

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

Number B27162

This Agreement is made and entered into by Fujitsu America Inc., 1250 E. Arques Avenue, Sunnyvale, CA 94085 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities.

RECITALS

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

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

INTENT AND PURPOSE

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

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

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage

(SANs, etc.) should not exceed \$300,000 each. Desktop per unit/configuration costs should not exceed \$100,000. Printers of all types and monitors per unit/configuration costs should not exceed \$50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

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

1. Definitions

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

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

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

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

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

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

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

described in section 471.59, subdivision 1.” Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the “State contract price.”

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

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

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

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

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

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

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

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

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

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

name(s) shall appear on the computer equipment. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

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

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

“NASPO” means the National Association of State Procurement Officials

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

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

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

“Peripherals” means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software,

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

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

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

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

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

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

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

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

“Purchase Order” means an electronic or paper document issued by the

Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Scope of Work

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

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

offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

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

4. Permissive Price Agreement and Quantity Guarantee

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

5. Order of Precedence

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

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

6. Payment Provisions

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

A. Acceptance

A Purchasing Entity shall reasonably determine whether all Products and services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following the delivery of non-acceptance of a product or service, failing which the Product or Service, as the case may be, shall be deemed accepted by the Purchasing Entity.

B. Payment of Invoice

1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments shall be made in accordance with the applicable laws of the Purchasing Entity.

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

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

C. Payment of Taxes

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

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

D. Invoices

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

7. Agreement Term

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

8. Termination

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

A. Termination for Convenience

At any time, the State may terminate this agreement, in whole or in part,

by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the WSCA/NASPO Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

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

C. A Purchasing Entity's Rights

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

D. The Contractor's Rights

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

9. Non-Appropriation

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

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any

further amounts under the relevant Purchase Order.

10. Shipment and Risk of Loss

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified "Ship to:" address when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

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

C. **Unless otherwise arranged between the Purchasing Entity and Contractor, all Products shall be shipped within 5 to 30 days after receipt of a purchase order, by a reliable and insured shipping company.**

11. Warranties

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance of all products furnished through this Agreement. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process, and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities, **per the terms of the warranty purchased with the product**. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:

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

6. The Product is in the legal possession of the Purchasing Entity, as defined in Article 10 Shipment and Risk of Loss, before any warranty period begins.
7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or the use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
 - a) Fujitsu LifeBook Family International Limited warranty
 - b) Warranty for Fujitsu Siemens Computers Products (Server and Storage)

B. Contractor may modify the warranties described in Exhibit A from time to time with the prior approval of the WSCA/NASPO Contract Administrator.

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

D. The basic warranty shall be three year, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule.

E. **HIGH RISK USES.** Contractor's products are designed, developed, and manufactured as contemplated for general use, including without limitation, general office use, commercial use, and ordinary industrial use. Contractor's products are not designed for use in circumstances that require extremely high-level safety precautions that may involve catastrophic property damage or that could lead directly to death or severe personal injury ("High Risk Uses") including, without limitation, uses in connection with control of nuclear reactions, aircraft and satellite flight and traffic control, mass transport control, medical treatment and life support systems, and aerospace and missile launch control in weapon systems. The State shall not use Contractor's products for High Risk Uses. Contractor disclaims liability for the use of Contractor's products in High Risk Use applications. Contractor expressly excludes High Risk Uses of Contractor's products from coverage under corresponding Contractor warranties, express and implied. Parties using or selling Contractor's products for use in High Risk Use applications do so at their own risk and agree to fully indemnify and hold harmless Contractor for any damages resulting from such improper use.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a

judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:

1. Give the Contractor prompt written notice of any claim;
 2. Allow the Contractor to control the defense or settlement of the claim; and
 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Provide a Purchasing Entity the right to continue using the Products or Services;
 2. Replace or modify the Products or Services so that it becomes non-infringing; or
 3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
 2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
 3. Product modifications by the Purchasing Entity or a third party;
 4. Product use prohibited by Specifications or related application notes; or
 5. Product use with products that are not the Contractor branded.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Standard Configuration price or Per Transaction Multiple Unit Discount. Only General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the

issuance of the General Price Reduction prices.

The initial, Cumulative, Per Transaction Multiple Unit and Standard Configuration Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. When the Cumulative Inception-to-Date Sales Volume ("ITD SV") for all Participating Entities of the Contractor reaches the agreed upon thresholds, the Contractor will apply the agreed upon discount listed to all prospective Orders placed by Participating Entities for that product series. ITD SV will be calculated within forty-five (45) days of the end of each calendar quarter. The agreed upon discounts will be applied to Order issued on or after the first day of the following calendar quarter.

14. Product and Service Schedule

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

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

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting

contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA/NASPO Contract Administrator.

B. Addition of units/configurations

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

16. Technical Support

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

17. Takeback and Other Environmental Programs

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

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

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

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

18. Product Delivery

Contractor agrees to deliver Products to Purchasing Entities **within thirty (30)** days after acceptance of a valid Purchase Order, pending parts availability, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

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

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

21. Independent Contractor

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

22. Use of Servicing Subcontractors

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

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

23. Payments to Subcontractors

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontract that takes civil action against the Contractor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action.

The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor or supplier. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

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

24. Indemnification, Hold Harmless and Limitation of Liability

The Contractor shall indemnify, protect, save and hold harmless the Lead State, Participating Entities, and its representatives and employees, from any and all claims, suits, actions, liabilities and costs of any kind, including all legal fees incurred by the State arising from the performance of the Contract by the Contractor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contractor may have with the State's or Participating Entities' failure to fulfill its obligations pursuant to the Contract. In the event of a claim, the Contractor shall have control of the defense and settlement of the claim; shall receive prompt notification of the claim from the State and reasonable assistance in the defense of the claim from the State. The State shall not incur costs or expenses for the Contractor's account without the Contractor's prior written consent.

The State agrees that the Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$5,000,000 or the fees paid for the applicable product or service directly related to the claim, whichever is greater. This limitation of liability does not apply to damages for personal injury or death, or to Contractor's obligation to indemnify, defend and hold the State harmless against intellectual property infringement or copyright claims under paragraph 12 of this Agreement. This indemnification does not include liabilities cause by the State's gross negligence, or intentional wrong doing of the State.

IN NO EVENT SHALL CONTRACTOR OR ITS SUPPLIERS OR THE STATE BE LIABLE IN ANY WAY FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS OR LOST PROFITS, OR LOSS OF OR DAMAGE TO RECORDS OR DATA WHETHER

FORESEEABLE OR NOT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF THIS AGREEMENT.

25. Amendments

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

26. Scope of Agreement

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

27. Severability

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

28. Enforcement of Agreement/Waivers

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

29. Web Site Maintenance

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids described in the RFP, and/or in accordance with instructions

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

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

30. Equal Opportunity Compliance

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

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

31. Governing Law

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

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in any Contractor key personnel, in writing, and in advance if possible. The State

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

33. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, **except as expressly provided in Paragraph 41, Survival, below**. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Data Practices

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

35. Organizational Conflicts of Interest

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest.

An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

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

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

36. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be new or serviceably used (tested to new specifications)

37. FCC Certification

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

38. Site Preparation

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

39. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Contract. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Contract due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this

Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Contract.

40. WSCA/NASPO Contract Administrator

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

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

41. Survival

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

42. Succession

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

43. Notification

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

To MMD:

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

To the Contractor:

Romaine Adams
Fujitsu America Incorporated
1250 E. Arques Avenue,
Sunnyvale, CA 94085

With Copy to:

Peter M. Lee
Manager, Contracts Administration
Fujitsu America Incorporated
41 Freeland Avenue-Suite 236
Totowa, New Jersey 07512
(973) 256-2573
(973) 256-0622 f
Email: PLee@us.fujitsu.com

44. Reporting and Fees

- A. Administration Reporting and Fees
1. The Contractor agrees to provide monthly utilization reports to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th of March; etc.). The report shall be in the format developed by the Lead State and

supplied to the Contractor.

2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor. Payment shall be made in accordance with the following schedule:

| <u>Period End</u> | <u>Fee Due</u> |
|-------------------|----------------|
| June 30 | July 31 |
| September 30 | October 31 |
| December 31 | January 31 |
| March 31 | April 30 |

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

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement.

The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.

2. Purchasing Entities will be encouraged to use the reporting format developed by the lead State for their reporting needs. However, the Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
 1. Nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure, of not less than 30 day from the date of receipt of written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
 1. Exercise any remedy provided by law or equity;
 2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 3. Impose liquidated damages, as mutually agreed upon by the parties as specified in an Amendment to a Participating Addendum;
 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.
 5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor.
- D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

46. Audits

A. Website Pricing Audit

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

Website pricing will be audited within three days of the 30th of each month using a random selection process.

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

B. Sales Audit

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

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

47. Extensions

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

48. Sovereign Immunity

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

49. Ownership

- A. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Contract and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Contract. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Contract without the prior written consent of the State.

- B. Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Contract, will be the property of the State and are, by the Contract, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Contract shall be considered "works for hire" as defined in the U.S. Copyright Act. **Nothing in the Agreement shall be construed as transferring any right, title or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.**

50. Prohibition Against Gratuities

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

51. Antitrust

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided by Contractor **in connection with this Agreement** resulting from actual damages suffered as a result of antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

52. Right to Publish

- A. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the WSCA/NASPO Contract

Administrator.

- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

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

54. Hazardous Substances

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

55. Customer Satisfaction/Complaint Resolution

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

56. Value Added Services

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

57. E-Rate Program

The Contractor's E-Rate identification number is 143029609; qualifying products are as follows: server, storage and networking products.

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

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

1. FUJITSU AMERICA, INC.

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

By: 

Title:

Date:

By:

Title:

Date:

2. MATERIALS MANAGEMENT DIVISION

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

By: 

Title: Acquisitions Supervisor

Date: 7/2/09

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: 
By Brenda Willard

Date:

JUL 02 2009

Original signed

Original signed

JUL 02 2009

By Brenda Willard

EXHIBIT A – ADDITIONAL WARRANTIES

Fujitsu LifeBook Family International Limited Warranty

International Limited Warranty Terms and Conditions

End-User Product International Limited Warranty

This end-user international limited warranty ("Warranty") is extended by Fujitsu America, Inc. to the original purchaser ("Purchaser") of the Fujitsu America, Inc. product ("Product") accompanied by this Warranty and is not transferable.

What is Covered

Fujitsu America, Inc. warrants the Product against defects in material or workmanship under normal use for the applicable warranty period listed below ("Warranty Period"), beginning from the date of original purchase by Purchaser. If the Product becomes defective during the Warranty Period, Fujitsu America, Inc. will, at its option and without charge, repair the Product with new or reconditioned components or parts, or replace the Product with a reconditioned product of the same or functionally equivalent model.

What This Warranty Does Not Cover

This Warranty does not cover and shall be void for defects or damages resulting from casualty, accident, transportation, misuse or abuse, neglect, alterations, service or repair by other than Fujitsu America, Inc. or its ASPs, improper installation, operation or maintenance, improper connections with peripherals, or other causes not arising out of defects in materials or workmanship. This Warranty does not cover Products used as short term rental equipment. Fujitsu America, Inc. and its Solution Providers are not responsible for damage to or loss of any programs, data, or removable storage media, whether it occurs during warranty or other repair service.

Preinstalled or Bundled Software

Fujitsu America, Inc. and its suppliers make no warranty or representation, either express, implied or statutory, with respect to software provided with the Product and licensed to Purchaser, its quality, performance, merchantability, or fitness for a particular purpose. Nor does Fujitsu America, Inc. warrant that the functions contained in the software will be uninterrupted or error free. The software is provided "AS IS", except if expressly warranted by the licensor in the applicable software license agreement, and is subject to the terms and conditions of the software license agreement contained in or accompanying the software. In no event will Fujitsu America, Inc., its ASPs, dealers, distributors or other resellers be liable for direct, indirect, special, incidental, or consequential damages resulting from any defect in the software or its documentation, even if advised of the possibility of such damages.

Data Storage Media

The only effective protection for data stored in a computer, such as on a hard drive, is the regular backing up of that data by you, the Purchaser. ASPs shall not be responsible for any software programs, data or other information stored or used on any media or part of any Product returned to Fujitsu America, Inc. or its ASPs for warranty service or other repair including the costs of recovering such programs or data. If during the warranty service or repair of the Product the contents of the hard drive or any other data storage media are altered, deleted, modified or lost, Fujitsu America, Inc. and its ASPs are not responsible. It is solely your responsibility as the Purchaser to back up any software programs, data, or information stored on any storage media or any part of a Product returned for warranty service or repair to Fujitsu America, Inc. or its ASPs.

Warranty Disclaimer and Limitations

THIS WARRANTY STATEMENT FOR THE PRODUCT AND THE SOFTWARE IS IN LIEU OF ALL CONDITIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING BUT NOT LIMITED TO ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ON THE PART OF

FUJITSU AMERICA INC., ITS SUPPLIERS OR ITS AUTHORIZED SOLUTIONS PROVIDERS. ALL IMPLIED OR STATUTORY WARRANTIES TO THE EXTENT THAT THEY CANNOT BE EXCLUDED ARE LIMITED TO THE EFFECTIVE PERIOD OF THE EXPRESS WARRANTY SET FORTH HEREIN. FUJITSU WARRANTS THAT THE HARDWARE PRODUCT, PURCHASED FROM FUJITSU AMERICA INC. OR FROM AN AUTHORIZED FUJITSU RESELLER BY THE ORIGINAL PURCHASER, IS FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP UNDER NORMAL USE. IF THE PRODUCT IS DEFECTIVE IN MATERIALS OR WORKMANSHIP, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE REPAIR OR REPLACEMENT AS PROVIDED ABOVE. HOWEVER IF THAT REMEDY FAILS OF ITS ESSENTIAL PURPOSE, FUJITSU AMERICA INC. RESERVES THE RIGHT TO REFUND THE PURCHASE PRICE OF THE PRODUCT TO THE PURCHASER IN EXCHANGE FOR THE RETURN OF THE PRODUCT. FUJITSU AMERICA INC., ITS SUPPLIERS AND ITS AUTHORIZED SOLUTION PROVIDERS SHALL NOT BE LIABLE FOR ANY DAMAGES INCLUDING, BUT NOT LIMITED TO, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF USE OR DATA, LOSS OF PROFITS OR INTERRUPTION OF BUSINESS, WHETHER SUCH ALLEGED DAMAGES ARE BASED IN WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY, BUT EXCLUDING PERSONAL INJURY), CONTRACT, OR INDEMNITY. EXCEPT TO THE EXTENT PROHIBITED BY LAW, THIS IS THE EXCLUSIVE WRITTEN LIMITED WARRANTY OF THE ORIGINAL PURCHASER. FUJITSU AMERICA INC. WARRANTY PROGRAM IS VALID ONLY FOR PRODUCT(S) PURCHASED IN NORTH, CENTRAL AND SOUTH AMERICA.

State Law Rights

SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SUCH LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

Options and Limitations

Service Programs

Every Fujitsu America Inc. notebook or Tablet PC computer is covered by a limited warranty designed to meet user-specific service & support. For added convenience and investment protection the following programs are available:

Service Program Options

Definitions:

Service Plans

In the first 30 days after your purchase you have the option to extend your International Limited Warranty up to a coverage period for three (3) years from the date of purchase.

Screen Protection Plan¹

The screen is covered under the International Limited Warranty against any defects in materials and workmanship. However, if the computer screen is accidentally cracked or marred, it must be replaced at the customers' expense. Screens are not repairable and must be replaced. The replacement costs can approach the total cost of the unit. Customers may purchase additional coverage under the Screen Protection Plan, which allows the customer to have damaged screens replaced twice during a one-year period. Screen protection is available in the U.S. and Canada.

Executive Mobile Service^{6,7}

Designed specifically for the on-the-go mobile professional or those needing an extra measure of coverage, our Executive Mobile Service is an available upgrade providing on-location International Limited Warranty service within the continental United States. After a telephone

call to determine if a dispatch is necessary, a trained technician will be sent directly to your location, providing added convenience, increased system availability and quick repair.

⁶ Purchase of Screen Protection or Executive Mobile Plan requires the purchase of an extended service plan. (Only applicable to notebooks or Tablet PCs that come with a one-year Standard Limited Warranty).

⁷ An adult 18 years or older must be present during service. A telephone diagnostics session is required to determine if an on-site dispatch is necessary. If an on-site dispatch is not necessary, as determined by Fujitsu America Inc., or deemed not suited to return a unit located in the field to proper working condition, the unit must be returned to Fujitsu America Inc. Central Repair Depot for diagnostics and service. Fujitsu America Inc. will pay the freight charges both ways for an Executive Mobile customer under these circumstances. Local Business hours are Monday through Friday only, holidays excluded.

Fujitsu America Inc. Extended Service prices and policies are subject to change without notice.

Warranty for Fujitsu Siemens Computers Products

Thank you for purchasing this quality product from Fujitsu Siemens Computers. Our products are developed to meet high standards in both quality and technology. To further ensure quality, we grant you, the final customer, a warranty on our products in accordance with the following conditions. You are entitled to make use of this warranty in the case of defects in materials or workmanship in the product you have purchased.

The exact type of warranty and its term of validity for your Fujitsu Siemens Computers product are specified in the Warranty Overview, included with your product. If you have purchased your device in one of the countries not listed in the warranty overview, the type and term of the warranty are indicated in the invoice or delivery slip prepared at the time of the initial purchase of the product by the final customer. Keep this documents in a safe place.

The warranty provided is based on a voluntary obligation of Fujitsu Siemens Computers as the manufacturer to the initial purchasers of new devices. The warranty does not apply to devices brought into circulation as used devices by Fujitsu Siemens Computers. In addition, as the final customer you may have a right to legal claims not restricted by these warranty conditions. Other claims or claims in addition to those described here can not be asserted from the warranty. Independent of this, other, separate warranties of the sales partners of Fujitsu Siemens Computers or other third parties may exist which can be brought forward exclusively against these. It is possible to purchase Service Top Up services from Fujitsu Siemens Computers sales partners at additional cost to extend the scope and term of the warranty. More information on this topic is provided at the end of these warranty conditions.

Warranty conditions

The warranty begins on the day of initial purchase of the product by a final customer from the dealer (date of purchase of the original purchase receipt or date of the original delivery note). Please note that warranty claims can only be asserted by presenting the original purchase receipt or the original delivery note. Therefore, always keep your purchase receipt or your delivery note together with the warranty documents.

The receipt/note has to state the product name and the product identification number.

Warranty claims must be asserted immediately following the discovery of the fault to the sales or service partner, or to the Fujitsu Siemens Computers help desk.

A list of Help Desk telephone numbers is included with your product. A current list is also provided on the internet at www.fujitsu-siemens.com/helpdesk.

Scope and Performance of Warranty Services

Unless regulated in some other manner, the warranty covers all material and labour defects which occur in the respective warranty period. The type and term of the warranty specified for your product in the **Warranty Overview** is described in detail in the following. If you have purchased your device in a country not listed in the warranty overview, please see the original invoice or the original delivery slip for the applicable warranty type and term.

Defects that are caused by improper use are excluded from the warranty. Proper operation is understood to be operation of the product under the conditions described in the operating manual or documentation of the product. The warranty is limited to the manufacture of the hardware features and the condition of the original product prior to the defect. For this it is sufficient when the affected product fulfils the test requirements in accordance with the Fujitsu Siemens Computers specifications for the original product in accordance with the product data sheet. The warranty of Fujitsu Siemens Computers does not include the restoration of customer data or software.

Within the warranties named above and described in detail below, the warranty shall be carried out by repair or exchange at the discretion of Fujitsu Siemens Computers. Defective parts shall be replaced with new or as good as new parts where there are material and/or processing faults. If necessary, the entire product shall be exchanged with an identical or functionally identical product. The value of the warranty service is always limited to the value of the defective product.

The defective parts removed from a product as part of a warranty case shall become the property of Fujitsu Siemens Computers and shall be retained for by the End Customer for Fujitsu Siemens Computers, if necessary. If these parts cannot be returned to Fujitsu Siemens Computers upon request, Fujitsu Siemens Computers is entitled to charge for a corresponding amount.

For genuine Fujitsu Siemens Computers parts used in warranty cases, only the remaining warranty period of the repair device applies, should these parts be installed in a Fujitsu Siemens Computers product.

For data storage media, only the limited scope described separately in these warranty conditions shall apply, regardless of the warranty scope of the system.

Warranty services shall be provided by Fujitsu Siemens Computers or authorised service partners during the working hours specified locally on site. The working hours may differ depending on national or regional customs.

In every case, Fujitsu Siemens Computers is free to resolve the defect by returning to you a replacement part or a component and you undertake the exchange, installation or connection yourself using the instructions made available by Fujitsu Siemens Computers. This pre-supposes that the part or component concerned is suitable for such an exchange. Provided that nothing else is formally decided, FSC can at any time require the return of the defective or exchanged part or the replaced component.

Description of the kinds of warranty



Replacement parts warranty

Following consultation with the help desk, the customer shall bring the defective device to a qualified service point (service partner or repair centre) specified by Fujitsu Siemens Computers. In a warranty case Fujitsu Siemens Computers shall assume the costs for eliminating the fault and for the required materials/parts. The costs for the resulting labour time and the costs and risk of transport to and from the qualified service point (service partner or repair centre) shall be borne by the customer.



Bring-in warranty

Following consultation with the help desk, the customer shall bring the defective device to a qualified service point (service partner or repair centre) specified by Fujitsu Siemens Computers. In a warranty case, Fujitsu Siemens Computers shall assume the costs for the resulting labour and the required materials or replacement parts.

The costs and risk of the transport to and from the service point (service partner or repair centre) shall be borne by the customer.

Limited Bring-In-Warranty on Components

The warranty scope may differ from that of the product with which the component was purchased for the following components. Please see the respective included warranty document or the original invoice or original delivery note for any existing restrictions to the warranty period for the following components.

Component

- External keyboard
- Notebook keyboard/touchpad
- Mouse
- Accumulators, batteries
- External loudspeakers, microphone, headphones
- APC UPS

Please note that a separate warranty of another manufacturer may exist for components.

Should you have questions, please contact a Help Desk (see enclosed Help Desk list or go to the website at www.fujitsu-siemens.com/helphdesk).

Return-to-Base-Warranty (Send-In-Warranty)



The customer reports a defective device to the help desk over the telephone. If the help desk cannot solve a problem over the telephone, the customer will be informed of which Fujitsu Siemens Computers service partner he or she will be able to send the device to. For this, the customer is responsible for the despatch and insurance of the product. The transport and insurance costs shall be borne by the customer. Fujitsu Siemens Computers shall assume the costs for the materials / spare parts and the labour costs as required, as well as the return postage to the sender or to any other address within the country in which the service partner authorised by Fujitsu Siemens Computers is located.



Collect & Return warranty

The customer reports a defective device to the help desk over the telephone. Should the help desk be unable to solve the problem over the phone, the device shall be collected from the customer and brought to a repair centre for repairs. Following repairs the device shall be returned to the customer. In a warranty case, Fujitsu Siemens Computers shall bear the costs for collection, the required materials and/or spare parts and the resulting labour charges, as well as the costs for return transport of the device to the customer.



Warranty with on-site service

The customer reports a defective device to the help desk over the telephone. If the malfunction cannot be repaired by the help desk over the phone, a Fujitsu Siemens service partner shall repair the fault at the location of the customer.

The condition for this on-site service is that the customers premises are located within a distance of 50 km or one hour travelling time from a Fujitsu Siemens Computers service partner or Fujitsu Siemens Computers repair centre. If longer distances must be travelled, Fujitsu Siemens Computers reserves the right to charge separately for any additional costs resulting for travelling and travelling time in agreement with the customer, or to repair the device after being sent in by the customer to a central Fujitsu Siemens Computers repair centre. The latter also applies should repairs not be possible on site.

For questions concerning the service zone, please contact our help desk. A list of Help Desk telephone numbers is included with your product. A current list is also provided on the Internet at www.fujitsu-siemens.com/helpdesk. In a warranty case, Fujitsu Siemens Computers shall bear the resulting labours costs and costs for travelling time within a radius of 50 km for any transport necessary and for the required materials or spare parts. If the warranty with on-site service also provides for a certain reaction time, then the service partner generally arrives at the customer's location within this time. The reaction time begins with the working day following the day on which the customer has successfully reported its defective device to the help desk.

Limited Warranty on Data Storage Media

The warranty on data storage media products is limited. During a period of six months after the purchase, Fujitsu Siemens Computers will replace any data carrier that turns out to be physically defective upon delivery if it was supplied with the product by Fujitsu Siemens Computers. Software itself is not the object of the warranty.

Proceeding in a warranty case

The following information is an explanation of what you must do in the case of a warranty claim.

Should, contrary to expectation, your Fujitsu Siemens Computers product be defective, please contact the Fujitsu Siemens Computers Help Desk first. There our employees will help diagnose defects and malfunctions. They are often capable of eliminating the malfunction over the phone.

A list of Help Desk telephone numbers is included with your product. A current list is also provided on the Internet at www.fujitsu-siemens.com/helpdesk. Please always have the following information ready before calling the Help Desk:

- Your name, address, post code and a telephone number at which you can be reached
- the model designation, the article code and the serial number of the product
- the date and place of purchase
- a brief description of the problem.

In case of a warranty claim, please always have the original CDs supplied at the time of purchase, with which the factory preinstalled original configuration can be restored.

The help desk will co-ordinate the further procedure with you.

We would like to take this opportunity to point out that we save data provided by you in a warranty case for quality assurance purposes. These data will be used when processing the warranty case for checking the performance of our service personnel and our authorised service partners. This is done to ensure a high standard of service quality at our service partners within the Fujitsu Siemens Computers Group and their subsidiaries and parent companies. For this purpose the data may also be transmitted to qualified third parties authorised accordingly.

If in individual cases you do not want your personal data to be stored, used and/or transmitted as part of the specified quality assurance measures beyond the direct processing of the warranty, you can notify us of this fact by phone via our Help Desk.

A regular data backup is always recommended when using any computer hardware or software. A data backup is always advisable prior to service activities, as it cannot always be ensured that no data will be lost during service. Please note that you, as the user of the device, bear the sole responsibility for a complete data backup including application and operating system software. Fujitsu Siemens Computers is expressly relieved of any and all liability for the loss of data and information occurring in the course of providing warranty services.

Warranty exclusions

The following points are not covered by the warranty:

- minor defects or deviations from the product specifications, that are immaterial or negligible as regards to the value or the functioning of the product
- providing and installing upgrades/updates of BIOS, drivers or software
- resetting security functions, deleting passwords, etc.
- backup or restoring customer-specific data or software
- reinstalling non executable software/operating systems (e.g. deleting system relevant files, faulty system settings or self reproducing computer programs such as computer viruses)
- the uninterrupted or fault free functioning of integrated installed or supplied software, nor the quality, performance, merchantability or fitness of such software or any accompanying documentation for any particular purpose, even if it was delivered with a Fujitsu Siemens Computers product.
- signs of wear on data carriers, backlights, picture tubes of plasma screens/CRT monitors (screen burn or loss of brightness)
- replacing consumed batteries
- parts and components subject to consumption (e.g. printer cartridges)
- reduced capacity of accumulators
- defective pixel in notebook displays and LCD screens within ISO 13406-2 / class II

Neither does the warranty cover diagnosis and the remedying of defects caused:

- through improper use or improper maintenance of the device by the customer or third parties (e.g. LCD breakage, mechanical or casing damages, defective cables or plugs); improper actions include operations that are not compatible with the instructions contained in the product manual
- by force majeure (lightning, floods, war, etc.)
- by dirt or contamination (mouse, magnetic tape drive, etc.)
- by extraordinary environmental influences (excess voltage, magnetic fields, etc.) or
- by other circumstances of which Fujitsu Siemens Computers is not responsible.

Warranty claims expire upon:

- equipment or use of Fujitsu Siemens Computers products with spare parts, components and/or peripherals not certified for the respective use by Fujitsu Siemens Computers,
- if services/repairs or other modifications to the product have been carried out by persons not authorised by Fujitsu Siemens Computers,

unless the customer proves that any defects occurring thereafter were neither caused by nor arose as a consequence of such events.

Limitation of Liability

Any claims of the party entitled to the warranty not expressly named in these warranty conditions are excluded, in as much as no mandatory legal obligation or liability exists for Fujitsu Siemens Computers according to the applicable laws of the respective country. This is also true with regard to claims to the replacement of subsequent damage, lost profits, data or information loss or damage as the result of an interruption in operation.

Valid law

The warranty is subject to the applicable laws of the country in which the product was initially purchased by the final customer from the dealer, and must be interpreted in agreement with these laws. The agreement on contracts for the international sale of merchandise shall not be applied.

Further services

In this context we would also like to call your attention to our offer of Top Up Services, with which you can purchase an extension of the customer services for your Fujitsu Siemens Computers products in accordance with your personal needs. For details, contact our Fujitsu Siemens Computers Help Desk or a Fujitsu Siemens Computers sales partner.

Fujitsu Siemens Computers Top Up Services will be provided to you in accordance with the terms and conditions as they are set out in this document; further conditions might be added.

Fujitsu Siemens Computers Top Up Services terms and conditions will be given to you upon purchase of Top Up Services, or they are available at your local Fujitsu Siemens Computers sales partner.

EXHIBIT B – COMPLAINT RESOLUTION

Service Escalation Procedures

The Fujitsu Computer Systems Global Support Center (GSC) staffed 24 x 7 x 365 is virtually connected via a sophisticated phone system to all FCS support tools and infrastructure. Integrated tools and tracking systems utilized by FCS provide a single, support center network where all calls are logged.

Fujitsu's Global Support Center (GSC) provides initial call determination to ascertain specific customer problem type, equipment type, and problem severity. After call screening and logging, the GSC immediately forward calls to the appropriate level of service. Known hardware failure problems, defined by the customer, will receive immediate escalation for parts repair or replacement.

If the GSC determines that a hardware problem exists or if other problems require on-site service, FCS dispatches a technician. The technician will arrive on-site within the contracted service level agreement response time.

A key element of the entire Enterprise technical and management escalation process is the Customer Care Duty Manager (CCM). The CCM proactively monitors and tracks escalations to ensure adherence to the escalation process. The customer can contact the on call CCM any time by calling 1-800-962-8709. They are available to obtain status, provide feedback, and/or escalate the problem from a technical or management perspective.

Time-based commitment (TBC) alerts are also in place that will automatically invoke problem analysis and escalation procedures that will involve GSC technical support as well as site team technical support. Based on the problem analysis, and necessary fix activity, the escalation procedure automatically entails the escalation of the problem through the GSC Technical Support Management Team and the site Field Support Management team.

PROBLEM SEVERITY DEFINITIONS

| | |
|------------|--|
| Severity 1 | A critical system component is non-operational and the customer cannot continue to operate. A problem that severely impacts the customer's operation and the customer is willing to commit the system and resources to fix the Problem. |
| Severity 2 | The system, network or critical application has a problem but is able to operate in a degraded fashion. The system, network or critical application has an intermittent problem that has a high negative impact on customer operations. |
| Severity 3 | A non-critical problem, one which does not keep the customer from running his critical applications. This could also be an information request or a documentation question. Response can be deferred to a mutually agreeable time. |

Fujitsu has an established global service account management structure. Fujitsu operates a Global Service Office that spans all "theaters" - AMERICAS, APAC and EMEA. Each of these regions has an established service management structure defined and generally available 24 x 7. This office is responsible and accountable for global support of global customers of the Fujitsu group.

Fujitsu appreciates the investment our customers make in their IT infrastructure. To that end, Fujitsu has established relationships with key service providers across all industry segments that are capable of delivering the level of service required by customers in today's global environment. Fujitsu enjoys a 30+ year reputation as one of the industry's leading service delivery providers.

Customer Service, Billing, Product and Compliance Issues

Addressing external customer issues is of highest priority.

A corrective action plan should address the root cause of a problem and ensure that there is no reoccurrence.

For a customer issue, the department manager documents a corrective action plan and a target close date in the appropriate reporting system. In addition, in the case of external customers, the manager communicates the plan and target end date. Any external customer issue that may affect future business should be escalated to next level management and marketing.

For an audit finding, the plan and plan end date is submitted to the Quality Office by the department manager within 30 days of receiving the audit report. The Quality Office updates the audit finding in the Quality database. In addition, in the case of external audits, the Quality Office will send the plan and plan end date to the BSI auditor for approval.

Implement Corrective Action Plan

Having identified the root cause of the issue or audit finding, the corrective action is then implemented within the target close date.

All activity and follow up activity (customer communications, etc.) is documented in the appropriate database.

Validate Implementation

Customer concurrence with the resolution must be obtained prior to closing a customer issue.

Notify the Auditor/Quality Office when the audit finding has been resolved. The Quality Office will close the audit finding upon Auditor/Quality Office verification and concurrence with the resolution.

If the requester does not agree with the corrective action plan, then:

- the issue is escalated to next level management by the internal requester
- all issues must be escalated to next level management by the department manager if the requester is an external customer.

EXHIBIT C – VALUE-ADDED SERVICES

Fujitsu Hardware and Software Bundling Services
Fujitsu Software Image Management Service
PRIMERGY Rack Server QuickStart Services
ETERNUS SAN Architecture Service
ETERNUS Advanced Copy Installation Service
Fujitsu ETERNUS Storage Systems Assessment Service
Fujitsu ETERNUS Storage Systems Design Service
ETERNUS Storage QuickStart Services
Multi-Vendor Enterprise Services
Data Backup Design and Implementation
Data Center Relocation - Physical Relocation
Data Center Relocation - Project Management
Data Center Relocation - Solution Development
User Data Migration
Application Management
Business Intelligence
Business Process Outsourcing
Customer Relationship Management
Enterprise Change Management
Enterprise Compliance Management
Enterprise Content Management
Enterprise Resource Planning
Enterprise Risk Management
Hosting and Security
IT Development
IT Lifecycle Management
IT Portfolio Management
Legacy Services
Microsoft .NET
Offshore Outsourcing
Open Systems J2EE
Oracle Services
Portal Application Integration
Program Management
Quality Assurance & Testing
SAP Services
Service-Oriented Architecture
Software-as-a-Service
Supply Chain Management
Training
Application Development and Integration
Business Simplification
Call Center Services
Enterprise Packaged Applications
Information Simplification
IT Simplification
Managed Services
Microsoft-Enabled Applications

Fujitsu Leasing Information

Individual Purchasing Entities may enter in to lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. Sample lease documents can be found at <http://store.shopfujitsu.com/fpcbp/WSCA>.