

MHEC/Sun Microsystems, Inc.
Master Price Agreement
Effective November 2, 2009 through June 30, 2012

Sun Microsystems, Inc., (Sun Microsystems) located at 4150 Network Circle, Santa Clara, CA 95054 USA, and the Midwestern Higher Education Commission (MHEC) located at 1300 South Second Street, Suite 130, Minneapolis, Minnesota, 55454 on behalf of the Eligible Organizations located in the MHEC member states enter into this MHEC/Sun Microsystems Master Price Agreement (Master Agreement), subject to the terms and conditions herein, effective this First day of July, 2009 (Effective Date). For purposes of this Master Agreement Sun Microsystems and MHEC are referred to collectively as the Parties or individually as Party.

1. Definitions

Authorized Reseller: refers to resellers authorized by Sun Microsystems to resell Sun Microsystems products and services. Sun Microsystems will list Authorized Resellers on an internet site accessible to MHEC, its Member States and Eligible Organizations. MHEC shall have a right to request Sun Microsystems remove a reseller if it deems such reseller is not in compliance with the terms of this Agreement.

Documentation: refers to the license made available by Sun Microsystems to Procuring Eligible Organization of documentation relating to any Equipment or Software as well as any manuals relating to the Equipment or Software.

Eligible Organizations: This Master Agreement shall be made available to all Eligible Organizations. Eligible Organizations shall include:

- all not-for-profit private and public institutions and/or systems of higher education (colleges, universities, community colleges, technical institutions and equivalent institutions) located in a Member State;
- all K-12 schools and school districts located in a Member State;
- all city, county, and other local governments located in a Member State
- all state governments and their departments of Member States
- Eligible Organizations located in a Member State that terminates its association with the Compact will no longer be eligible under this Master Agreement to purchase pursuant to this Master Agreement. Termination by any Member State shall not prohibit or restrict Sun Microsystems from negotiating or contracting with such Member State or entity within such Member State outside the Compact. MHEC shall promptly notify Sun Microsystems in writing of the termination of any Member States' membership in the Compact. If any Member State so terminates its membership in the Compact, such termination shall not effect the validity or enforceability of or constitute a default under any purchase order then in effect with any Participant. Similarly, MHEC shall promptly notify Sun Microsystems if other states join the Compact after which such states shall be deemed to be Member States for purposes of this Master Agreement.
- The above categories of organization for all states in each of the other regional education compacts (WICHE, SREB, and NEBHE) who choose to participate in this contract by Addendum as agreed to by the signatories of this contract.

Entitlements: means a document delivered to an end user that sets out the authorized scope of use of Software, licensed pursuant to this Agreement, and Software Service information, if any,

Equipment: refers to Sun Microsystems's full line of new or refurbished equipment and components made available for sale by Sun Microsystems to Eligible Organizations under this Master Agreement.

Large Order Negotiated Prices: refers to the price offered to specific Eligible Organizations under defined additional terms and conditions. Selection and pricing of large order negotiated prices shall be by mutual agreement of the Eligible Organization and Supplier. Large Order Negotiated Prices shall apply only to those items that meet the applicable additional terms and conditions negotiated by Supplier and the Eligible Organization.

Member State: refers to any state that is a member, or an affiliate member, of the Midwestern Higher Education Compact. The current Member States are Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. MHEC shall promptly notify Sun Microsystems if any other states join the Compact and thereby become a Member State for purposes of this Master Agreement.

Order: refers to an Eligible Organization's purchase order or other ordering document evidencing its intent to procure Products or Services from Supplier under the terms and conditions of this Master Agreement.

Price Agreement: refers to an indefinite quantity contract, which requires Sun Microsystems to furnish Products or Services to a Procuring Eligible Organization that issues a valid Order document.

Prices: refers to the category discounts and other discounts (delineated in Exhibits A& B) applied to the Products and Services of the then current Sun Microsystems US Price List.

Procuring Eligible Organization: refers to an Eligible Organization which desires to purchase under this Master Agreement and has executed an Order.

Products: refers to the full product line of Sun Microsystems Equipment, Software and Documentation.

Product List: refers to the Sun Microsystems US Price List then in effect; a complete list of Products and certain Services including the corresponding prices for those Products and Services made available for purchase by Eligible Organizations under this Master Agreement. The Product List contains an item number, item description and the maximum price for each Product. The Product List is referenced in Exhibit A and may be modified from time to time in Sun's sole discretion.

Promotion Prices: refers to prices that are offered nationally or regionally to a specific category of customers intended to include Eligible Organizations for defined time periods under defined terms and conditions.

Professional Services: refers to certain services offered by Sun Microsystems and further described in a written Statement of Work.

Services: refers to the services offered by Sun Microsystems under this Master Agreement, including pre-sales Assessment, Installation and Implementation Assistance, Technical Support and Training.

Services List: refers to the standard discounts and time and material "On-Call Rates" for Sun Microsystems Product Support Plans included as Exhibit B.

Service Listing: Refers to Services and the corresponding prices for those Services made available for purchase by Eligible Organizations under this Master Agreement. The Services Listing contains an item number, item description and the price for each service. Where travel is necessary to perform the Services, additional reasonable costs may be levied. The Service Listing will be included on the Sun Microsystems sponsored Web Site and may be modified from time to time pursuant to the terms and conditions of this Master Agreement.

Software: refers to Sun Microsystems's full offerings of software and firmware (including third-party software and firmware) licenses made available to Procuring Eligible Organization under this Master Agreement. Software shall include updates, upgrades, maintenance releases, revisions and enhancements to the licensed software. Software may include source code under certain conditions and may be covered by additional external agreements such as the GNU General Public License. In such cases the terms of this Master Agreement will prevail.

Statement of Work: refers to a detailed document that describes services, deliverables, time frames, assumptions, change procedures and acceptance criteria for certain professional and/or consulting services offered by Sun Microsystems

Supplier: Sun Microsystems or Authorized Reseller.

2. Scope of Work

Procuring Eligible Organizations shall purchase from Supplier, and Supplier shall distribute to Procuring Eligible Organizations Products and Services in accordance with the terms of this Master Agreement. All Eligible Organizations are qualified to purchase under this Master Agreement, including those Eligible Organizations currently under a separate agreement with Supplier. This Master Agreement is a Price Agreement. Accordingly, Supplier shall provide Products or Services only upon the issuance and acceptance by Supplier of a valid Order. Orders may be issued to purchase any Products listed on the Product List or for any Services listed on the Services List Procuring Eligible Organization may purchase any quantity of Products or Services listed in Sun Microsystems's Product List and Services List at the prices stated therein. For Large Order Negotiated Prices, Supplier and Eligible Organization may negotiate quantity discounts below the Product and Services List price(s) for a given purchase order. As it sees fit, Supplier may offer under this Master Agreement Promotional Price discounts that result in prices below those listed in the Product Price List and the Services Price List. Sun Microsystems is solely responsible for fulfillment of the responsibilities under the terms and conditions of this Master Agreement.

MHEC shall not be liable for any Eligible Organization that executes an Order under this Master Agreement. An Eligible Organization shall not be responsible for any other Eligible Organization that executes its own Order under this Master Agreement.

3. Purchasing Under Master Agreement

A. **Products:** Procuring Eligible Organization shall purchase from Supplier the Products listed on the Product List under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the quantity, and description of the Product that Procuring Eligible Organization desires to purchase or license; (iii) the price of

the Product in accordance with this Master Agreement; (iv) the “bill-to” address; (v) the “ship-to” address; (vi) the requested delivery dates and shipping instructions; (vii) a contact name and telephone number; and (viii) reference to this Master Agreement. Supplier must not substitute any item(s) that has been ordered by the Procuring Eligible Organization using this contract without the prior written or electronic approval by the appropriate purchasing officer of the Procuring Eligible Organization. The substitute item must be at the same or better technology level than the original product ordered, and pricing at the same or lower price. Failure to comply may result in return of merchandise at Supplier's expense.

- B. **Services:** Procuring Eligible Organization shall purchase Services from Supplier under the terms and conditions of this Master Agreement by delivering to Supplier an Order. The Order should include: (i) Procuring Eligible Organization by name and address; (ii) the description of the Service (s) that Procuring Eligible Organization desires Supplier to perform; (iii) the price of the Service in accordance with this Master Agreement; (iv) the “bill-to” address; (v) the requested performance dates; (vi) a contact name and telephone number; and (vii) reference to this Master Agreement.
- C. Each Order that is accepted by Supplier will become a part of the Agreement as to the Products and/or Services listed on the Order only; no additional terms or conditions will be added to this Agreement as a result of the acceptance of the Order, nor will such terms affect any purchase. An Order from an Eligible Organization accepted by Supplier constitutes a binding contract.
- D. All Products furnished will be subject to acceptance pursuant to the terms and conditions of Section 7.A (“Acceptance”) by Procuring Eligible Organization after delivery. No substitutions or cancellations are permitted without approval of the Procuring Eligible Organization. Nothing in this Section precludes any agreements for the use of electronic purchase orders.
- E. Procuring Eligible Organization may request in writing changes to an Order (“Change Request”) that Supplier has previously accepted. In response to a Change Request, Supplier will provide written quotations to Procuring Eligible Organization, including any changes to prices, license fees, shipment or completion dates. A Change Request is a separate Order subject to the terms and conditions of this Master Agreement and Sun Microsystems’s change order process.
- F. Supplier will accept a purchasing card for order placement in addition to accepting a purchase order.
- G. When equipment purchased on this contract requires installation, the Supplier must provide the cost of installation as a separate line item on their quotation. The installation cost must include all set-up, instruction, and operation manual charges. Equipment must be set in place in an area designated by Procuring Eligible Organization personnel, demonstrated to be in operating condition, and approved by Procuring Eligible Organization personnel. All debris will be bundled by Supplier in preparation for disposal by the Procuring Eligible Organization. Upon installation all operating instructions, and a minimum of 1 operating and maintenance manuals, should be furnished to Procuring Eligible Organization’s personnel identified on the purchase order, or have the manuals available for online access.

4. Quantity Guarantee

This Master Agreement is not a purchase order, nor does it guarantee any purchases to be made by any Eligible Organization. This Master Agreement is not an exclusive agreement. MHEC and Eligible Organizations may obtain computer hardware products and services from other sources during the term of the Master Agreement.

5. Master Agreement Term

This Master Agreement will be formed upon execution by the Parties, and shall remain in effect, unless otherwise terminated pursuant to the terms of the Master Agreement, for a period of three (3) years from the Effective Date. The Master Agreement may be mutually renewed for four (4) additional one-year terms unless terminated pursuant to the terms of this Agreement.

6. Order of Precedence

Where the terms and conditions of this Master Agreement are in conflict with an Eligible Organization's state and/or institutional laws or regulations, the Eligible Organization and Sun Microsystems may enter into an addendum to amend the terms and conditions of the Master Agreement to conform to the Eligible Organization's state and/or institutional laws or regulations. Likewise, a Procuring Eligible Organization and Sun Microsystems may enter into an addendum to supplement or modify this Agreement for specific Products or Services. The terms and conditions of the addendum shall only be applicable between the Eligible Organization that entered into the addendum and Sun Microsystems. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. executed addendum between Eligible Organization and Sun Microsystems
- B. the terms and conditions of this Master Agreement
- C. exhibits to this Master Agreement
- D. Sun Microsystems Entitlements
- E. the list of Products and Services contained in the Order

7. Payment Provisions

- A. **Acceptance.** (1) Products: Unless otherwise agreed upon by Procuring Eligible Organization and Supplier, within fifteen (15) business days from the date of delivery, the Procuring Eligible Organization shall accept or reject the Products. Products shall be invoiced upon delivery. (2) Services: Unless otherwise agreed to by Procuring Eligible Organization and Supplier, within fifteen (15) business days (or such longer period if specified in a Statement of Work) from completion of Services, Procuring Eligible Organization shall accept or reject the Services. Services shall be invoiced upon completion unless otherwise specified on the Order.
- B. **Payment of Invoice.** Invoices shall be submitted to the Procuring Eligible Organization at each and any address supplied by the Procuring Eligible Organization. Vendor shall not demand or assume a single invoicing address for each such institution unless that is the desire of the institution.. Payments shall be remitted to Supplier at the address shown on the invoice. Payment shall be tendered to Supplier within thirty (30) days of the date of the invoice. After the thirtieth (30) day

from the date of the invoice, unless mutually agreed to, interest shall be paid on the unpaid balance due to Supplier at the rate of one and one-half percent (1½) per month. The Procuring Eligible Organization shall make a good faith effort to pay within thirty (30) days after the date of the invoice.

- C. **Dispute Notice.** Procuring Eligible Organization shall notify Supplier of any billing discrepancies or disputes about an invoice within ten (10) days after receiving it, specifying with particularity the basis of any such dispute (“Dispute Notice”). Tender of a Dispute Notice does not relieve Procuring Eligible Organization of its obligations to pay the undisputed portion of any invoice subject to a Dispute Notice. Any amounts that were the subject of a Dispute Notice and are subsequently resolved in favor of Supplier will be subject to interest charges accruing from the original due date.
- D. **Partial Shipment.** In the event an order is shipped incomplete (partial), the Procuring Eligible Organization must pay for each shipment as invoiced by Supplier unless the Procuring Eligible Organization has clearly specified “No Partial Shipment” on each purchase order.
- E. **Payment of Taxes.** The price listed under this Master Agreement do not include, and Procuring Eligible Organization shall reimburse Supplier for, any and all taxes and/or duties assessed against or payable by Supplier in connection with the sale of Equipment, licensing of Software or Documentation, or performance of Services except for taxes imposed upon Sun Microsystems’s net income. Unless the Procuring Eligible Organization provides a proof of tax exemption, taxes will be additive to the contracted price.

8. Shipping

Sun Microsystems shall ship the Products F.O.B. destination. Title to Products shall pass to Procuring Eligible Organization upon delivery. Risk of loss or damage to the Products shall pass to Procuring Eligible Organization upon delivery to the Procuring Eligible Organization. Sun Microsystems shall bear the risk of loss with respect to returned Products except for loss or damage directly attributable to the negligence of the Eligible Participant. All equipment ordered as a Customer Ready System (CRS) must be shipped fully configured with the required memory, components, and selected or specified operating system. Many Eligible Participants are committed to promote environmentally sound procurement, usage and disposal methods which are in compliance with State, County, and Municipal regulations. Many Eligible Participants have a recycling program for starch and Styrofoam packing peanuts. Our preference is to receive starch peanuts whenever possible. The Supplier shall not use INSTAPAK™ or mix starch and Styrofoam peanuts under any circumstances. Each product shall be separately pre-packed in accordance with commercially accepted methods. Small products may be packaged in protective envelopes (Mail-Lite or Bubble-Jet packs).

9. Product Delivery

- A. Unless otherwise agreed to by Procuring Eligible Organization and Supplier, Supplier agrees to deliver Products to Procuring Eligible Organization within thirty (30) days after receipt of a valid Order. If delivery cannot be made within thirty (30) calendar days, Supplier will notify Procuring Eligible Organization within five (5) business

days following placement of a valid Order, and Procuring Eligible Organization, can cancel the order by written, electronic, or facsimile notification. Failure of the Supplier to adhere to delivery schedules as specified or to promptly replace defective Product shall render the Supplier liable to the Procuring Eligible Organization for the difference between the prices to be paid under this Agreement and the actual and reasonable cost (but in no event greater than the fair market value) of substantially similar Products for similarly situated customers. Supplier need note that all locations of any particular Eligible Participant may not be within the MHEC region.

- B. If deliveries prove to be unsatisfactory, or other problems arise, MHEC reserves the right to delete product or services from the Master Agreement and/or cancel Master Agreement for cause in accordance with the termination provisions herein. Similarly, if deliveries prove to be unsatisfactory or other problems arise under the agreement for a Procuring Eligible Participant, the Procuring Eligible Participant retains all of its remedies for a default. Failure of the Procuring Eligible Participant to exercise its rights of termination for cause or other remedies for default due to a Supplier' failure to perform as required in any instance shall not constitute a waiver of termination rights or other default remedies in any other instance.
- C. Supplier may choose to deliver products electronically where practicable. This option must be under the independent control of each Procuring Eligible Organization.

10. Price Guarantees

The Procuring Eligible Organization shall pay the lower of the prices contained in the Product List or an Announced Promotion Price or Large Order Negotiated Price (provided that, with respect to the applicability of Large Order Negotiated Prices, such Procuring Eligible Organization is a party to the Large Order Negotiated Price negotiations and the purchase is part of the project for which the Large Order Negotiated Price was negotiated).

Sun Microsystems shall not sell Products or Services to Eligible Organizations under this Agreement at prices higher than those provided for via this Master Agreement, and in instances where this provision is applied, this Master Agreement shall be referenced in the Supplier's invoice.

11. Product List

Sun Microsystems agrees to maintain the Product List in accordance with the following provisions:

- A. The Product List prices for all Equipment, Software and Documentation will conform to the Product List provided to MHEC and set forth as Exhibit A. Except as set forth in Section 10, "Price Guarantees", the discount percentage set forth in the Product List shall not decrease during the term of the Master Agreement. Written notice is to be provided to MHEC within thirty (30) days of an announced Product Family price change. The reasonableness of the price change will be reviewed by MHEC, and results of the review will be discussed with Sun Microsystems during the MHEC-Sun Oversight Committee meetings as described in Section 39.
- B. Should the list price of a Product on Sun Microsystems' price list price decrease at any time during this Master Agreement, Sun Microsystems agrees to a similar price

reduction on this Master Agreement's Product List for the same Product, prior to the Administrative Fee set forth in Paragraph 36 of this Master Agreement.

- C. For all Products on the Product List, any price reductions that occur from the time of submission of an Order by Procuring Eligible Organization to Product delivery must be passed on to the Procuring Eligible Organization that issued the Order.
- D. Sun Microsystems shall add new product(s) to the Product List when new product(s) shall become available for sale by Sun Microsystems. The pricing for all new Products shall incorporate, to the extent possible, similar or comparable price discount levels provided herein, as agreed by the Parties.
- E. MHEC Eligible Organizations require a managed environment and a guaranteed minimum product lifecycle of 10 months or longer:
 - Products that cannot meet the 10-month minimum lifecycle replacement must be clearly noted in the published product description.
 - Optional components that are add-on items at the time of purchase (e.g., additional hard drives) are exempt from the 10-month minimum lifecycle requirement.
 - Product cannot change or be upgraded during the entire lifecycle period for any reason other than end-of-life issues, manufacturer recalls and as may be required under Section 19 herein, (e.g., swapping of processor, motherboard, etc. is prohibited). If a product will be discontinued within the given refresh period, MHEC must be notified in writing, before the refresh period begins, with an explanation of when and why the change will be necessary. An exception process is available for circumstances that affect all manufacturers (e.g., natural disaster affecting production or shipping).
- F. Equipment bid shall be warranted as new, current models manufactured with 100% new OEM parts. All products should be offered in current production as of the date of the award. For purpose of this contract "current production" shall mean that the equipment model is being manufactured as new equipment for the United States market, Sun Microsystems will delete obsolete and discontinued Products from the Product List in accordance with its End of Life policies.
- G. Country of origin will be indicated on the Product or its packaging
- H. The Product List shall be maintained by Sun Microsystems on an Internet web site. Revised Product Lists will be uploaded to the Internet web site within thirty (30) days of the Product List being revised.
- I. The Product List may be made available by Sun Microsystems at no cost to Eligible Organizations for inclusion in an electronic purchasing system.
- J. Prices will be F.O.B. destination (interior/ground floor or inside dock), and freight pre-paid and allowed, to any and all locations of the Procuring Eligible Organization. Prices must include all packing, freight, insurance charges and installation/operation manuals.
- K. Specific geographic restrictions on the availability of Products must be noted on the Product List.

12. Services List

Sun Microsystems agrees to maintain the Service List in accordance with the following provisions:

- A. The Service discounts for all Product Support Services will conform to the Service List – Exhibit B attached to this Agreement. Except as set forth in Section 10, “Price Guarantees”, the discount percentage set forth in the Service List shall not decrease during the term of the Master Agreement. For the Service Listing available through the Sun Microsystems Website written notice is to be provided to MHEC within thirty (30) days of an announced price change. The reasonableness of the price change will be reviewed by MHEC, and results of the review will be discussed with Sun Microsystems during the MHEC-Sun Oversight Committee meetings as described in Section 39.
- B. Should the list price of a Service on Sun Microsystems’ list price decrease at any time during this Master Agreement, Sun Microsystems agrees to a similar price reduction on this Master Agreement’s Services List for the same Service, prior to the Administrative Fee set forth in Paragraph 36 of this Master Agreement.
- C. The Service List shall be maintained by Sun Microsystems on an Internet web site.
- D. The Services List may be made available by Sun Microsystems at no cost to Eligible Organizations for inclusion in an electronic purchasing system.
- E. Specific geographic restrictions on the availability of Services must be noted on the Services List.
- F. Sun Microsystems agrees to make available maintenance services to meet the Procuring Eligible Participant’s ongoing performance requirement for as long as the Procuring Eligible Participant utilizes the equipment. Such services shall be available in accordance with Sun Microsystems' standard End of Life policies
- G. Sun Microsystems may offer a direct or indirect leasing program as a financial Service under separate agreement.

13. License

- A. **License grant.** Subject to the terms of the Entitlement, Sun Microsystems grants to Procuring Eligible Organization a non-exclusive, non-transferable limited license (the “**License**”) to:
 - a) use the Software for its Permitted Use for the term identified in the Entitlement; and
 - b) make copies of the Software for back-up and archival purposes.
 - c) software will be deemed accepted by a Procuring Eligible Organization in accordance with Section 7.A above.

Restrictions.

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

- b) Subject to License Grant section b) above or to any documentation accompanying the Software, Procuring Eligible Organization may not copy, modify, or distribute Software.
- c) Procuring Eligible Organization may not rent, lease, lend or encumber Software.
- d) Unless allowed by applicable law, Procuring Eligible Organization may not decompile or reverse engineer Software.
- e) This Agreement will apply to any Updates, unless such Updates contain a separate license for a new component.
- f) Procuring Eligible Organization may not publish or provide the results of any benchmark or comparison tests run on Software to any third party without advising Sun Microsystems of the methodology used and giving them sufficient time and opportunity to collaborate. Further, Sun Microsystems retains a right, but not the obligation, to review the results of any benchmark or comparison testing before such results are published or otherwise distributed..
- g) Unless otherwise specified, if Software is delivered with embedded or bundled software that enables functionality of such Software, Procuring Eligible Organization may not use such embedded software on a stand-alone basis or use any portion of such software to inter-operate with any programs(s) other than Software.
- h) Software may contain programs that perform automated collection of system data and/or automated software updating services. System data collected through such programs may be used by Sun Microsystems, its subcontractors, and its service delivery partners for the purposes of providing Procuring Eligible Organization with remote system services as applicable, and/or improving Sun Microsystems's software and systems.

Java Compatibility and Open Source.

Software may contain java technology. Procuring Eligible Organization may not create additional classes to, or modification of, the java technology, except under compatibility requirements available under a separate agreement available at the following URL: <http://java.net/jiul.csp>. Portions of Software may be provided with open source code (and related notices) licensed from the global community of open source developers and third parties. Such open source licenses and notices govern the use of those portions of the Software. Any licenses granted hereunder do not alter any rights and obligations Procuring Eligible Organization may have under such open source licenses, however, the disclaimer of warranty and limitation of liability provisions in this Agreement will apply to all Software provided hereunder.

Transferability of certain software licenses. Procuring Eligible Organization may transfer any operating system Software license with its related Equipment, if:

1. the transfer occurs at least six (6) months after Sun Microsystems's delivery of the Equipment;
2. Procuring Eligible Organization notifies Sun Microsystems in writing, and obtains a written undertaking from its transferee to comply with the applicable licensing terms; and
3. The transferee is the intended end user of the transferred Sun Microsystems Equipment.

Commercial software notice. If Software is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the Government's rights in Software and accompanying documentation are only as set out in this Agreement; this is in accordance with 48 CFR 227.7201 through 227.7202-4 (for Department of Defense (DoD) acquisitions) and with 48 CFR 2.101 and 12.212 (for non-DoD acquisitions)

Additional Terms and Conditions. Sun Microsystems or its independent audit firm may, subject to applicable law and upon reasonable notice, examine and audit the records and systems of Procuring Eligible Organization to ensure compliance with any license granted by Sun Microsystems. Any audit will be performed during Procuring Eligible Organization's regular business hours and in a manner which avoids unreasonable interference with Procuring Eligible Organization's business operations. Procuring Eligible Organization acknowledges that any breach or threatened breach of any license involving unauthorized use of Sun Microsystems's intellectual property will result in irreparable harm to Sun Microsystems for which damages may not be an adequate remedy. In addition to the rights and remedies otherwise available at law, Sun Microsystems is entitled to equitable relief, including injunction, in the event of such breach. Procuring Eligible Organization may not alter or obscure any proprietary rights notice appearing on any Sun Microsystems-supplied materials, and must include such notices on any copies. Breaches of any license granted under this Agreement are excluded from the Limitation of Liability provision of this Agreement.

14. Warranties

- A. Equipment: Sun Microsystems warrants that the Equipment shall be free from defects in material and workmanship under normal use and that the Equipment shall remain in good working order for a period of at least 12 months from the date of delivery, or from date of installation for Products for which installation by Supplier is required. If any Equipment is not as warranted in this Section, then (a) Procuring Eligible Organization shall obtain from Sun Microsystems a return authorization number, and return the Equipment at Sun Microsystems's expense, together with the authorization number and a detailed description of the problem, to Sun Microsystems's designated repair facility; and (b) Sun Microsystems shall repair or replace the Equipment and return it at Sun Microsystems's expense to Procuring Eligible Organization's destination point. Sun Microsystems shall assume the risk of loss or damage to any

Equipment returned to Sun Microsystems for repair or replacement from receipt thereof until delivery to Procuring Eligible Organization's destination point. If Sun Microsystems ascertains that Equipment is not readily returnable for repair, then at its option, Sun Microsystems may elect to repair or replace the Equipment at Procuring Eligible Organization's site. In such instances, Procuring Eligible Organization, at its expense, shall make the Equipment accessible for repair or replacement and shall be responsible for restoring the site after Sun Microsystems has completed its repair or replacement. In repairing or replacing any Equipment or part of any Equipment under this warranty, Sun Microsystems may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Equipment or parts of Equipment. For any Equipment or parts thereof repaired, replaced or corrected under this Section, the warranty period applicable to the Equipment will continue for the longer of (i) the remainder of the original warranty period or (ii) ninety (90) days after the date of Acceptance of the repaired or replaced Equipment. If, Sun Microsystems determines that it cannot, in a commercially reasonable manner repair or replace any Equipment, then Sun Microsystems may, in its sole discretion, refund to Procuring Eligible Organization the price of the Equipment, less a reasonable adjustment for beneficial use. Sun Microsystems may offer equipment with warranty options other than those stated in this section, but if a lesser warranty is offered it must be so noted to the Procuring Eligible Organization as part of the quotation.

- B. Software: Sun Microsystems warrants that the media, if any, on which the Software is delivered will be free of defects and Software will contain the features delineated in the applicable users manual, as it exists at the date of delivery. Otherwise Software is provided "AS IS" for a period of ninety (90) days after Acceptance of the Software by Procuring Eligible Organization as determined by Section 7A of this Master Agreement.. If the media is defective and the Software is still commercially available, Sun Microsystems shall repair or replace the defective media. If the Software does not in the applicable user documentation, Sun Microsystems, at its option, shall correct the defects in the Software or refund to Procuring Eligible Organization the purchase amount paid to Sun Microsystems for the defective Software, less a reasonable adjustment for beneficial use. In repairing or replacing any Software medium under this warranty, Sun Microsystems may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Software medium. The warranty period for the corrected Software via fixes and/or patches will be the remaining period of the original warranty period. The Software support agreement shall include firmware and software updates for all Software purchased by Procuring Eligible Organization under this Master Agreement.

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

1. modified, altered or adapted without Sun's written consent;
2. maltreated or used in a manner other than in accordance with the relevant manual;

3. repaired by any third party in a manner which fails to meet Sun's quality standards;
 4. improperly installed by any party other than Sun;
 5. used with equipment or software not covered by the warranty, to the extent that the problems are attributable to such use; or
 6. purchased from any entity other than Sun or a Sun authorized reseller or transferred according to this Agreement.
- D. Services: Sun Microsystems represents and warrants that the Services provided under this Master Agreement will be performed in a skillful, competent, timely, professional and workmanlike manner, and that the Sun Microsystems employees, agents and contractors assigned to perform Services under this Master Agreement have the proper skill, training and background so as to be able to perform in a skillful, competent, timely, professional and workmanlike manner. The warranty period for Services is thirty (30) days from the date of Acceptance by Procuring Eligible Organization as determined by Section 7A of this Master Agreement. If Sun Microsystems determines that it cannot, in a commercially reasonable manner correct any Services, then Sun Microsystems may, in its sole discretion, refund to Procuring Eligible Organization the price of the Services less a reasonable adjustment for beneficial use. Any claim for breach of the above warranty must be made in writing.
- E. **No Implied Warranties.** Except as specified in this Agreement, 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.

15. Termination

- A. At any time MHEC may terminate this Master Agreement, in whole or in part, by giving Sun Microsystems ninety (90) days written notice; provided however, neither MHEC nor Eligible Organization has the right to terminate a specific Order for convenience after it has been issued if the Product is ultimately accepted. At any time, Sun Microsystems may terminate this Master Agreement, in whole or in part, by giving MHEC ninety (90) days written notice. Such termination shall not relieve Sun Microsystems of any warranty or other service obligations incurred under the terms of this Master Agreement.
- B. Either Party may terminate this Master Agreement for cause based upon material breach of the Master 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 remedies available to it under the law.
- C. In the event that either Party be adjudged insolvent or bankrupt by a court of competent jurisdiction, or upon the institution of any proceedings by or against it

seeking relief, reorganization or arrangement under any laws relating to insolvency, or upon any assignment for the benefit of creditors, or upon the appointment of a receiver or trustee of any of its property or assets, or upon the liquidation, dissolution or winding up of its business, then and in any such event this Master Agreement may immediately be terminated or cancelled by the other Party hereto

- D. In the event this Master Agreement expires or is terminated for any reason, a Procuring Eligible Organization shall retain its rights in all Product and Services accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.
- E. If Sun Microsystems is unable to provide maintenance services pursuant to this Master Agreement, and in MHEC's sole opinion is unlikely to resume providing maintenance services to meet MHEC's ongoing performance requirements, then Sun Microsystems or its receiver or trustee (if applicable) shall provide to MHEC a listing of suppliers capable of supplying necessary spare parts and equipment support. This listing may be made available by MHEC to all Member States and Eligible Purchasing Organizations that have purchased Products and are affected by Sun Microsystems inability to provide maintenance services.

16. Non-Appropriation

This provision applies only to publicly funded Eligible Organizations. The terms of this Master Agreement and any Order issued for multiple years under this Master Agreement is contingent upon sufficient appropriations being made by the legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Master Agreement or in any purchase order or other document, Procuring Eligible Organization may terminate its obligations under this Master Agreement if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Procuring Eligible Organization's decision as to whether sufficient appropriations are available shall be accepted by Sun Microsystems and shall be final and binding.

A Procuring Eligible Organization shall provide sixty (60) days notice, if possible, of its intent to terminate this contract for non-appropriation. The Procuring Eligible Organization shall send to Sun Microsystems a notice of its Governing Body's decision not to appropriate funds for the installment sale payments for the subsequent fiscal year. The notice shall also include a statement that the Procuring Eligible Organization was unsuccessful in finding another assignee within its own organization to continue the installment sale payments and that the Product or Service will not be replaced by a similar product during the ensuing fiscal year. Such termination shall relieve the Procuring Eligible Organization, its officers and employees from any responsibility or liability for the payment of any future Orders. However, all outstanding invoices from Sun Microsystems will be paid by the Procuring Eligible Organization.

17. Records and Audit

Sun Microsystems agrees to maintain detailed records pertaining to the price of Services rendered and Products delivered for a period of three (3) years from the date of Acceptance of each Order. Notwithstanding the foregoing Procuring Eligible

Organization and Sun Microsystems may agree to a longer period provided such agreement is memorialized in writing. These records shall be subject to inspection by Procuring Eligible Organization and appropriate governmental authorities with Procuring Eligible Organization's state. The Procuring Eligible Organization shall have the right to audit billings either before or after payment. Payment under this Master Agreement shall not foreclose the right of the Procuring Eligible Organization to recover excessive or illegal payments.

18. Independent Contractor

Sun Microsystems and its agents and employees are independent contractors and are not employees of MHEC or any Eligible Organization. Sun Microsystems has no authorization, express or implied to bind MHEC or any Eligible Organization to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent of MHEC or any Eligible Organization, except as expressly set forth herein. Nothing in this Master Agreement is intended, or shall be deemed, or construed to constitute a partnership or a joint venture between the Parties.

19. Patent, Copyright, Trademark and Trade Secret Indemnification

19.1 Sun Microsystems ("the Indemnifying Party") will defend or settle, at its option and expense, any legal proceeding brought against MHEC and/or Procuring Eligible Organization ("the Indemnified Party") to the extent that it is based on a claim brought by a third party that materials and services (such provided materials and services consist exclusively of Products and Services) as provided by the Indemnifying Party to the Indemnified Party, infringe such third party's patent or copyright or misappropriate such third party's trade secret or other proprietary right of third party ("IP Claim"), and will indemnify the Indemnified Party against all damages and costs attributable exclusively to such claim awarded by the court finally determining the case, provided that the Indemnified Party:

1. gives written notice of the IP Claim to the Indemnifying Party promptly after learning of the IP Claim;
2. subject to any legally required approval, including the approval of state's attorney general, or consistent with applicable law gives the Indemnifying Party sole control of the defense and settlement of the IP Claim;
3. provides to the Indemnifying Party, at the expense of the Indemnifying Party, all available information and assistance; and
4. does not compromise or settle the IP Claim.

19.2 If such provided materials and/or services are found to infringe or misappropriate pursuant to an IP Claim, or in the reasonable opinion of the Indemnifying Party are likely to be the subject of an IP Claim, the Indemnifying Party will at its option:

5. obtain for the Indemnified Party the right to use such provided materials and/or services;
6. replace or modify such provided materials and/or services in such a way that (i) they become non-infringing and non-misappropriating and (ii) they substantially

- perform in the same manner or substantially provide the same results, or there is no material adverse effect in their overall performance; or
7. if neither (5) nor (6) is reasonably achievable, remove such provided materials and/or services and refund to the Indemnified Party the original price paid thereof less net benefits realized by the Indemnified Party through accumulated depreciation or expensing thereof, up until the date of removal.

19.3 Notwithstanding anything to the contrary, and for the avoidance of doubt, Sections 19.1 and 19.2 do not apply to, and Indemnifying Party has no obligation or liability of any kind for, any IP Claim arising from:

8. compliance by the Indemnifying Party with the designs or specifications of the Indemnified Party;
9. modification of such provided materials and/or services that are not specifically authorized by a future written authorization signed by a Vice President of the Indemnifying Party;
10. use of an allegedly infringing version of such provided materials and/or services, if the alleged infringement could have been avoided by the use of a different version made available to the Indemnified Party by the Indemnifying Party;
11. a combination comprising such provided materials and/or services in combination with any third party services, hardware, software, data, or other materials to the extent the IP Claim is caused by such combination;
12. a violation of the Indemnifying Party's license grant; or
13. any separate or component hardware, software or other materials to the extent it comprises any third party open source or freeware technology, or any derivatives or other adaptations thereof, and any combination that includes any of the foregoing, except to the extent the foregoing technology consists of open source software technology that was provided by Sun Microsystems with Products and has been operating exclusively on Products and covered by a Sun Microsystems support agreement, up to a maximum aggregate liability of \$2,000,000 U.S. dollars.”.
14. Any claim that relates to Linux open source software, even where it has been built into the Product when it was originally made

19.4 This Section 19 is excluded from the Limitation of Liability provision (Section 20) of this Agreement and states the entire liability of the Indemnifying Party and the exclusive remedies of the Indemnified Party for any proceedings or claims that any services, hardware, software, data or other materials infringe or misappropriate a third party's intellectual property.).

20. Limitation of Liability

To the extent permitted by applicable law Sun Microsystems, MHEC and Procuring Eligible Organization acknowledge the full extent of their own respective liability to the other parties arising from: death, or personal injury resulting from intentional or negligent acts or omissions; or claims for non-payment, including reasonable collection costs as

determined by a court of competent jurisdiction for amounts not paid; or the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability). Further To the extent permitted by applicable law Sun Microsystems, MHEC and Procuring Eligible Organization acknowledge their own respective liability to the other parties for all direct damages due to damage to real and tangible property arising from the gross negligence or willful misconduct of a party, its employees, subcontractors and agents.

Subject to the foregoing and any exceptions identified elsewhere in this Agreement and to the extent not prohibited by applicable law:

1. each party's maximum aggregate liability for all claims relating to this Agreement, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to two million US dollars (U.S. \$2,000,000) per Agreement or, in the case of purchases where payment for the purchase has been made in full, to the amount paid to the other party during the previous twelve (12) months for the product or service which is the subject matter of the claim up to a maximum of two million US dollars (\$2,000,000); and
2. neither party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of this Agreement (including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders, or other economic advantage), however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, and even if that party has previously been advised of the possibility of such damages.

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

21. Confidentiality

- A. While Sun Microsystems is providing Services hereunder, Eligible Organization or Sun Microsystems may disclose to the other certain business information identified as confidential (“Confidential Information”). All such information shall be marked or otherwise designated as “Confidential” or “Proprietary”. In order for such information to be considered Confidential Information pursuant to this Section 21 of the Master Agreement, it must conform to the data practices laws or similar type laws of the State in which the Eligible Organization is located or was founded. Information of a proprietary nature which is disclosed orally to the other party shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the recipient within ten (10) days after oral disclosure. Both Eligible Organization and Sun Microsystems agree that, with respect to Confidential Information it receives (as “Recipient”) from the other (as a “Discloser”) in connection with this Master Agreement or an Order pursuant to this Master Agreement, that it (i) will use such Confidential Information solely for the purposes contemplated by the Master Agreement or an Order placed

under this Master Agreement, (ii) shall not use any such Confidential Information for any other purpose and in particular shall not so use such Confidential Information in any manner either to the detriment of the Discloser or for the benefit of the Recipient or any third party, and (iii) shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser.

- B. Each Party will make reasonable efforts not to disclose the other Party's Confidential Information to any third party, except as may be required by law, unless such Confidential Information: (i) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of the non-disclosing party; (ii) was rightfully in the non-disclosing party's possession or the possession of any third party free of any obligation of confidentiality; or (iii) was developed by the non-disclosing party's employees or agents independently of and without reference to any of the other party's Confidential Information. Confidential Information shall remain the property of and be returned to the Disclosure (along with all copies or other embodiments thereof) within fifteen (15) days of (a) the termination or completion of the Order under this Master Agreement, or (b) the earlier receipt by the Recipient from the Discloser of a written demand following a breach by Eligible Participant or Sun Microsystems of this Master Agreement or an Order under this Master Agreement directing that Confidential Information described generally or specifically in such demand be returned to the Discloser .
- C. Notwithstanding anything to the contrary in this Agreement or amendment to this Master Agreement, both Eligible Participant and Sun Microsystems agree to comply with the data practices or similar type laws of the State in which Eligible Participant is located or founded.

22. FERPA (and Other Privacy Laws)

Where applicable Sun Microsystems agrees to comply with the Family Education Rights and Privacy Act (FERPA), the Health Insurance Portability and Accountability Act (HIPPA), the Gramm-Leach Bliley Act (GLBA) and all other state and federal privacy laws; and agrees to implement and maintain safeguards to protect the security, confidentiality, and integrity of information it receives from Eligible Organization. Eligible Organization will comply with all applicable laws regarding collection and use of data under this Agreement. Eligible Organization consents to Sun Microsystems' use and processing of Eligible Organization's data and will ensure that, where it provides Sun Microsystems with data relating to another, it has obtained that other's consent to Sun Microsystems' lawful use and processing of such data.

23. Amendments

Except as provided for in Section 6, “Order of Preference”; Section 11, “Product List”; and Section 12 “Service List”; this Master Agreement shall only be amended by written instrument executed by the Parties.

24. Scope of Agreement

This Master Agreement incorporates all of the agreements of the Parties concerning the subject matter of this Agreement, and all prior agreements have been merged into this Master Agreement. No prior agreements, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Master Agreement.

25. Invalid Term or Condition

If any term or condition of this Master Agreement shall be held invalid or unenforceable, the remainder of this Master Agreement shall not be affected and shall be valid and enforceable.

26. Enforcement of Agreement

A Party’s failure to require strict performance of any provision of this Master Agreement shall not waive or diminish that Party’s right thereafter to demand strict compliance with that or any other provision. No waiver by a Party of any of its rights under this Master Agreement shall be effective unless express and in writing, and no effective waiver by a Party of any of its rights shall be effective to waive any other rights.

27. Web Site Maintenance

Sun Microsystems agrees to maintain and support Internet website(s) for access to the Product List, Service List, Product descriptions, Product specifications, Service descriptions, Service specifications and other aids in accordance with instructions provided by MHEC. In addition, Sun Microsystems will provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting. Sun Microsystems shall notify MHEC when there are additions and/or deletions made to the list of Authorized Resellers.

28. Equal Opportunity Compliance

Sun Microsystems agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Sun Microsystems 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 Sun Microsystems under this Master Agreement. If Sun Microsystems is found to be not in compliance with these requirements during the life of this Master Agreement, Sun Microsystems agrees to take appropriate steps to correct these deficiencies.

29. Compliance with Law

Sun Microsystems shall comply with all applicable laws and governmental regulations, which by their terms, apply to Sun Microsystems's performance under an Order pursuant to this Master Agreement. Eligible Organization agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement. MHEC agrees to comply with all applicable laws and governmental regulations in connection with this Master Agreement.

30. Applicable Law

- A. As between Eligible Organization and Sun Microsystems, this Master Agreement will be construed in accordance with, and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.
- B. As between MHEC and Sun Microsystems this Master Agreement will be construed in accordance and its performance governed by the laws of the state of Minnesota. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the State of Minnesota.
- C. As between Eligible Organization, MHEC, and Sun Microsystems this Master Agreement will be construed in accordance with and its performance governed by the laws of the state in which the Eligible Organization resides. Venue for all legal proceedings arising out of this Master Agreement, or breach thereof, shall be in a state or federal court with competent jurisdiction located in the state in which the Eligible Organization resides.

31. Conflict of Interest

Sun Microsystems warrants to the best of its current knowledge that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Master Agreement.

32. Assignment

Neither Party may assign or transfer its rights or obligations hereunder without the prior written consent of the other, such consent not to be unreasonably withheld or delayed. Nothing in this Section shall preclude Sun Microsystems from employing a subcontractor in carrying out its obligations under this Master Agreement. Sun Microsystems's use of such subcontractors will not release Sun Microsystems from its obligations under this Master Agreement.

33. Survival

Certain paragraphs of this Master Agreement including but not limited to Patent, Copyright, Trademark and Trade Secret Indemnification; and Limitation of Liability and Payment Provisions shall survive the expiration of this Master Agreement. Software licenses, warranty and service agreements, and non-disclosure agreements that were

entered into under terms and conditions of this Master Agreement shall survive this Master Agreement.

34. Notification

A. **Between the Parties:** Whenever under the terms of this Master Agreement any notice is required or permitted to be given by one Party to the other, such notice shall be given in writing and shall be deemed to have been sufficiently given for all purposes hereof if given by facsimile or mail, postage prepaid, to the Parties at the addresses set forth below, or at such other address as the Parties may direct in writing from time to time:

<u>To MHEC:</u>	<u>To Sun Microsystems :</u>
MHEC	Sun Microsystems, Inc.
1300 South Second Street	701 Devonshire Drive
Suite 130	Bldg. C STE 115 & 119
Minneapolis, Minnesota 55454-1079	Champaign, IL 61820
Attn: Grant Crawford	Attn: Tom Lockman
Facsimile: 612-626-8290	Fax:

Changes in the above information will be given to the other Party in a timely fashion.

B. **To Eligible Organization:** Notices shall be sent to Eligible Organization’s business address. The term “business address” shall mean the “Bill to” address set forth in an invoice submitted to Eligible Organization.

35. Administrative Reporting and Fees

On a quarterly basis (where quarter one is January 1 – March 31 and the quarter one report is due by April 30), Sun Microsystems will, in a timely manner, make available to MHEC reports and information generated by this Master Agreement, including but not limited to state-by-state and institution-by-institution information on sales volume. Sun Microsystems will work with MHEC to develop a volume savings report that meets their requirements. The information and reports shall be accompanied with a check payable to the Midwestern Higher Education Commission for an amount equal to one percent (1%) of the net Product and Service sales for that quarter period (the “Fee”). MHEC, from time to time and at its sole discretion, may change the percentage of the Fee it will receive as a result of this Master Agreement. Any change in the fee may also require a change in the Product List and Service List price.

36. MHEC Not Liable For Eligible Participants

MHEC is not liable to Sun Microsystems for the failure of any Eligible Organization to make any payment or to otherwise fully perform pursuant to the terms and conditions of an Order and/or the Master Agreement.

37. Announcements and Publicity

Any announcements and publicity given to MHEC (or an Eligible Organization) resulting from this Master Agreement must receive the prior approval of MHEC (or Eligible Organization). Sun Microsystems will not make any representations of MHEC’s (or an

Eligible Organization's) opinion or position as to the quality of effectiveness of the Products, Supplies and/or Services that are the subject of this Master Agreement without the prior written consent of MHEC (or Eligible Organization).

38. Marketing

The Sun Microsystems MHEC Program Manager will assist MHEC in developing and implementing appropriate marketing strategies including seminars, printed materials and a full service, on-line MHEC-specific web site to receive information on products, supplies, services and prices and to place request for quotes. Additionally, Sun Microsystems will market this Master Agreement as a first option to Eligible Organizations, and will respond to RFPs from Eligible Organizations using this Maser Agreement where applicable and allowable per the terms of the RFP.

39. Oversight Committee

An Oversight Committee comprised of representatives of Eligible Organizations shall be appointed by MHEC to assist and support MHEC and Sun Microsystems in developing and refining the implementation of this Master Agreement. This shall include, but not be limited to, assistance with marketing strategies, representing the interests of Eligible Organizations in assuring quality and timely products and services; and to advise Sun Microsystems on the effectiveness of its implementation progression. At the very least there will be an annual meeting between Sun Microsystems and MHEC (and perhaps members of the Oversight Committee) to perform a contract health check; including items such as those above.

40. Force Majeure

Neither Sun Microsystems nor MHEC nor Procuring Eligible Organization shall be liable to each other during any period in which its performance is delayed or prevented, in whole or in part, by a circumstance beyond its reasonable control, which circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind); fire; war; act of a public enemy or terrorist; act of sabotage; epidemic; strike or other labor dispute; riot; piracy or other misadventure of the sea; embargo; inability to secure materials and / or transportation; or, a restriction imposed by legislation, an order or a rule or regulation of a governmental entity. If such a circumstance occurs, the Party unable to perform shall undertake reasonable action to notify the other Parties of the same.

41. Sovereign Immunity.

Notwithstanding anything to the contrary in this Master Agreement or Order under this Master Agreement, this Master Agreement shall not be construed to deprive a Eligible Organization of its sovereign immunity, or of any legal requirements, prohibitions, protections, exclusions or limitations of liability applying to this Master Agreement or afforded by Eligible Organization's State to the Eligible Organization.

42. Miscellaneous.

All Parties to this Master Agreement may retain a reproduction (e.g., electronic image, photocopy, facsimile) of this Master Agreement that shall be considered an original and shall be admissible in any action to enforce this Master Agreement. Sun Microsystems may accept this Master Agreement either by its authorized signature or a signed Order. Except as provided for in this Master Agreement, all changes to this Master Agreement must be made in writing signed by both Parties; accordingly any additional terms on the Procuring Eligible Organization's ordering documents shall be of no force or effect. The Parties, by their representatives signing below, agree with the terms of this Master Agreement and further certify that their respective signatories are duly authorized to execute this Agreement.

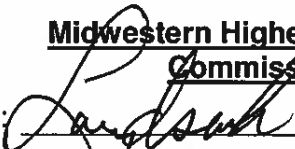
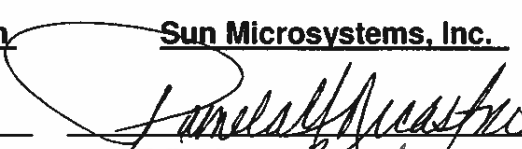
	<u>Midwestern Higher Education Commission</u>	<u>Sun Microsystems, Inc.</u>
Signature:		
Name:	Larry Isaak	Tom Eusterman Pamela NICASTRO
Title:	President	Assistant DIRECTOR
	<u>Midwest Higher Education Compact</u>	<u>Sun Microsystems, Inc</u>
Address:	1300 South Second Street, Suite 130	701 Devonshire Drive, Bldg. C STE 115
	<u>Minneapolis, Minnesota, 55454</u>	<u>Champaign, IL 61820</u>
Date:	10-26-09	

Exhibit A – Product List

US GEH EDU / SLG Category Discounts			
Cat	Description	Standard SLG Discounts	Standard EDU Discounts
A	Enterprise Servers	29%	38%
B	Software except SunOne	19%	38%
C	Custom Pricing	0%	n/a
D	Low end, promotions, upgrades, cables	0%	n/a
E	Lower end - X64 Servers	5%	8%
F	Volume & Midrange products	14%	18%
G	Mid and High end servers like M series	24%	34%
H	Low end, Midrange, Sun Ray	14%	18%
J	Middleware Software like Sun One, IDM	21%	50%
K	Warranty Service	20%	50%
M	Used for majority of storage products	24%	34%
N	Java – JES	0%	0%
P	Enterprise Storage	20%	21%
R	High Volume Subscription	16%	50%
T	Storage Tape Media	24%	29%

Further discounts are available. The level of additional discounts applied through use of these options is dependant on the products involved, volumes and the like, and would have to go through an internal Sun Microsystems approval process at the time the alternative is being proposed

1. Exclusive Purchase Agreements
2. Standard Configurations
3. Special Programs, e.g, (not intended to be a commitment to offer these programs in the future)
 - Triple Crown
 - Matching Grant
4. Volume Threshold Discounts –
 - a. For an individual Purchasing Eligible Organization
 - Single Purchase Order > \$1.5MM = Additional .5% discount on Purchase Order
 - Single Purchase Order > \$2.5MM = Additional 1% discount on Purchase Order
 - b. For MHEC-wide Master Agreement

At the end of each quarter, a review of the previous four quarters will be conducted.

1. If during the previous four quarters attained revenue has reached \$15MM = Additional 1% discount over standard discounts will be applied to subsequent eligible product sales of all Purchasing Eligible Organizations
2. If during the previous four quarters attained revenue has reached \$25MM = Additional 2% discount over standard discounts will be applied to subsequent eligible product sales of all Purchasing Eligible Organizations

The additional discounts will remain in effect until a subsequent “rolling” four-quarter review shows that revenue attainment has dropped below the thresholds listed above for the previous four quarters.

The Volume Threshold Discounts (VTD) are provided under the following restrictions:

- Due to Corporate pricing restrictions and guidelines, Categories K, R and T are excluded from the VTDs.
- Categories C, D and N are excluded because they are 0%, custom pricing categories,
- Special Programs, such as Matching Grant, are excluded from the VTDs because additional discounts have already been applied for Special Program pricing

Exhibit B – Services

Purchasing of Services. Services discounts may be available for Eligible Organizations’ purchase of Services, subject to the Price List, discount eligibility criteria, and standard discount level applicable to Eligible Organizations’ purchase. Services discounts may be calculated on a multiplicative basis. When a Service is classified in a Product Category that is listed in Exhibit A above, then the Product Category discount shall apply and the discount described in this Exhibit B shall not apply. The type(s) and level(s) of Services discount(s) currently applicable to Eligible Organizations’ purchase of Services is (are):

1. SunSpectrum Service Plan Discounts

Type	Discount % off MSRP
CAT K Service Discounts	EDU 50% SLG 20%
*Multi-Year Service Plan – 2 year	4%
*Multi-Year Service Plan – 3+ years	8%
*Pre-Pay – 1 year	3%
*Pre-Pay – 2 year	6%
*Pre-Pay – 3+ years	9%
* \$12K annual minimum required	

SunSpectrum Geographic Restrictions

The following mileage restrictions are applied to the various levels of SunSpectrum support. The mileage is the distance from a Sun Registered Stocking Location:

Maximum Service Level	Mileage from SRSL
Platinum	0 – 30
Gold 7X24	31 – 100
Gold Business Hours	101 – 150
Silver	151 – 250
Bronze / Parts Only	251 +

2. Time and Material On-Call Rates

Sun Contract Status	During Local Business Hours	After Local Business Hours
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Sun Contract Status	During Local Business Hours	After Local Business Hours
Sun Contracted Customer	\$250 / hr	\$350 / hr
Non Contracted Customer	\$350 / hr	\$450 /hr
<i>2 hour minimum required</i>		
<i>Travel over 30 miles charged hourly rate</i>		

3. Service Listing

For a complete listing of available Sun Service offerings visit:
<http://www.sun.com/service/servicelist>