all claims relating to the Agreement, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to the amount paid or received during the previous twelve (12) months for the Software or Service which is the subject matter of the claim up to a maximum of two million US dollars (\$2,000,000) and neither party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the Agreement (including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders, or other economic advantage), however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, and even if that party has previously been advised of the possibility of such damages.

b) Liability for damages will be limited and excluded, even if any exclusive remedy provided for in the Agreement fails of its essential purpose.

11. Export Regulations. Software, Services, technology, materials, tools, and technical data delivered by or to Sun are subject to U.S. export controls and may be subject to the trade laws of other countries. The parties agree to comply with all export control regulations and acknowledge that each party has the responsibility to obtain such licenses to export, re-export or import as may be required. The parties agree not to export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws. The parties will not use or provide Software, Services, technology, materials, tools, and technical data for nuclear, missile, or chemical and biological weaponry end uses.

12. Confidential Information. A party receiving Confidential Information (the "Recipient") must keep it confidential using the same degree of care that it exercises with respect to its own information of like importance but in no event less than reasonable care, and may use it only for the purposes for which it was provided under the Agreement. Confidential Information may be disclosed only to employees, contractors and third party providers performing services in furtherance of this Agreement and/or each party's internal activities that are obligated to the Recipient under similar confidentiality restrictions and only for the purposes for which it was provided under the relevant Agreement. These obligations do not apply to Confidential Information which:

- a) is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;
- b) is or becomes known to the public through no act or omission of the Recipient;
- c) the Recipient develops independently without using Confidential Information of the other party; or
- d) is disclosed in response to a valid court or governmental order, and then only to the extent required to comply with the court or governmental order, if the Recipient has given the other party prior written notice and provides reasonable assistance so as to afford it the opportunity to object.

13. Sun Trademarks. You may refer to Software and Services by their associated names, provided that such reference is not misleading and complies with Sun's Trademark and Logo Policies, which can be found at the following URL: <http://www.sun.com/policies/trademarks>. You may not remove or alter any Sun Trademarks, or co-logo Software or Services. You agree that any use by You of Sun Trademarks will inure to the sole benefit of Sun. You agree not to incorporate any Sun Trademarks into Your trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

14. Miscellaneous.

- a) Neither party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld, except that:
 - i) both parties may assign their right to receive payment; and
 - ii) Sun may use subcontractors in the performance of its obligations, in which case Sun will remain responsible for the performance of such subcontractors.
- b) If Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the Government's rights in Software and Accompanying documentation will be only as set forth in this Agreement; this is in accordance with 48 CFR 227.7201 through 227.7202-4 (for Department of Defense (DoD) acquisitions) and with 48 CFR 2.101 and 12.212 (for non-DoD acquisitions).
- c) Sun may use Your name in promotional materials, including press releases, presentations and customer references regarding the sale of Software or Services. These permissions are free of charge for worldwide use in any medium. Sun will obtain Your prior approval for publicity that contains claims, quotes, endorsements or attributions by You, such approval not to be unreasonably withheld.
- d) The parties will use reasonable efforts to resolve any dispute arising out of the Agreement through a meeting of appropriate managers from each party. If the parties are unable to resolve the dispute, either party may escalate the dispute to its executives. If an executive level meeting fails to resolve the dispute within thirty (30) days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other equitable relief at any time.
- e) Any action related to this Agreement will be governed by California law and controlling U.S. federal law. The venue for litigation will be the appropriate courts located in Santa Clara County, California. Choice of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods will not apply to any dispute under the Agreement.
- f) You acknowledge that Software and Services are not designed or intended for use in the design, construction, operation or maintenance of any nuclear facility.
- g) A party is not liable under this Agreement for non-performance caused by events or conditions beyond that party's reasonable control. This provision does not relieve either party of its obligation to make payments then owing.
- h) This Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner that expresses or implies a relationship other than that of independent contractor.
- i) All written notices, including by electronic mail or facsimile, required by the Agreement must be delivered in person or by means evidenced by a receipt or acknowledgment and will be effective upon receipt.
- j) If any provision of this Agreement is held to be unenforceable, this Agreement will remain in effect with the provision omitted, unless omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate.
- k) This Agreement is the entire agreement between the parties relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgement, or other communication between the parties relating to its subject matter during the term of this Agreement. No modification of this Agreement will be binding, unless in writing and signed by an authorized representative of each party.

IN WITNESS WHEREOF THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE EFFECTIVE DATE.

SUN MICROSYSTEMS, INC.

COMPANY

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____



WSCA/NASPO Contract Administration
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Fax: 651.297.3996
TTY: MN Relay Service 1.800.627.3529
<http://www.mmd.admin.state.mn.us>

1 AMENDMENT NUMBER: 1 TO CONTRACT NUMBER: B27175

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Sun Microsystems Inc., 4150 Network Circle, Santa Clara, CA 95054 ("Contractor") (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. B27175, effective September 1, 2009, through August 31, 2012, to provide direct-from-manufacturer personal computer equipment, peripherals and related services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

Section 3. Title Passage is changed to read:

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon delivery to the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensors, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement

Section 6.b.2. Payment of Invoice is changed to read:

For Minnesota, per Minn. Stat. § 16A.124 payment shall be made within 30 days following receipt of an undisputed invoice, Product or Service, whichever is later. For other Purchasing Entities, payment of invoice is 30 days from date of invoice. The ordering entity is not required to pay the Contractor for any products and/or services provided without a written purchase order or other approved ordering document from the appropriate purchasing entity. In addition, all products and/or services provided must meet all terms, conditions, and specifications of the Contract and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card".

Section 10.A. Shipment and Risk of Loss is changed to read:

All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery. Delivery of the product does not relieve the Contractor of responsibility for latent defects, fraud and Contractor's warranty obligations.

Section 29.B. Website Maintenance is changed to read:

The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A. above. Contractor's website will accept quote requests that will be forwarded and processed through internal quoting organization. The quoting organization shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

Section 45.C.5 Default and Remedies is changed to read:

Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor. Costs will be limited to two times the value of the order but in no event more than the financial liability set forth in Section 24. Administrative handling is defined as including but not limited to the time required to cancel the previous order including defaulting the vendor, research an alternate product, obtain a price, and order the product.

This Amendment is effective beginning on September 1, 2009, or upon the date that the final required signatures are obtained, whichever occurs later, and shall remain in effect until August 31, 2012 or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. SUN MICROSYSTEMS INC.

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Leslie Woodin

Title: Region Executive

Date: 9/17/2009

Leslie Woodin

By: _____

Title: _____

Date: _____

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopschke

Title: Acquisition Management Specialist

Date: 9/22/09

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: Bernd Willard

Date: 9/24/09