



This Try and Buy Exhibit ("Exhibit") is an Exhibit to the General Terms that form a part of Contract No. C070004 referenced above, and is effective as of the date signed by both parties ("Effective Date"), SUN MICROSYSTEMS, INC., a Delaware corporation with its address at 4150 Network Circle, Santa Clara, CA 95054 together with its Affiliated Companies ("Sun") and the Oklahoma State Regents for Higher Education with its address at 655 Research Parkway, STE. 200, Oklahoma City, OK 73104 ("Company"). 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."

The purpose of this Agreement is to provide Company, who has expressed a good faith interest in purchasing Sun Products, with the opportunity to participate in a program whereby Company may borrow and use certain Sun Products for a period reflected in the attached Appendix, prior to making a final purchasing decision, such program to be referred to herein as Sun's "Try and Buy Program."

The terms of this Agreement will govern over any conflicting terms in any web-based or "click-through" agreement that may be required in order for Company to participate in Sun's Try and Buy Program.

Authorized Customers as defined in the General Terms may use this Exhibit to participate in Sun's Try and Buy Program by agreeing to the terms in Appendix A ("Customer Agreement"), and in doing so, each such customer is agreeing to be bound by the terms and conditions of this Exhibit as if it were Company. Each such customer shall be solely responsible and liable to Sun for each Customer Agreement, and no Customer Agreement will create any obligations or liabilities for Company.

## 1. INTERPRETATION

### 1.1 In this Exhibit:

"Designated Site" means the location of the Products specified in Appendix A to this Exhibit. Company shall not move the Products or any portion thereof from the Designated Site without the prior written approval of Sun.

"Loaned Equipment" means, collectively, the computer hardware (including components), software media and spare parts listed in the standard product price lists published by Sun from time to time (and any associated documentation) that is the subject of, and specified in, Appendix A to this Exhibit.

"Loaned Software" means those data processing programs specified in Appendix A to this Exhibit.

"Order," "Order Confirmation" and "Price List" shall have the meaning set forth in the Purchasing Exhibit which forms a part of Contract No. C070004

"Products" means, collectively, Loaned Equipment and Loaned Software.

1.2 Capitalized terms used but not defined in this Exhibit have the meaning set out in the General Terms.

1.3 In the event of any inconsistency between the elements of the Agreement, the following order of precedence will apply (in descending order):

- (a) the Appendices;
- (b) the main text of this Exhibit;
- (c) the General Terms;
- (d) the applicable Price List, Service Listing or SOW;
- (e) the Order Confirmation; and
- (f) the Order.

## 2. TITLE

Sun warrants and represents that Sun is the owner of the Loaned Equipment. Title and full ownership rights to the Loaned Equipment remains with Sun and title and full ownership rights to all copies of the Loaned Software remains

with Sun. Company shall not make any representations to the contrary.

### **3. USE OF PRODUCTS**

Company shall use the Loaned Equipment and/or Loaned Software solely at the Designated Site and solely for the term hereof, and Loaned Software shall be used solely on the Loaned Equipment, unless expressly permitted in the Appendix. Company shall not copy, reverse engineer, disassemble or decompile any Products.

### **4. DELIVERY, INSTALLATION AND RISK OF LOSS**

Risk of loss of or damage to Loaned Equipment will pass from Sun upon delivery to Company. Shipping costs for Loaned Equipment delivered under this Agreement will be paid by Sun.

### **5. TERM AND TERMINATION**

5.1 Term of Exhibit. This Exhibit shall be effective upon the first delivery of Products and shall remain in force, unless terminated earlier in accordance with the provisions of Section 5.

5.2 Term of Appendices. Each Appendix shall be effective upon the first delivery of Products and shall remain in force for the period stated therein, unless terminated earlier in accordance with the provisions of Section 5.

5.3 General Termination. For the avoidance of doubt, the termination provisions set out in the General Terms shall apply to this Exhibit.

5.4 Additional provisions relating to Termination. Without limiting Section 5.3, the following additional provisions shall apply to termination of this Exhibit:

5.5 Sun may terminate this Exhibit immediately upon written notice, if Company fails to comply with any of the material terms and conditions hereof. Company may terminate this Exhibit upon written notice to Sun, and upon instructions from Sun, returning the Products.

5.6 Sun may terminate this Exhibit upon written notice in the event that Company is adjudicated bankrupt, files a voluntary petition in bankruptcy, makes an assignment for benefit of creditors or becomes unable to meet its obligations in the normal course of business as they fall due.

5.7 In the event of the direct or indirect taking over or assumption of control of Company or of substantially all of its assets by any government, governmental agency or other third party, Sun may terminate this Exhibit upon written notice to Company.

5.8 Upon the termination of this Exhibit or an attached Appendix for any reason, except purchase of the Products under Section 6, herein, Company shall immediately terminate use of the Products, and within five (5) business days, return the Products at Company's expense to Sun. If Company fails to return the Loaned products in the allotted time period, Company must pay the purchase price for the Loaned products, and Sun will invoice company for such payment.

### **6. OPTION TO PURCHASE**

6.1 Provided Company is not in default of this Agreement at any time prior to the expiration or earlier termination of this Agreement, Company, by submitting a Purchase Order to Sun, may elect to purchase the Loaned Equipment and a right to use license to the Loaned Software. If the Loaned Equipment and/or Loaned Software was new and unused at the time it was first delivered to Company, the purchase price shall be the lesser of the purchase price for such equipment as set out in Sun's published Price List in effect on the date the Loaned Equipment and/or Loaned Software was first delivered to Company or the current list price, less any discount that Company may otherwise be entitled to by virtue of any then existing agreement(s) with Sun.

6.2 The purchase shall be governed by Contract No. C07004 referenced above.

### **7. LIMITED WARRANTIES**

**UNLESS SPECIFIED IN THIS EXHIBIT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, ARE DISCLAIMED AND EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.**

**8. LIMITATION OF LIABILITY**

Section 7 of the General Terms shall apply, except that Section 7.2.2 (for purposes of this Exhibit only) is replaced by the following:

“Each party's maximum aggregate liability to the other for claims relating to this Exhibit, whether for breach of contract, breach of warranty, or in tort, including negligence, will be limited to the amount paid to Sun during the previous twelve (12) months for the Products or Service which is the subject matter of the claim, up to a maximum of U.S. \$2,000,000.”

**9. CONFIDENTIAL INFORMATION**

For purposes of this Exhibit the following is added to Section 2.1:

“A party receiving Confidential Information ("the Recipient") must keep it confidential using the same degree of care that it exercises with respect to its own information of like importance but in no event less than reasonable.”

**10. INTELLECTUAL PROPERTY CLAIMS**

For purposes of this Exhibit, Section 6 of the General Terms is hereby deleted.

**11. MISCELLANEOUS**

In the event that notice to either party is required under this Agreement:

If to Sun:

Sun Microsystems, Inc.  
4150 Network Circle  
Santa Clara, California 95054  
Attn.: Contract Management

If to Company:

The Company contact designated in:  
Contract C07004 and in the relevant Appendix A, if any

IN WITNESS WHEREOF, THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS EXHIBIT AS OF THE DATE SIGNED BY BOTH PARTIES.

**SUN MICROSYSTEMS, INC.**  
BY: *[Signature]*  
NAME: TOM LOCKMAN  
TITLE: REGION EXECUTIVE  
DATE: 6-15-09

**COMPANY**  
BY: *[Signature]*  
NAME: *[Signature]*  
TITLE: Vice Chancellor IT  
DATE: 6-9-09

**APPENDIX A  
TRY AND BUY EXHIBIT  
CONTACT NO. C070004**

This is an Appendix to the Try and Buy Exhibit of Contract No. C07004 (the "Exhibit"). This Appendix is governed by the terms of the Exhibit, which is hereby incorporated by reference.

Note to Customers: Read the Exhibit before signing this Appendix. In particular, note that pursuant to Section 5.8 of the Exhibit, upon the termination of this Appendix for any reason, except purchase of the products, you must return the products, at your expense, to Sun WITHIN FIVE (5) BUSINESS DAYS. If you fail to return the loaned products within that time period, you must pay Sun the purchase price for the loaned products.

**DESCRIPTION OF LOANED EQUIPMENT AND LOANED SOFTWARE**

**DESIGNATED SITE (Ship To):**

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

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**CUSTOMER CONTACT (Bill To):**

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**SERVICE CONTACT (if services are required):**

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

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**LOANED EQUIPMENT (state part number & description):**

**Per Quote Number** \_\_\_\_\_

**LOANED SOFTWARE:**

**TERM OF APPENDIX:** \_\_\_ Days from first delivery of Products

**APPENDIX EFFECTIVE DATE:** \_\_\_\_\_

**IN WITNESS WHEREOF, THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS APPENDIX A AS OF THE APPENDIX EFFECTIVE DATE.**

<b>SUN MICROSYSTEMS, INC.</b>		<b>CUSTOMER</b>	
<b>BY:</b> _____		<b>BY:</b> _____	
<b>NAME:</b> _____		<b>NAME:</b> _____	
<b>TITLE:</b> _____		<b>TITLE:</b> _____	
<b>DATE:</b> _____		<b>DATE:</b> _____	