



# GENERAL TERMS

Customer name: **Oklahoma State Regents for Higher Education**

General Terms reference no: **AR-92481-EDU**

These Sun Terms and Conditions ("General Terms") are made as of November 1, 2006 ("Effective Date") between **SUN MICROSYSTEMS, INC.**, a Delaware corporation with its address at 901 San Antonio Road, Palo Alto, CA 94303 and the **OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION** with its address at 655 Research Parkway, STE. 200, Oklahoma City, OK 73104.

## 1. INTERPRETATION

- 1.1. The purpose of the General Terms is to create a single mechanism under which **Oklahoma State Regents for Higher Education** ("Customer") may form purchasing or other Agreements with Sun Microsystems, Inc. and its Affiliated Companies ("Sun").
- 1.2. **In the General Terms:**
  - 1.2.1. **"Affiliated Company"** means, any entity: (a) which is owned 50% or more by Sun or (b) over which Sun exercises management control;
  - 1.2.2. **"Agreement"** means each agreement entered into under the General Terms, comprising the General Terms and an Exhibit executed by Sun and Customer referencing the General Terms;
  - 1.2.3. **"Confidential Information"** means any information disclosed by one party to another under any Agreement which is, prior to or at the time of disclosure, identified in writing as confidential or proprietary;
  - 1.2.4. **"Customer"** means the entity who, for the purposes of this Agreement, is a purchaser or licensee of computer products who acquires such products for its own internal use rather than for distribution or resale. "Customer" includes counties, school districts, municipalities, vocational-technical schools, institutions within the state system, other state agencies, and any entity eligible for direct connection to OneNet under its Client Connection Policy. Notwithstanding the foregoing certain rights and obligations of Customer are reserved solely for the Oklahoma State Regents for Higher Education including, but not necessarily limited to, Sections 8. Termination, Expiration and Term and 11.8. Modification;
  - 1.2.5. **"Equipment"** means the hardware (including components), software media and spare parts listed in the standard product price lists published by Sun from time to time;
  - 1.2.6. **"Exhibit"** means any exhibit to the General Terms as executed by the parties from time to time;
  - 1.2.7. **"IPR"** means intellectual property rights, including patents, trademarks, design rights, copyrights, database rights, trade secrets and all rights of an equivalent nature anywhere in the world;
  - 1.2.8. **"Products"** means Equipment or Software;
  - 1.2.9. **"Services"** means the services described in any Service Listing or SOW;
  - 1.2.10. **"Service Listing"** means any offering in Sun's Enterprise Services Service List, which is located at <http://www.sun.com/service/servicelist> (a hard copy of each of which will be made available to Customer on request), together with such other standard service offerings as the parties may agree from time to time;
  - 1.2.11. **"SOW"** means any statement of work relating to Services;

- 1.2.12. **"Software"** means (i) any binary software programs listed in the standard price lists published by Sun from time to time, (ii) any Updates, and (iii) any related user manuals or other documentation;
- 1.2.13. **"Sun Trademarks"** means all names, marks, logos, designs, trade dress and other brand designations used by Sun in connection with Products and Services;
- 1.2.14. **"Updates"** means subsequent releases and error corrections for Software previously licensed, as listed in the standard price lists published by Sun from time to time.

## 2. CONFIDENTIAL INFORMATION

- 2.1. To the extent not prohibited by **Oklahoma Open Records Act**, a party receiving Confidential Information ("the Recipient") may use it only for the purposes for which it was provided under the Agreement. Confidential Information may be disclosed only to employees or contractors obligated to the Recipient under similar confidentiality restrictions.
- 2.2. The obligations of section 2.1 do not apply to information which:
  - 2.2.1. is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;
  - 2.2.2. is or becomes known to the public through no act or omission of the Recipient;
  - 2.2.3. the Recipient develops independently without using Confidential Information of the other party; or
  - 2.2.4. is disclosed in response to a valid court or governmental order, if the Recipient has given the other party prior written notice and provides reasonable assistance so as to afford it the opportunity to object.

## 3. RESTRICTED ACTIVITIES

- 3.1. **Export laws.** Products, Services and technical data delivered by Sun may be subject to US export controls or the trade laws of other countries. Customer will comply with all such laws and obtain all licenses to export, re-export or import as may be required after delivery to Customer. Customer will not export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws. Customer will not use or provide Products, Services, or technical data for nuclear, missile, or chemical biological weaponry end uses.
- 3.2. **Nuclear applications.** Customer acknowledges that Products and Services are not designed or intended for use in the design, construction, operation or maintenance of any nuclear facility.

## 4. SUN TRADEMARKS

- 4.1. Customer may refer to Products and Services by their associated names, provided that such reference is not misleading and complies with Sun's Trademark and Logo Policies, which are found at <http://www.sun.com/policies/trademarks>.
- 4.2. Customer may not remove or alter any Sun Trademarks, nor may it co-logo Products or Services. Customer agrees that any use of Sun Trademarks by Customer will inure to the sole benefit of Sun.
- 4.3. Customer agrees not to incorporate any Sun Trademarks into Customer's trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

## 5. PUBLICITY

- 5.1. With Customer's prior written permission, Sun may use Customer's name in promotional materials, including press releases, presentations and customer references regarding the sale of Products or Services. These permissions are free of charge for worldwide use in any medium. Sun will obtain Customer's prior approval for publicity that contains claims, quotes, endorsements or attributions by Customer, such approval not to be unreasonably withheld or delayed.

## 6. INTELLECTUAL PROPERTY CLAIMS

- 6.1. Sun will defend or settle, at its option and expense, any legal proceeding brought against the Customer to the extent that it is based on a claim that materials (which term includes Products) developed and provided

by Sun infringe a third party's patent, trade secret or copyright. Sun will indemnify Customer against all damages and costs attributable exclusively to such claim awarded by the court finally determining the case, provided that Customer:

- 6.1.1. gives written notice of the claim promptly to Sun;
  - 6.1.2. gives Sun sole control of the defense and settlement of the claim;
  - 6.1.3. provides to Sun, at the expense of Sun, all available information and assistance;
  - 6.1.4. does not compromise or settle such claim; and
  - 6.1.5. is not in material breach of any Agreement.
- 6.2. If such materials are found to infringe, or in the reasonable opinion of Sun are likely to be the subject of a claim, Sun will at its option:
- 6.2.1. obtain for Customer the right to use such materials;
  - 6.2.2. replace or modify the materials so they become non-infringing; or
  - 6.2.3. if neither option is reasonably achievable, remove such materials and refund their net book value.
- 6.3. Sun shall have no obligation to the extent any claim results from:
- 6.3.1. use of materials in combination with any third party equipment, software or data not provided by Sun;
  - 6.3.2. compliance by Sun with the designs or specifications of the Customer;
  - 6.3.3. modification of materials other than at the direction of Sun; or
  - 6.3.4. use of an allegedly infringing version of the materials, if the alleged infringement could have been avoided by the use of a different version made available to Customer by Sun.
- 6.4. This section states the entire liability of Sun and the exclusive remedies of Sun for claims that materials infringe a third party's IPR.

## 7. LIMITATION OF LIABILITY

- 7.1. **No limitation on certain categories of liability.** Each party acknowledges the full extent of its own liability to the other, arising from:
- 7.1.1. death or personal injury resulting from negligent acts or omissions;
  - 7.1.2. breach of any applicable license grant; or
  - 7.1.3. claims for non payment; and
  - 7.1.4. the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability) are not affected.
- 7.2. **Limitations on other categories of liability.**
- 7.2.1. ***Subject to 7.1 above and to the extent any limitation of liability contained herein is construed by a court of competent jurisdiction to be a limitation of liability in violation of Oklahoma law, such limitation of liability shall be void.***
  - 7.2.2. Each party's maximum aggregate liability for all claims relating to any 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) or, in the case of purchases, 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

7.2.3. neither party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the General Terms or any 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.

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

## 8. TERMINATION, EXPIRATION AND TERM

8.1. **Termination for cause.** Either party may terminate the General Terms or any Exhibit immediately by written notice:

8.1.1. if the other party commits a non-remediable material breach of the General Terms or Exhibit (as the case may be); or

8.1.2. if the other party fails to cure any remediable material breach within thirty (30) days of being notified in writing of such breach.

8.2. **Termination without cause.**

8.2.1. Either party may terminate the General Terms immediately by written notice if no Exhibit is in effect.

8.2.2. Either party may terminate any Exhibit at any time upon expiration of ninety (90) days' written notice.

8.3. **Term of Agreement**

8.3.1. The term of this Contract shall be one (1) year commencing on the date of approval by both parties with three (3) one-year renewal options. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers

8.4. **Actions following termination or expiration.**

8.4.1. On termination of the General Terms (for whatever reason), all Exhibits shall automatically terminate with immediate effect. Following termination of an Exhibit (for whatever reason), each party will deliver to the other any property (including Confidential Information if requested by the Disclosing Party) of the other in its possession or control relating to that Exhibit, in good condition, reasonable wear and tear excepted.

8.4.2. Upon expiration of the General Terms all Exhibits shall continue for the period specified in the Exhibit and the provisions of the General terms shall continue to apply. No Exhibit may be extended beyond its stated term in the event of Expiration of the General Terms.

8.5. **Effect of termination.** Neither party will be liable for any damages arising out of the termination or expiration of the General Terms or any Exhibit, provided that such termination or expiration will not affect any right to recover:

8.5.1. damages sustained by reason of material breach; or

8.5.2. any payments which may be owing in respect of any Agreement.

## 9. ASSIGNMENT AND SUBCONTRACTING

9.1. Neither party may assign or otherwise transfer any of its rights or obligations under the General Terms or any Exhibit without the prior written consent of the other party, which consent will not be unreasonably withheld, except that:

9.1.1. both parties may assign their right to receive payment; and

9.1.2. Sun may use subcontractors in the performance of its obligations, in which case Sun will remain responsible for the performance by such sub-contractors.

**10. DISPUTE RESOLUTION**

10.1. The parties will use reasonable efforts to resolve any dispute arising out of the General Terms or any Exhibit through a meeting of appropriate managers from each party. If the parties are unable to resolve the dispute, either party may escalate the dispute to its executives. If an executive level meeting fails to resolve the dispute within thirty (30) days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other provisional relief at any time.

**11. GENERAL**

**11.1. Governing law.**

11.1.1. All disputes will be governed by the laws of **Oklahoma**

11.1.2. Choice of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods will not apply to any dispute under the Agreement.

11.2. **Force majeure.** A party is not liable under any Agreement for non-performance caused by events or conditions beyond that party's reasonable control, if the party makes reasonable efforts to perform. This provision does not relieve either party of its obligation to make payments then owing.

11.3. **Notices** All written notices required by the General Terms or any Exhibit must be delivered in person or by means evidenced by a delivery receipt or acknowledgment and will be effective upon receipt. Notices communicated by electronic mail or facsimile will be deemed to be written.

11.4. **Relationship.** Neither the General Terms nor any Agreement is intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

11.5. **Invalidity.** If any provision of the General Terms or any Agreement is held invalid by any law or regulation of any government or by any court or arbitrator, such invalidity will not affect the enforceability of other provisions.

11.6. **Survival.** Rights and obligations under the General Terms and any Exhibit which by their nature should survive, will remain in effect after termination or expiration of the General Terms or the relevant Exhibit.

11.7. **No waiver.** Any express waiver or failure to exercise promptly any right under the General Terms or any Exhibit will not create a continuing waiver or any expectation of non-enforcement.

11.8. **Modification.** No modification to the General Terms or any Exhibit will be binding, unless in writing and manually signed by an authorized representative of each party.

11.9. **Entire agreement.** This Agreement, including the Purchasing Exhibit, Appendices and Schedules, constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties and prevails over any conflicting or additional terms contained in any quote, purchase order, acknowledgment, or other communication between the parties relating to its subject matter during its term.

**IN WITNESS WHEREOF THE DULY AUTHORISED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THESE GENERAL TERMS AS OF THE EFFECTIVE DATE.**

**SUN MICROSYSTEMS, INC.**

By: 

Name: Adrian Brevard

Title: Manger, Government Contracts

Date: 10/25/06

**OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION**

By: 

Name: Kurt A. Snodgrass

Title: Vice Chancellor, IT & Telecomm.

Date: 10-31-06

# PURCHASING EXHIBIT

Customer name: **Oklahoma State Regents of Higher Education**

General Terms reference no: **AR-92481-EDU**

Exhibit reference no: \_\_\_\_\_

THIS EXHIBIT ("Exhibit") is an Exhibit to the General Terms referenced above, and is effective as of November 1, 2006 ("Exhibit Effective Date"). The General Terms are an integral part of this Exhibit and are incorporated by reference. The General Terms and this Exhibit are together referred to as the "Agreement".

## **1. INTERPRETATION**

In this Exhibit:

- 1.1. "**Appendix**" means any Appendix to this Exhibit;
- 1.2. "**Deliverable(s)**" means in relation to any Services, the specific item(s) to be delivered in connection with the applicable Service Listing or SOW;
- 1.3. "**Order**" means an order for Products or Services, which may be submitted by Customer to Sun in hard copy form ("Purchase Order") or in electronic form ("Electronic Order");
- 1.4. "**Order Confirmation**" means a written or electronic acknowledgment or invoice issued by Sun in response to an Order;
- 1.5. "**Price List**" means, in relation to any Order, the applicable Price List determined in accordance with section 3 of this Exhibit, as the same may be modified by Sun from time to time;
- 1.6. "**Schedule**" means any Schedule to this Exhibit.
- 1.7. Capitalized terms used but not defined in this Exhibit have the meanings set out in the General Terms. In the event of any inconsistency between the elements of the Agreement, the following order of precedence will apply (in descending order):
  - 1.7.1. the Schedules;
  - 1.7.2. the Appendices;
  - 1.7.3. the main text of this Exhibit;
  - 1.7.4. the General Terms;
  - 1.7.5. the applicable Price List, Service Listing or SOW;
  - 1.7.6. the Order Confirmation; and
  - 1.7.7. the Order.

## **2. ORDERING**

### **2.1. Ordering procedure**

- 2.1.1. Customer may order Products or Services by:
  - 2.1.1.1. submitting an Electronic Order in the manner directed by Sun; or
  - 2.1.1.2. submitting a Purchase Order to Sun (and Customer acknowledges that Electronic Orders for certain Products or Services may require to be supplemented by a Purchase Order);
  - 2.1.1.3. in each case specifying the Products or Services required and referencing the General Terms and applicable Exhibit numbers. By doing so, Customer agrees that the Order is governed by the Agreement.
  - 2.1.1.4. Sun may accept the Order by:

2.1.1.4.1. issuing an Order Confirmation to Customer; or

2.1.1.4.2. shipping the Products or initiating performance of the Services required in the Order.

2.1.1.5. The identification of the Products or Services in the Order and any Order Confirmation, together with any applicable Service Listings or SOWs and the Agreement, will constitute an "Accepted Order" and create a binding commitment for the purchase of those Products or Services.

2.2. **Renewal of Accepted Orders for Services.** Subject to Section 3.2 below and provided the provisions of the General Terms have not terminated or expired, Customer may renew a renewable Accepted Order for Services for successive one (1) year periods by submitting a new Order in accordance with this section at least thirty (30) days prior to the expiration date. Certain renewable Accepted Orders designated by Sun will be automatically renewed for successive one (1) year periods upon the anniversary of the then current effective period but in no event shall renewal extend more than twelve (12) months beyond the expiration of the General Terms.

2.3. **Electronic ordering.** For the purposes of placing Electronic Orders, Customer represents and warrants:

2.3.1. that it will keep confidential any unique user identification and password which Sun assigns to Customer; and

2.3.2. that all of Customer's employees who submit orders are authorized by Customer to do so.

### 3. PRICING AND PAYMENT TERMS

3.1. **Applicable Price List.** The Price List applicable to an Order under this Exhibit depends on the Products or Services ordered

3.1.1. Unless otherwise specified in the Schedule, the Price List is:

3.1.1.1. The Sun US Price List in effect at the time the Order is accepted for the Products and Services listed in the Discount Schedule of this Exhibit and the Scholarpac Price List.

3.1.2. Sun may modify the prices and/or discounts set forth in a renewable Accepted Order for Services upon renewal of any such Accepted Order, or annually for Accepted Orders with a term of more than one year.

3.1.3. All payments will be made in the currency of the applicable Price List (or as otherwise agreed in writing).

3.1.4. Software license fees are neither contingent upon nor dependent on any further deliverables from Sun, including, but not limited to, professional services.

3.1.5. Customer shall pay all invoices within **forty-five (45)** days of the date of invoice or, in case of Products, delivery (whichever is the later).

3.1.6. Customer is not required to pay the disputed portion of any invoice, pending resolution of that dispute, if written notice of the dispute has been provided to Sun within fifteen (15) days of the date of the invoice.

3.2. **Review and reimbursement of discounts - Services.** Within thirty (30) days of each anniversary of this Exhibit, Sun will determine Customer's discounts for the following year, based on Sun's applicable discount policies. Customer will reimburse Sun for discounts extended to Customer that are based on volume, term of service or other criteria not earned by Customer.

### 4. IPR OWNERSHIP AND LICENSING

4.1. **Pre-existing IPR.** Each party shall retain its own pre-existing IPR.

4.2. **License terms.**

4.2.1. **General scope of licenses.** Sun agrees to grant to Customer a license to use Software and Deliverables in the terms set out in the Appendices.

4.2.2. **Audit rights.** Sun or its independent audit firm may, subject to applicable law and upon reasonable notice, examine and audit the records and systems of Customer to ensure compliance with any license granted by Sun. Any audit will be performed during Customer's regular business hours and in a manner which avoids unreasonable interference with Customer's business operations.

4.2.3. **Injunctive relief.** Customer acknowledges that any breach or threatened breach of any license involving unauthorized use of Sun's intellectual property will result in irreparable harm to Sun for which damages would not be an adequate remedy.

- 4.2.4. **Proprietary rights notices.** Customer may not alter or obscure any proprietary rights notice appearing on any Sun-supplied materials, and must include such notices on any copies.

## 5. CUSTOMER OBLIGATIONS – SERVICES

- 5.1. **Incorporation of Customer obligations.** Customer shall fulfill all applicable Customer obligations under the Agreement, and acknowledges:
- 5.1.1. that performance of this Agreement by Sun is conditional upon Customer's fulfillment of such obligations;
- 5.1.2. that any additional services which Sun provides as a result of Customer's failure to do so will be billed separately, at Sun's applicable time and materials rates.
- 5.2. **Cooperation.** Customer will cooperate with Sun and will provide safe and timely access to its premises and computer equipment, including remote access, adequate working space, facilities and any other services, personnel, information or materials that Sun personnel may reasonably require to perform Sun's obligations.
- 5.3. **Compliance with data privacy laws.** Sun and Customer will comply with all applicable laws regarding collection and use of data under this Agreement. Customer consents to Sun's use and processing of Customer's data and will ensure that, where it provides Sun with data relating to another, it has obtained that other's consent to Sun's use and processing of such data.

## 6. WARRANTY

- 6.1. **Warranties.** Sun warrants Products and Services in the terms set out in the respective Appendix.
- 6.2. **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.

## 7. TERMINATION

- 7.1. **General.** For the avoidance of doubt, the termination provisions set out in the General Terms shall apply to this Exhibit.
- 7.2. **Additional provisions relating to termination.** Without limiting section 7.1, the following additional provisions shall apply to termination of this Exhibit and of Accepted Orders made under this Exhibit:
- 7.2.1. either party may terminate an Accepted Order immediately by written notice: (i) if the other party commits a non-remediable material breach of such Accepted Order; or (ii) if the other party fails to cure any remediable material breach within thirty (30) days of being notified in writing of such breach;
- 7.2.2. neither party may terminate a renewable Accepted Order during its initial term;
- 7.2.3. either party may terminate a renewed Accepted Order by giving sixty (60) days' prior written notice to the other party;
- 7.2.4. Sun will deliver to Customer any Deliverables, whether finished or unfinished, subject to receipt of payment for any Services rendered through the date of termination or expiration; and
- 7.2.5. where the Exhibit has been terminated by Sun for cause, Customer will destroy all copies of Software.

## 8. DELIVERY ARRANGEMENTS FOR PRODUCTS

- 8.1. **Target delivery dates.** In relation to Products, Sun will use reasonable efforts to meet the delivery dates stated on its Order Confirmation.
- 8.2. **Changing delivery arrangements.**
- 8.2.1. Sun may make Product substitutions and modifications that do not cause a material adverse effect in overall Product performance;
- 8.2.2. Subject to Customer's agreement, Sun may make and invoice for partial deliveries; and
- 8.2.3. Prior to shipment, Customer may cancel, reschedule or reconfigure an Accepted Order for Products:

- 8.2.3.1. once, at no charge, provided Sun receives written notice at least thirty (30) days prior to the scheduled delivery date and the requested delivery date is within thirty (30) days of the original delivery date; and
  - 8.2.3.2. in all other cases, subject to Customer paying a restocking fee equal to three percent (3%) of the purchase price of the canceled, rescheduled or reconfigured portion of the Accepted Order.
- 8.3. **Title and risk.** Unless otherwise specified in a Schedule or otherwise agreed by Sun in writing, title to Equipment and risk of loss of or damage to Products will pass from Sun upon **delivery, to Customer's Location** and Products will be deemed accepted upon such delivery. **Shipping costs for Products delivered under this Agreement will be paid by Sun.**

## 9. CHARGING ARRANGEMENTS FOR PRODUCTS

- 9.1. **Charges and invoices.** The charges for Products are as set out in the Price List.
- 9.2. **Taxes and expenses.** The stated charges for Products are exclusive of all sales and other taxes based upon the value of the Products (for which Customer is responsible).
- 9.3. **Equipment upgrades.** Only eligible Equipment purchased from Sun or a Sun authorized reseller, and certain non-Sun equipment identified by Sun from time to time, may qualify for the Sun Upgrade Allowance Program ("UAP"), or other upgrade programs offered by Sun. Sun in its sole discretion will determine which Equipment or non-Sun equipment is eligible to qualify under the UAP or other Sun upgrade program. The price of Equipment upgrades under the UAP or other Sun program is based upon Customer: (a) owning, possessing and using the Equipment being upgraded for at least ninety (90) days prior to upgrading, and (b) returning to Sun the Equipment or non-Sun equipment being traded in as part of the upgrade ("Trade-in Equipment") within sixty (60) days of upgrade delivery to Customer. If the Trade-in Equipment is not returned within sixty (60) days, Sun may bill back and Customer agrees to pay promptly the full amount of any upgrade allowance. Customer warrants that it has good and unencumbered title to the Trade-in Equipment.

## 10. LICENSE TERMS FOR SOFTWARE PRODUCTS

- 10.1. **License grant.** Sun grants to Customer a non-exclusive and non-transferable license to use Software provided to Customer hereunder for its internal use only, subject to:
  - 10.1.1. any restrictions set out in the Order or Order Confirmation as to the permitted number of users and CPUs; and
  - 10.1.2. any supplemental license terms accompanying the Software.
- 10.2. **Reservation of rights.** Software is confidential and copyrighted, all rights therein not expressly granted to Customer are reserved to Sun, and Sun retains title to all copies.
- 10.3. **License restrictions.** Except as prohibited by applicable law, Customer may not make copies of Software, other than for archival purposes, or modify, decompile, or reverse-engineer Software.
- 10.4. **Transferability of software licenses.** Customer may transfer any operating system Software license with its related Equipment, if:
  - 10.4.1. the transfer occurs at least six (6) months after Sun's delivery of the Equipment; and
  - 10.4.2. Customer notifies Sun and obtains a written undertaking from its transferee to comply with the applicable licensing terms.

## 11. PRODUCT WARRANTIES

- 11.1. **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"). Sun furthermore warrants that Software listed on the Warranty Web Page as of 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 on the date of delivery to Customer. Otherwise Software is provided "AS IS".
- 11.2. **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.
- 11.3. **Exclusive remedy.** To the extent permitted by Oklahoma law, Customer's sole and exclusive remedy and Sun's entire liability for breach of the above warranty will be:

- 11.3.1. the repair or, at Sun's option and expense, replacement of defective Equipment, or, if such repair or replacement is not reasonably achievable, the refund of the purchase price or license fee paid by Customer; and
  - 11.3.2. the provision of Software support as shown on the Warranty Web Page. Parts or components which are replaced under applicable warranty may be new or like-new. Title in all defective parts which are removed from Equipment under applicable warranty shall transfer back to Sun.
- 11.4. **Products excluded from warranty.** No warranty will apply to any Product which has been:
- 11.4.1. modified, altered or adapted without Sun's written consent;
  - 11.4.2. maltreated or used in a manner other than in accordance with the relevant manual;
  - 11.4.3. repaired by any third party in a manner which fails to meet Sun's quality standards;
  - 11.4.4. improperly installed by any party other than Sun; or
  - 11.4.5. used with equipment or software not covered by the warranty, to the extent that the problems are attributable to such use.

## 12. REPORTING REQUIREMENTS FOR INTERNATIONAL TRANSACTIONS

- 12.1. Customer will report all Product exports and re-exports by providing a monthly report to Sun by the 15<sup>th</sup> day of each month with:
- 12.1.1. the name of the buying office of Customer;
  - 12.1.2. the name of the Sun selling office;
  - 12.1.3. Product type;
  - 12.1.4. serial number(s);
  - 12.1.5. new country of installation; and
  - 12.1.6. date of export for each Product exported from the original country of installation. A sample monthly report is available from Sun on request.

## 13. REMOTE SERVICES

- 13.1. By purchasing any Services which are delivered remotely, Customer:
- 13.1.1. agrees that Sun may access Products remotely at Customer's site, and may process and store Product data in order to remotely monitor, manage and service Products (all such data will be treated by Sun as Customer Confidential Information, except that Customer permits disclosure for the purposes of fulfilling this Agreement);
  - 13.1.2. commits to procure and maintain a Sun-specified bridge or gateway appropriate to the systems or networks involved, at Customer's expense; and
  - 13.1.3. assumes responsibility for all telecommunications and internet access charges related to the remote Services.
- 13.2. If Customer fails to permit or facilitate remote Services, Sun may decline to deliver such Services and assess additional charges or other conditions for the delivery of Services which would otherwise be provided remotely, or revoke any applicable warranties.

## 14. SYSTEMS SUPPORT

- 14.1. **Customer Sites.** Systems support will be delivered to the Customer's sites and for the systems indicated on the relevant Order Confirmation (respectively, "Customer Sites" and "Covered Systems"). Customer will give Sun at least thirty (30) days' written notice prior to relocating Covered Systems, which notice must specify the new site. Support of relocated systems is subject to local availability and may be subject to additional fees, and to inspection and recertification of the relocated systems at Sun's applicable time and materials rates.
- 14.2. **Problem Avoidance.** Customer will perform routine system preventative maintenance and cleaning. Prior to requesting support from Sun, Customer will comply with all applicable operating and troubleshooting procedures, as posted on a Sun knowledge database or as otherwise provided by Sun. If such efforts are unsuccessful in eliminating the malfunction, Customer will promptly notify Sun. Customer will establish and maintain a procedure external to Covered Systems so that Customer can reconstruct lost or altered files, data, or programs.

- 14.3. **Qualified Personnel.** Requests for hardware and software support may be made only by Customer personnel who:
- 14.3.1. possess the necessary expertise and training (as from time to time defined by Sun) to diagnose and resolve system and software malfunctions with direction by Sun; and
  - 14.3.2. are designated as "Contacts" in accordance with the applicable Service Listing or SOW.
- 14.4. **Additional Systems.** Customer may add systems to an Accepted Order for a period coterminous with the term of the Accepted Order at Sun's applicable, pro-rated, per-system fee, upon written notice to Sun and subject to Sun's rights of inspection. Sun will provide to Customer an add-on Order Confirmation reflecting the additional Covered Systems and associated additional fee.
- 14.5. **Eligible Systems - Automatic Eligibility.** Systems support is available only for systems which are covered by a valid software license and are in good working condition. Systems placed under an Accepted Order for systems support prior to the expiration of:
- 14.5.1. Sun's warranty; or
  - 14.5.2. an existing Sun support agreement, automatically will be deemed to be in good working condition.
- 14.6. **Eligible Systems - Eligibility after Observation Period.** With respect to any system that does not qualify for support under section 14.5, Sun may require that the system pass an inspection. In that event, Sun may place such system under observation, and support coverage will only commence once the system has operated for ninety (90) consecutive days (the "Observation Period") without experiencing a system failure. Systems requiring support during the Observation Period will receive such support on a time and materials basis.
- 14.7. **Eligible Systems - Other.** With respect to any system that does not qualify for support under section 14.5, Sun reserves the right to determine whether any problem occurring during the first ninety (90) days of support coverage is attributable to a condition predating the commencement of support coverage, and to bill Customer at Sun's applicable time and materials rates to correct such problem and return such system to eligible condition.
- 14.8. **Exclusions.** Services do not include services required due to:
- 14.8.1. improper use, abuse, accident, or neglect;
  - 14.8.2. alterations, modifications, or attempts to repair Covered Systems that Sun has not authorized;
  - 14.8.3. causes external to a Covered System, such as (but not limited to) failure to maintain environmental conditions within the operating range specified by the manufacturer;
  - 14.8.4. attachment of a Covered System to equipment, software, or other items not listed on Sun's then current Enterprise Services Price List;
  - 14.8.5. relocations or attempts to relocate Covered Systems; or
  - 14.8.6. failure to maintain software and Covered Systems at Sun-specified minimum release levels or configurations necessary to keep a Covered System within the terms of Sun's applicable end of life support policy, or to properly install remedial replacement parts, patches, software updates or subsequent releases as directed by Sun; and
  - 14.8.7. any Services Sun delivers as a result of any such event will be invoiced separately at Sun's applicable time and materials rates, and are subject to the applicable Agreement.

## 15. ON-SITE MATERIALS

- 15.1. Customer will segregate, safeguard and designate as the property of Sun all tools, parts, spares, equipment and materials placed on a Customer site and for which title is not transferred to Customer ("On-Site Materials").
- 15.2. On-Site Materials may only be used by authorized persons consistent with the terms of the applicable Service Listing or SOW. Customer will have no right or interest in the On-Site Materials, and will not grant any liens or security interests therein. Customer assumes all risk of loss or damage to On-Site Materials that may occur prior to their return and receipt by Sun.
- 15.3. Within ten (10) days after termination or expiration of any Accepted Order, Customer will deliver to Sun any On-Site Materials related to such Accepted Order, with a bill of lading, freight charges prepaid and fully insured.

## 16. NON – SOLICITATION

- 16.1. Without the prior written consent of Sun, Customer will not recruit any personnel assigned by Sun to perform any Services designated as consulting services in a Service Listing or SOW ("Consulting Services") for Customer until one (1) year after completion of the applicable Services.
- 16.2. "Recruit" means to initiate personal contact for the purposes of hiring, but does not include responding to an unsolicited application, receiving unprompted responses to advertisements, or receiving candidates who are, without Customer involvement, presented to Customer by a recruiting firm.
- 16.3. If Customer hires personnel in violation of this provision, Customer immediately will pay Sun liquidated damages in an amount equal to the hired employee's total compensation for the six (6) months preceding the date of hiring.

## 17. IPR OWNERSHIP AND LICENSE TERMS FOR SERVICE DELIVERABLES

- 17.1. **Deliverables.** Subject to section 6 main text of the Exhibit, Sun shall own all IPR in the Deliverables. Rights not expressly granted under any Accepted Order are reserved to Sun. Customer's rights to use Deliverables are set out in section 17.2.
- 17.2. **License terms.**
  - 17.2.1. **General scope of licenses.** Sun grants to Customer a non-exclusive and non-transferable license to use Deliverables for its internal use only, subject to:
    - 17.2.1.1. any restrictions set out in the Order or Order Confirmation as to the permitted number of users and CPUs; and
    - 17.2.1.2. any supplemental license terms accompanying the Deliverable.
  - 17.2.2. **Use of tools and Updates** Tools may be accessed only by authorized Customer contacts for the sole purpose of diagnosing and resolving problems on Covered Systems. The provision of an Update will not alter any warranty on the Software previously licensed, and such Updates may be used or accessed only in connection with the use of Covered Systems.
  - 17.2.3. **License restrictions.** Except as prohibited by applicable law, Customer may not:
    - 17.2.3.1. make copies of Deliverables, other than for archival purposes; or
    - 17.2.3.2. modify, decompile, or reverse-engineer Deliverables.

## 18. SERVICE WARRANTIES

- 18.1. **Warranty.** Sun warrants that Services will be performed in a good and workmanlike manner.
- 18.2. **Exclusive remedy.** Customer's sole and exclusive remedy and Sun's entire liability for breach of the above warranty will be reperformance of Services.
- 18.3. **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.

## 19. CHARGING ARRANGEMENTS FOR SERVICES

- 19.1. **Charges and invoices.** The charges for Services are as set out in the Price List or the applicable SOW (if not in the Price List). Charges for systems support Services shall be invoiced monthly, quarterly or annually in advance as agreed between the parties as stated in the Accepted Order. Invoices for other Services shall be rendered upon completion of such Services or monthly in the event the duration of services exceeds one month.
- 19.2. **Items not included in charges.** The stated charges are exclusive of the following items (for which Customer is responsible):
  - 19.2.1. reasonable travel expenses in the amount actually incurred by Sun;
  - 19.2.2. reasonable and necessary out-of-pocket expenses associated with Consulting Services. **Customer reserves the right to dispute expenses that appear unreasonable in accordance with section 3.1.6 of the Purchasing Exhibit;**
  - 19.2.3. costs incurred by Customer or its employees in connection with their participation in educational services;
  - 19.2.4. transportation and insurance charges; and
  - 19.2.5. the costs of operating supplies and accessories.

## 20. MISCELLANEOUS

- 20.1. **Service availability.** Services may not be available in certain locations, and Deliverables may vary between locations. Services are subject to availability of qualified Sun personnel and facilities and may be subject to additional costs or terms or to payment of minimum applicable fees. Sun may modify the Service Listings at any time, but will continue to provide Deliverables as set out in the relevant Service Listing in effect on the date the relevant Order Confirmation was issued until expiration or renewal of the relevant Accepted Order. Sun may make Service substitutions and modifications that do not cause a materially adverse effect in overall Service performance.
- 20.2. **Limitations on use of Service.** Customer acknowledges that Services are solely for Customer's internal use, and Customer may not provide, lease, or resell Services, directly or indirectly, to any third party, unless, and only to the extent that, Customer is authorized by Sun in writing to do so.

## PRICING EXHIBIT

This Schedule sets out the Price Lists and discounts applicable to Customer's purchase of Products and Services, and together the General Terms and the Exhibit, comprises the Agreement between Sun and Customer.

1. **Customer name:** Oklahoma State Regents For Higher Education

2. **Customer's Individual Contact Details:**

Name: Purchasing Director

Address: 655 Research Parkway, Suite 200

Oklahoma City, OK 73104

Phone: 405-255-9206

Fax : 405-225-9230

Email: [ghanke@osrhe.edu](mailto:ghanke@osrhe.edu)

3. **Provision of Discounts:** For Products on Sun's then current, applicable US Price List, Sun agrees to grant to Customer, during the initial term of this Agreement, the discounts as shown in the schedule below. Such discounts shall not apply to those Products which are listed as "non-discountable" in the appropriate price List, nor may they be applied to exceed any listed maximum discount. Such discount shall apply towards purchases of discountable spare parts, but such discounts shall not apply to purchases of training, installation (except where included in the purchase price of the Products), consulting, repairs, maintenance work and source code license fees.

4. **Purchasing of Products:** In case of Product purchases the discounts are for the period as of the Exhibit Effective Date until the Expiration Date as set out below:

<u>Product Category</u>	<u>EDU</u>	<u>State Agencies</u>
Category A:	37.50%	20.50%
Category B:	37.50%	5.50%
Category D (non-discountable):	N/A	N/A
Category E:	7.50%	N/A
Category F:	17.00%	N/A
Category G:	33.00%	N/A
Category H:	17.50%	5.50%
Category J:	N/A	N/A
Category K:	N/A	N/A
Category M*:	33.00%	N/A
Category P:	20.50%	7.50%

Category \_\_\_\_:

***\*Denotes new Products and Discounts have been added to this existing category.***

- 4.1. All discounts for purchases in more than one country are subject to Customer's application and approved membership and guidelines for Sun's Passport program.
  - 4.2. Certain Products may not fall into any of the above categories; the discounts, if any, applicable to such Products may differ from the discounts on this Schedule. In addition, discount limits may apply to certain Products in which event the foregoing discounts may be reduced to the discount limit.
  - 4.3. All Buyers may acquire Sun Products through a fair market value operating lease through Sun Finance. Contact your local Sales Rep for additional information.
- 5. Purchasing of Services** Services discounts may be available for Customer's purchase of Services, subject to the Price List, discount eligibility criteria, and standard discount level applicable to Customer's purchase. The type(s) and level(s) of Services discount(s) currently applicable to Customer's purchase of Services is (are): **EDU = 35.00%, State Agencies = 20.00%**
- 5.1. All Education End Users receive the above a minimum discounts. Additional volume discounts are applied on a multiplicative calculation method for a total discount. **[NOTE: ADDITIONAL VOLUME DISCOUNTS ARE NOT AVAILABLE TO NON-EDUCATION ENTITIES]**Volume is calculated on a per-site basis.

<u>Gross (List Price) Volume</u>	<u>Additional Discount</u>
\$0 - \$4,999	0%
\$5,000 - \$14, 999	5%
\$15,000 - \$24,999	7%
\$25,000 - \$49,999	10%
\$50,000 - \$99,999	13%
\$100,000 - \$149,999	20%
\$150,000 - \$249,999	25%
\$250,000 - \$499,999	30%
\$500,000 - \$999,999	35%
\$1,000,000 =====>	40%

- 5.2. Sun Service uses the multiplicative calculation method when applying discounts and uplifts to contracts. Volumes are on a per location basis.

For example, a school over \$1,000,000 List price annual contract would get:

\$100 less 35% EDU discount = \$65 per month

\$65 less 40% Site Volume = \$39 net, or a 61% total discount.

## **6. Equipment Grant**

- 6.1. During the term of this Agreement Sun will provide Customer an Equipment Grant based upon all end user Product purchases made during a contract year covered under this Agreement. Sun will apply 2% to the net purchases made. In six (6) month increments, Sun will calculate the grant amount earned for that period ("Grant Period") All grant amounts earned in the current Grant Period must be used within 90 days after Customer receipt of grant amount notification. In the event the ninety (90) day period exceeds expiration of the Agreement; the terms and conditions of this Agreement will continue to apply to grants used after expiration.
- 6.2. Notwithstanding the above, Customer use of Equipment Grant is subject to the following conditions:

- 6.2.1. Grants accumulated during a Grant Period must be used within ninety (90) days of the date Sun presents Customer with the Summary. Grants cannot be carried over to subsequent Grant Periods;
- 6.2.2. Grants cannot be combined with any promotions; and
- 6.2.3. Unless otherwise agreed to by Sun in advance, Grants can only be applied to the Product Categories authorized by this Agreement. Grants cannot be applied to Services.

**7. Contract Sales Reporting**

- 7.1. Sun will submit periodic reports to the State Regents reflecting the total contract sales. These reports will be in the format found on the OneNet web site [Onenet.net/ops](http://Onenet.net/ops) under Contracts, as Contract Report Form. The reports are due within thirty (30) days after the close of the sales period. The sales period shall be in six months increments "(Grant Period)" and shall accompany the Equipment Grant calculation.