STATE OF IOWA
MASTER AGREEMENT

EFFECTIVE BEGIN DATE: 01-01-2005
EXPIRATION DATE: 08-31-2009

BUYER : ASHLEY SUPER
ashley.super@iowa.gov
515--28-1-70

FOB

PAYMENT TERMS (%): **DAYS:**

VENDOR:

Open Technologies, L.C.
6200 Aurora Ave Ste 606W

Des Moines, IA 50322
USA

VENDOR CONTACT:

Dan.Merry
PHONE: 515-251-8282 **EXT:** 201
EMAIL: dan.merry@open-tech.com
VENDOR #: 42146428400

DESCRIPTION OF ITEMS CONTRACTED

COMPUTERS, ACCESSORIES AND SUPPLIES per attached.
Contract for Sun Microsystems Equipment and Services per attached.

Reference:
http://www.sun.com/products-n-solutions/government/wsca/states/ia.html

Sales Contact:

Dan Merry or Jason Burks
Open Technologies, Inc.
6200 Aurora Ave., Ste 606W
Des Moines, IA 50322
Office: 515.251.8282
Fax: 515-251-8285
Email: dan.merry@open-tech.com
jason.burks@open-tech.com
sales@open-tech.com

https://www.open-tech.com/wsca/

RENEWAL PERIODS
FROM 09-01-2007 **TO** 08-31-2008
FROM 09-01-2008 **TO** 08-31-2009

THRESHOLDS
MINIMUM ORDER AMOUNT:
MAXIMUM ORDER AMOUNT:
NOT TO EXCEED AMOUNT:

AUTHORIZED DEPARTMENT
ALL
SUB Political Sub-divisions

TOTAL **$0.00**

VENDOR: _____

APPROVED BY: _____

THIS MA IS SUBJECT TO THE TERMS AND CONDITIONS ATTACHED HERETO. PLEASE SEE ATTACHMENTS FOR FURTHER DESCRIPTIONS.

STATE OF IOWA
MASTER AGREEMENT

LINE NO.	QUANTITY / SERVICE DATES	UNIT	COMMODITY / DESCRIPTION	UNIT COST / PRICE OF SERVICE
1	0.00000		204	$0.000000
				$0.000000
			COMPUTER HARDWARE AND PERIPHERALS FOR MICROCOMPUTERS	
2	0.00000		206	$0.000000
				$0.000000
			COMPUTER HARDWARE AND PERIPHERALS FOR MINI AND MAIN FRAME CO	
3	0.00000		207	$0.000000
				$0.000000
			COMPUTER ACCESSORIES AND SUPPLIES	
4	0.00000		91828	$0.000000
				$0.000000
			Computer Hardware Consulting	

TERMS AND CONDITIONS

Incorporation
The Request for Proposal and/or bid documents for this project and the vendor's proposal in response to the RFP or Bid together with any clarifications, attachments, appendices, or amendments of the State or the Vendor are incorporated into this Contract by reference as if fully set forth in this Contract.

Remedies upon Default
In any case where the vendor has failed to deliver or has delivered non-conforming goods and/or services, the State shall provide a cure notice. The notice to cure shall state the maximum length of time the vendor has to cure. If after the time period stated in the notice to cure has passed, the vendor continues to be in default, the State may procure goods and/or services in substitution from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The State's Attorney General shall be requested to make collection from the defaulting vendor.

Force Majeure
Force majeure includes acts of God, war, civil disturbance and any other causes which are beyond the control and anticipation of the party affected and which, by the exercise of reasonable diligence, the party was unable to anticipate or prevent. These provisions of force majeure also apply to subcontractors or suppliers of the Vendor. Force majeure does not include financial difficulties of the Vendor or any associated company of the Vendor, or claims or court orders that restrict the Vendor's ability to deliver the goods or services contemplated by this Agreement. Neither the Vendor nor the State shall be liable to the other for any delay or failure of performance of this Agreement caused by a force majeure, and not as a result of the fault or negligence of a party.

Subcontractors
The successful vendor shall be responsible for all acts and performance of any subcontractor or secondary supplier that the successful vendor may engage for the completion of any contract with the State. A delay that results from a subcontractor's conduct, negligence or failure to perform shall not exempt the vendor from default remedies. The successful vendor shall be respons ble for payment to all subcontractors and all other third parties.

Termination-Non-Appropriation
Notwithstanding any other provision of this contract, if funds anticipated for the continued fulfillment of this contract are at any time not forthcoming or insufficient, either through the failure of the State to appropriate funds, discontinuance or material alteration of the program for which funds were provided, then the State shall have the right to terminate this contract without penalty by giving not less than thirty (30) days written notice documenting the lack of funding, discontinuance or program alteration.

Immunity of State/Fed Agencies
The vendor shall defend and hold harmless the State and Federal funding source for the State of Iowa from liability arising from the vendor's performance of this contract and the vendor's activities with subcontracted and all other third parties.

Assignment
Vendors may not assign contracts or purchase orders to any party (including financial institutions) without written permission of the General Services Enterprise - Purchasing.

Anti-Trust Assignment
For good cause and as consideration for executing this purchase order, the vendor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa, relating to the particular goods or services purchased or acquired by the State of Iowa pursuant to the using State of Iowa agency.

Delivery and Acceptance
When an award has been made to a vendor and the purchase order issued, deliveries are to be made in the following manner.
A. Deliveries - All deliveries are to be made only to the point specified on the purchase order. If delivery is made to any other point, it shall be the responsibility of the vendor to promptly reship to the correct location. Failure to deliver procured goods on time may result in cancellation of an order or termination of a contract at the option of the State.
B. Delivery Charges - All delivery charges should be to the account of the vendor whenever poss ble. If not, all delivery charges should be prepaid by vendor and added to the invoice.
C. Notice of Rejection - The nature of any rejections of a shipment, based on apparent deficiencies disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a reasonable time after delivery of the item, with a copy of this notice to the General Services Enterprise - Purchasing. Notice of latent deficiencies which would make items unsatisfactory for the purpose intended may be given by the State of Iowa at any time after acceptance.

Delivery and Acceptance (cont)
D. Disposition of Rejected item - The vendor must remove at the vendor's expense any item rejected by the State. If the vendor fails to remove that rejected item, the State may dispose of the item by offering the same for sale, deduct any accrued expense and remit the balance to the vendor.
E. Testing After Delivery - Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test is being made and that payment will be withheld until completion of the testing process.

Title to Goods
The vendor warrants that the goods purchased hereunder are free from all liens, claims or encumbrances.

Indemnification
To the extent that goods are not manufactured in accordance with the State's design, the vendor shall defend, indemnify and hold harmless the State of Iowa, the State's assignees, and other users of the goods from and against any claim of infringement of any Letter Patent, Trade Names, Trademark, Copyright or Trade Secrets by reason of sale or use of any articles purchased hereunder. The State shall promptly notify the vendor of any such claim.

Nondiscrimination
The vendor is subject to and must comply with all federal and state requirements concerning fair employment and will not discriminate between or among them by reason of race, color, religion, sex, national origin or physical handicap.

Warranty
The vendor expressly warrants that all goods supplied shall be merchantable in accordance with the Uniform Commercial Code, Section 2-314 and the Iowa Code, Section 554.2314.

Taxes

The State of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity and/or service. Contractors performing construction activities are required to pay state sales tax on the cost of materials. The Iowa Department of Revenue exemption letter will be furnished to a vendor upon request.

Hazardous Material

All packaging, transportation, and handling of hazardous materials shall be in accordance with applicable federal and state regulations including, but not limited to, the Material Safety Data Sheet provision of O.S.H.A. Hazard Communication Standard 29CFR 1910.1200, and Iowa Administrative Code, Chapter 567.

Public Records

The laws of the State of Iowa require procurement records to be made public unless exempted by the Code of Iowa.

Miscellaneous

The terms and provisions of this contract shall be construed in accordance with the laws of the State of Iowa. Any and all litigation or actions commenced in connection with this contract shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa. If however, jurisdiction is not proper in Po k County District Court, the action shall only be brought in the United States District Court for the Southern District or Iowa, Central Division, providing that jurisdiction is proper in that forum. This provision shall not be construed as waiving any immunity to suit or liability, which may be available to the State of Iowa.

If any provision of this contract is held to be invalid or unenforceable, the remainder shall be valid and enforceable.

Records Retention

The vendor shall maintain books, records, and documents which sufficiently and properly document and calculate all charges billed to the State of Iowa throughout the term of this Agreement for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. The vendor shall at, no charge, permit the Auditor of the State of Iowa, or any authorized representative of the State (or where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government) to access and examine, audit, excerpt and transcr be any directly pertinent books, documents, papers, electronic or optically stored and created records, or other records of the vendor relating to orders, invoices, or payments documentation or materials pertaining to this Agreement.

Independent Contractor

The vendor is an independent contractor performing services for the State of Iowa, and as such shall not hold itself out as an employee or agent of the State.

Performance Monitoring

For all service contracts, the requirements of Iowa Code sections 8.47 shall be incorporated into final terms and conditions of the contract.

N30

NET 30 DAYS

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

WSCA-NASPO COMPUTER CONTRACTS

BULLETIN NO. 26

MASTER AGREEMENTS EXTENDED

The following Master Price Agreements have been extended through August 30, 2009:

A63307	Dell Marketing L.P.
A63308	Gateway Companies
A63309	Hewlett Packard Company
A63310	Howard Technology Solutions
A63311	IBM Corporation
A63312	MPC-G, LLC
A63313	Konica Minolta Printing Solutions
A63316	Xiotech Coporation
A74402	Okidata Americas
A74813	Lenovo (United States) Inc.

The 'Master Price Agreement with all Amendments' link on the website has been updated.

The Amendment for A85627 with Sun Microsystems was received today and is being signed and the website will be updated this week.

Other bulletins will be sent as the remaining Master Price Agreements are signed and the links updated.

If you have any questions, please e-mail them to one of us:

Bernadette Kopischke - Contract Administrator
E-Mail: bernie.kopischke@state.mn.us

Paul Stembler - Procurement Manager
E-Mail: paul.stembler@state.mn.us

December 11, 2006

To State of Iowa Entities and Agencies:

Re: WSCA Contract # 85627 , Open Technologies, Inc.

Open Technologies Inc. of Des Moines, Iowa is our authorized and approved servicing IT Vendor representing Sun Microsystems Technology Products based in Des Moines, Iowa responsible for sales coverage in the State of Iowa for Sun Microsystems.

Sun Microsystems Inc. recommends and prefers that **Open Technologies, Inc.** secure orders for Sun Technology Products via the WSCA participating addendum contract **#85627 .** Sun's WSCA Partner, Open Technologies will be responsible for performing all aspects of the WSCA contract including taking Purchase Orders direct, fulfilling Purchase Orders, invoicing and receiving payment as identified on the individual website for the Participating Vendor.
http://www.sun.com/products-n-solutions/government/wsca/states/mn.html
http://www.sun.com/products-n-solutions/government/wsca/states/ia.html

Open Technologies, Inc., address and website:

6200 Aurora Avenue
Suite 606W
Des Moines, Iowa 50322
Phone: 515.251.8282
sales@open-tech.com
https://www.open-tech.com/wsca/

Please feel free to contact me directly with any questions.

Sincerely,

Robert J. Reagan
Sr. Territory Manager
Iowa Government Sales
Sun Microsystems, Inc.
877-263-2200

Sun Microsystems, Inc.
State and Local Office
7760 France Avenue
Suite 950
Bloomington, Minnesota 55435
http://www.sun.com/government

PARTICIPATING ADDENDUM

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES
WSCA / NASP MASTER PRICE AGREEMENT
NUMBER A85627

SUN MICROSYSTEMS, INC.
And
State of Iowa

1. Scope

Within the State of Iowa, all state agencies, state facilities, cities, counties or education entities or any entity funded in part with tax dollars, are eligible purchasers and authorized to purchase products and services under the terms of this price agreement in lieu of a competitive selection process.

2. Changes by the Participating Entity:

a) Without affecting the approved product prices or discounts specified in the WSCA/NASPO Master Price Agreement, the Contractor shall provide to the State of Iowa a 1.00% rebate on all sales made within the State of Iowa against this agreement. The rebate is to be paid quarterly to The Iowa Department of Administrative Services, General Services Enterprise – Purchasing, Attn: Debbie O'Leary, Hoover State Office Building, Level A, Des Moines, IA 50319.

b) The Contractor shall provide an electronic detailed quarterly report on all sales made against this agreement within the State of Iowa to the State's primary contact below. The report file format shall be Microsoft Excel compatible format. The report at minimum shall include the date of sale, customer name and address, product description, quantity, invoice number, unit and extended invoice prices.

c) Contractor's stated prices on the Contractor's approved State of Iowa WSCA/NASPO web site shall be discounted using the discounts and price lists approved and agreed to with WSCA/NASPO under the Master Price Agreement. The stated discounts are considered to be the minimum discount offered. The Contractor may offer, within written quotes, a higher discount than the approved minimum discount for volume purchases or for competitive reasons.

3. Primary Contact:

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

Participating Entity Name:	State of Iowa
Name:	Ashley Super, DAS GSE Purchasing
Address:	Hoover State Office Building, Level A, Des Moines, 50319
Telephone:	515-281-7073
Fax:	515- 242-5974
E-mail:	Ashley.super@iowa.gov

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

Name:	Jack Nichols, Manager, State and Local Gov
Contractor:	Sun Microsystems, Inc.
Address:	1775 Wiehle Ave., Mailstop URSN03 Reston, VA 20190
Telephone:	571-203-8116
Fax:	571.203.8020
Email:	jack.nichols@Sun.com

4. Servicing Subcontractors:

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

5. Orders and Payments:

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

Orders:

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

Payments:

(Participating Entity to select the nearest Payment Office):

☐ Sun Microsystems, Inc.
C/o Bank of America
Dept. 1489
P.O. Box 61000
San Francisco, CA 94161

☐ Sun Microsystems, Inc.
Bank of America
Drawer CS 198330
Atlanta, GA 30384-8330

☑ Sun Microsystems, Inc.
C/o Northern Trust Company
P.O. Box 75640
Chicago, IL 60674-5640

The NASPO/WSCA Master Price Agreement Number A85627must be shown on all Purchase Orders.

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

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

One Behalf of State of Iowa:

By: Debbie O'Leary
Name: **Debbie O'Leary**
Title: **Administrator, DAS GSE**

Date: 6/8/06

On Behalf of Sun Microsystems, Inc.

By: Robert Lavine
Name: ROBERT LAVINE
Title: Executive Director, State & Local Gov't
Date: 6/16/06

WESTERN STATES CONTRACTING ALLIANCE

MASTER PRICE AGREEMENT
for
COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

Number A85627

This Agreement is made and entered into by Sun Microsystems, Inc. ("Contractor") and the 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 Participating States and Participating 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. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided.

It is the further intent of this Agreement that leasing or rental agreements are not included. Each Participating Entity is allowed to negotiate leasing or rental agreements into their Participating Addendum, if they have the legal authority to enter into these types of agreements without going through a competitive process.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed $100,000 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 the $100,000, with the <u>prior</u> approval of the WSCA Directors.

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 all customers for defined time periods under predefined terms and conditions.

"Confidential Information" means any information disclosed by one party to another party under the Master Price Agreement or any Participating Addendum of a Participating State or Participating Entity.

"Contract" means an agreement for the procurement of items of tangible personal property or services.

"Contract Administrator" means to an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

"Contractor" shall mean 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.

"Consumables" that are required for the operation of Equipment offered or supplied are included -- printer cartridges, batteries, projector bulbs, etc. *Consumables such as magnetic media, paper and generally available office supplies are excluded.*

"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 their 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, as defined by the Contractor.

"Energy Star®" is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at http://www.energystar.gov.

"Equipment" means workstations, desktop, servers, and storage drives, including upgrade components such as memory, storage drives, and spare parts.

"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 a Sun Commercial List price offered to consumer, business or governmental purchaser at prices lower than The Sun Commercial List prices used as a basis for the PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

"ISO 14001" is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to www.iso.org .

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

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

"Manufacturer" means the company that designs, assembles, 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's name(s) shall appear on the computer equipment. **The Contractor shall provide warranty service and maintenance for equipment covered by this 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 Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price. In order for a Purchasing 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" 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 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 physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

"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, or who subsequently signs a Participating Addendum 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 through the execution of a participating addendum.

"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 Purchasing Entities conducting a cooperative purchase.
"Political Subdivision" means local pubic 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" 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, LAN hardware, 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" mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.
"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 Agreement 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.
"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/help desk, 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" or **"Agent Reseller"** or **"Subcontractor"** 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 in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program**.
"Standard Configurations" mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. 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); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

"Takeback Program" means the Contractor's process for accepting the return of the equipment or other products at the end of life.

"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.

2. **Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and 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 the 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 warranty and maintenance services on equipment that is purchased. 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 Agreement upon receipt of the product by the Purchasing Entity. 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 conflicting with this Agreement or the Participating Addendum 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 P-1331 and Addenda thereto; and
F. Contractor's proposal including any written clarifications and/or 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 all 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 thirty (30) calendar days following delivery of non-acceptance of a product or service. In the event the Contractor has not been notified within 30 days from delivery of the product or completion of the service, the product and/or service will be deemed accepted on the 31st day after delivery of product or completion of service.

B. Payment of Invoice

1. Payments shall be submitted to the Contractor at the address shown on the invoice, 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. Payments shall be made in accordance with the applicable laws of the Purchasing Entity.

2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. 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. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. 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, 2007. The Agreement may be mutually renewed for two (2) additional one-year terms 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 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. 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 delivery to the identified ship to address when responsibility and liability for loss 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 wrongful intentional act or omission of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days 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 in accordance with the Contractor's standard warranties (See Exhibit A). In general, the Contractor warrants that:

1. The Product will conform with 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 any 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, and
3. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
4. 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 (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranty upgrades that are available if the product basic warranties do not meet business needs. A general description of these warranty upgrades are provided in **Exhibit A**. Detailed descriptions of Sun's warranty upgrades can be found on the Sun Services website (www.sun.com/services/).

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

B. Contractor may modify the warranties described in Exhibit A from time to time with 30 days prior written approval of the Contract Administrator.

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.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities 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 Purchasing Entity for all costs, 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.

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. Provide a Purchasing Entity the right to continue using the Products or Services;
2. Replace or modify the Products or Services so that it becomes non-infringing; 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 or by a third party on the Purchasing Entity's behalf 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; or
5. Product use with products that are not the Contractor branded.

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 (per Contractor's Trade-In program), Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator 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 guaranteed price discount levels on file with the Contract Administrator for the following Products:
Band 1: File/Print Servers, Mid-Range Servers
Band 2: Workstations
Band 4: Auxiliary Storage Solutions

B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the 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 requirements 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 Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the 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 that has been formally approved by the Contract Administrator.

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 Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator.

This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the 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 to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the 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 hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

17. Take back/Environment/Energy Efficiency Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

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

B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.

C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.

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

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

18. Product Delivery

Contractor agrees to use commercially reasonable efforts to deliver Products to Purchasing Entities within 10 - 14 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order, as agreed to between the Purchasing Entity and the Contractor.

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, strike, riot, industry-wide constraints, 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 Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor 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 with other third parties 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 Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. 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 Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, 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**

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

25. **Amendments**

Agreement 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 Agreement 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 Agreement, 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 Agreement is legally valid, 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 Agreement 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 forebearing/indulging 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 Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement 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 Agreement 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 approved PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids in accordance with reasonable instructions provided by the

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 requirements 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 website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed 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 reporting.

30. Equal Opportunity Compliance

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which it's primary place of business is located pertaining to equal employment opportunity. 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 Agreement.

31. Limitation of Liability

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal 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 or the use of the Products or Services purchased by the Purchasing Entity hereunder.

32. 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.

33. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the 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.

34. 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, except as expressly provided in Paragraph 41. Survival, below. 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.

35. Data Practices

A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, 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 Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.

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 referred to in this article by either the Contractor or the State.

C. The Contractor agrees to indemnify, save, and hold the State, 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, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.

D. 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 Master Price Agreement. Confidential information may be disclosed only to employees, contractors and third-party providers performing services in furtherance of this Master Price agreement and/or each party's internal activities, that are obligated tithe Recipient under similar confidentiality restrictions and only forth purposes for which it was provided under the relevant Master Price agreement. These obligations do not apply to information which;

(a) is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;

(b) is or becomes known t 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 government 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.

E. The Contractor agrees to be bound by the data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.

36. Organizational Conflicts of Interest

A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no 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 Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

37. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

38. 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.

39. 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 Services and shall bear the costs associated with the site preparation.

40. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give 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 this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

41. Survival

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

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 Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. 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. All notices shall be addressed as follows:

To MMD:

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

To Contractor:

Jack Nichols
Manager, State and Local Government Contracts
Sun Microsystems, Inc.
7900 Westpark Drive, Suite A110
Mclean, VA 22102-4203
Phone: 703.204.4167
Fax: 703.280.5830
Email: jack.nichols@sun.com

B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

Period End	Report Due
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.

3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a 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 quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.

5. The utilization reports shall be submitted to the 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 Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests 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 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 a 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 effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.

2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method 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. Consistent 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 within 30-days notification of the written notice, 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 mutually agreed by the parties, as specified in an Amendment to 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 from within the Participating Entity's jurisdiction.

46. Audits

A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.

1. 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 Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

B. 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, the Contractor may, at the sole discretion of the 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 State 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 Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

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 Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. Except as permitted pursuant to Paragraph 49B below, the Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.

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 Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, Pre-existing IP, trademarks, copyrights, intellectual property or other proprietary interest. The State shall grant a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable, sublicensable, worldwide license to use, without restrictions any intellectual property rights or portions thereof for which the State obtains ownership thereof pursuant to this Agreement. 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 agreements with others and to develop and provide Materials and Services which are similar to those provided under this agreement.

50. Prohibition Against Gratuities

A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement 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 Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.

B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement 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

Except as forbidden by applicable law, the Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement 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 Agreement, 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 Agreement, prior to its approval by the 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 Agreement without the prior written consent of the Agreement 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 Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, 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 or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.

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 submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

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**, including relative costs associated with those services.

57. E-Rate Program

The Contractor complies with this requirement 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.

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: Kate Zuscoll Title: Area Vice President Date: 2/13/06 By: Title: Date:	**2. MATERIALS MANAGEMENT DIVISION** In accordance with Minn. Stat. § 16C.03, Subd. 3. By: Bernadette Kopischke Title: Acquisition Management Specialist Date: 2/14/06 **3. COMMISSIONER OF ADMINISTRATION** Or delegated representative. By: Date: 14 FEB 06

EXHIBIT A - ADDITIONAL WARRANTIES

A) PRODUCT WARRANTIES

1.1 **Warranty**. Sun warrants that all Equipment as at the date of delivery will be free from material defects in materials and workmanship for the period shown on the web-page at http//www.sun.com/service/support/warranty ("the Warranty Web Page") (a hard copy of which is available on request). Company may review Sun's warranty programs and related procedural details at the Warranty Web Page. Sun furthermore warrants that Software listed on the Warranty Web Page as at the date of delivery, for the period shown on the Warranty Web Page, will contain the features described in the applicable user's manual, as it exists at the date of delivery to Company. Otherwise Software is provided "AS IS".

1.2 **Changes to Warranty Web Page.** Any changes to the warranty details specified on the Warranty Web Page from time to time will not apply to Products ordered prior to such change.

1.3 **Exclusive remedy.** Company's sole and exclusive remedy and Sun's entire liability for breach of the above warranty will be: (a) the repair or, at Sun's option and expense, replacement of defective Equipment; and (b) the provision of Software support as shown on the Warranty Web Page. Parts or components which are replaced under applicable warranty may not be new. Title in all defective parts which are removed from Equipment under applicable warranty shall transfer back to Sun.

1.4 **Products excluded from warranty.** No warranty will apply to any Product which has been:

(a) modified, altered or adapted without Sun's written consent;
(b) maltreated or used in a manner other than in accordance with the relevant manual;
© repaired by any third party in a manner which fails to meet Sun's quality standards;
(d) improperly installed by any party other than Sun;
(e) used with equipment or software not covered by the warranty, to the extent that the problems are attributable to such use; or
(f) purchased from any entity other than Sun or a Sun authorized reseller.

B) SERVICE WARRANTIES

1.1 **Warranty.** Sun warrants that Services will be performed in a good and workmanlike manner.

1.2 **Exclusive remedy.** Company's sole and exclusive remedy and Sun's entire liability for breach of the above warranty will be reperformance of Services.

1.3 **Claims.** Any claim for breach of the above warranty must be made in writing and notified to Sun within 90 days of performance of the Services at issue.

WARRANTY

NO IMPLIED WARRANTIES. Except as specified in this Exhibit, all express or implied conditions, representations and warranties, including any implied warranty or condition of merchantability, satisfactory quality, fitness for a particular purpose and non-infringement, are hereby excluded to the maximum extent permitted by law.

Upgrades to Sun's basic warranty coverage are provided under the SunSpectrum Service Plans. The following table summarizes the service plans provided through a SunSpectrum Support Agreement. The SunSpectrum Service Plans offer four coverage levels that provide technical support, on-site service and other services. Prices for these services are provided on Sun's Products and Services Schedule. Complete details of the Sun service support plans can be found on the Sun Services website (www.sun.com/services/).

SunSpectrum Service Plan Table

	Platinum Mission Critical	Gold Business Critical	Silver Basic Support	Bronze Self Maintenance
On-Demand Solaris Updates	Yes	Yes	Yes	Yes
Hardware Service Coverage*	24/7 2 hour On-site Service*	8-8, Monday-Friday 4 hour On-site Service*	8-5, Monday-Friday 4 hour On-site Service*	Replacement Parts – 2nd Business day*
Telephone and Online Technical Support	24/7 Live Transfer	24/7 Live Transfer	8-8, Monday-Friday Live Transfer	8-5, Monday-Friday 4 Hour Response
Support Notification Services	Yes	Yes	Yes	Yes
Online System Admin Resources	Yes	Yes	Yes	Yes
On-demand Solaris Updates	Yes	Yes	Yes	Yes
SunSpectrum eLearning Library	Yes	Yes	Yes	Yes
One-Stop Interoperability Assistance	Yes	Yes	No	No
System Health Check Subscription	Yes	Yes	No	No

Important Note:

**If necessary modify table to reflect local coverage. Refer to http://www.sun.com/service/support/localinfo.html for additional local coverage information.*

EXHIBIT B - COMPLAINT RESOLUTION

Sun's formal service escalation procedure is described in detail below. It is broken into four complaint categories: Service, Billing, Equipment and Order, and Issues.

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 C, "Sun Marketing Information" for service product descriptions for warranty and post-warranty support services.

An overview of the process:

- WSCA's service request is recorded and assigned to the appropriate Sun technical specialist.
- 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.
- If resolution is not achieved within the set period. WSCA's case is automatically escalated to a senior support engineer for resolution.
- 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.
- At the request of the Primary WSCA Account Manager, 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 Primary Account 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

A. Sun 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.

B. 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.

C. Upgrade Assistance Program (UAP)

UAP allows the customer to trade their system in at any time ** so they get investment protection throughout the life cycle 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

D. Sun 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. Over 250,000 students each year are trained by Sun and its authorized centers through Web-based courses and at over 250 training sites located in more than 60 countries.

Sun Educational Services provides an extensive array of fixed price, customized and hourly rate courses and services. Sun Educational Services training methodologies are built around AIM, assessing the staff in an IT department, building a comprehensive training solution, implementing the delivery of those solutions and managing to roll out of the solution. All training solutions are built on these principals to ensure successful knowledge transfer.

Industry-standard Sun certifications are available for Java, Sun Java System , Solaris, and Network Administration. Delivery options for Sun training include; instructor-led, virtual training, live labs, web-based, CD-ROM, seminar and mentoring.

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.

PARTICIPATING ADDENDUM

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

MASTER PRICE AGREEMENT
Sun Microsystems, Inc.

Contract Number A85627

(Participating Entity Name)

1. **Scope**
   (Briefly describe the jurisdiction of the governmental entity. If the jurisdiction includes all the governmental entities within an entire state, a statement to that effect will suffice)

2. **Changes:**
   (Insert specific changes or a statement that no changes are required)

3. **Primary Contact:**
   The primary participating entity contact for this Participating Addendum is as follows:
   Name:
   Participating Entity Name:
   Address:
   Telephone:
   Fax:
   E-mail:

   The primary Contractor contact for this Participating Addendum is as follows:
   Name: Jack Nichols, Manager, State and Local Government Contracts
   Contractor: Sun Microsystems, Inc.
   Address: 7900 Westpark Drive, Suite A110, McLean, VA 22102-4203
   Telephone: 703.204.4167
   Fax: Fax: 703.280.5830
   Email: jack.nichols@sun.com

4. **Servicing Subcontractors:**
   Only Sun Microsystems's authorized Partners that have been approved by the Participating entity are eligible to support the Master Price Agreement. These approved Partners will be identified on the individual website for the Participating Entity.

   Orders are to be issued directly to (unless otherwise noted in the individual Participating Addendum):
   Sun Microsystems, Inc.
   7777 Gateway Blvd.
   Newark, CA 94560
   Attention: Judy Ledyard
   Fax: 510.217.6040
   Email: judy.ledyard@sun.com

Payments are to be issued directly to (unless otherwise noted in the individual Participating Addendum):
Sun Microsystems, Inc.
C/o Bank of America
12120 Collection Center Drive
Chicago, IL 60693

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

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

Signatures as required by State Statutes, Rules or Policies