

Sycamore Networks, Inc.

Terms and Conditions

This Sales Agreement ("Agreement") is in effect as of the Effective Date between Sycamore Networks, Inc. ("Sycamore" or "Seller") and Buyer of Seattle ("Buyer of Seattle" or "Buyer").

1. **Sales Agreement.** The Buyer agrees to buy, and the Seller agrees to sell, assign, and transfer all of its right, title, and interest in Data and Telecommunications equipment and to license software to the Buyer: (the "Products").

2. **Payment.**

a. Domestic Buyer shall pay to Seller any and all amounts due for the purchase of Products within thirty (30) days of shipment. Invoices paid later than due date shall be assessed a 1% per month late charge, with calculation commencing at due date. Buyer agrees to pay Seller's reasonable attorneys' fees and expenses and other costs in connection with recovering the payment of any amounts due under this Agreement.

b. International Buyer shall pay via a Letter of Credit or by wire transfer to Sycamore, Inc. bank account. In the event any payment is not made when due, Sycamore may defer future shipment of Products under this Agreement until such sums are paid in full.

3. **Purchase Orders.**

a. Buyer shall purchase Products covered by this Agreement on Buyers standard non-cancelable purchase order form, or by telephone or facsimile followed by standard purchase order form confirming the order. The terms and conditions of this entire Agreement replace and supersede (i) the terms and conditions preprinted on the Buyer's standard purchase order form, and (ii) any terms and conditions preprinted on Seller's acknowledgement or invoice forms.

b. Purchase orders shall contain the following minimum information:

- i. Products being purchased;
- ii. Quantity requested;
- iii. Unit price and purchase order total price;

- iv. Shipping instructions, including carrier, ship to and bill to addresses and requested ship dates;
- c. All purchase orders are subject to acceptance by Seller.
- d. The terms and conditions defined in this Agreement shall apply to all orders as of the Effective Date of this Agreement including, the current purchase order that Sycamore has from {Customer Name} {Customer PO number}.

4. Shipment.

- a. Shipping Terms - Shipment shall be F.O.B. origin. Seller shall select the mode of transportation at its discretion unless otherwise instructed in writing by the Buyer pursuant to Section 3 herein. Buyer shall pay all shipping and transportation charges directly to the carrier or freight forwarder, or to the Seller as invoiced.
- b. Title – Title shall pass upon shipment of the Product.
- c. Risk of Loss – Upon shipment, the risk of loss from any casualty to the Products, regardless of the cause, will be the responsibility of the Buyer.

- 5. **License of Software Products and Firmware.** Subject to the provisions of this section, Seller grants to Buyer a nonexclusive, nontransferable license to use the object code form of the software Products purchased by Buyer hereunder solely for Buyer's internal business purposes (including, without limitation, in conjunction with Buyer's provision of services to its end-user customers) on or in conjunction with the hardware Product with which it was originally delivered, such license to be subject to Buyer's timely payment in full of the purchase price for such software and related hardware Products in accordance with this Agreement.

Subject only to the licenses specifically granted herein, Seller is the sole owner of all rights, title and interest, including all copyrights, patents, trademarks, industrial designs, trade names, trade secrets and other intellectual property rights in the software Products. The software Products are copyrighted and Buyer is only authorized to reproduce one copy of the software Products solely for back-up purposes. Buyer is hereby prohibited from otherwise copying or translating, modifying or adapting the software Products or,

incorporating in whole or any part in any other product or creating derivative works based on all or any part of the Products. Buyer is not authorized to license others to reproduce any copies of the software Products, except as expressly provided in this Agreement. Buyer agrees to ensure that all copyright, trademark and other proprietary notices of Seller affixed to or displayed on the software Products will not be removed or modified. Buyer shall not decompile, disassemble or reverse engineer, the licensed software or any component thereof, except as may be permitted by applicable law, in which case Buyer must notify Seller in writing and Seller may provide review and assistance.

The rights and licenses granted to Buyer with respect to any software Product furnished by Seller may not be sold, licensed, sublicensed, rented, assigned or otherwise transferred to another party without the prior written consent of Seller.

Upon the effective date of a termination of this Agreement by Seller for Buyer's breach, the license granted to Buyer under this Agreement shall terminate and Buyer shall immediately discontinue use of the software and all copies and documentation thereof, purge all software from its systems and return all such copies and documentation to Seller.

U.S. Government Restricted Rights. Notice - Distribution and use of products including computer programs and any related documentation and derivative works thereof, to and by the U.S. Government, are subject to the Restricted Rights provisions of FAR 52.227-19, paragraph (c)(2) as applicable, except for purchases by agencies of the Department of Defense (DOD). If the software is acquired under the terms of a Department of Defense or civilian agency contract, the software is a "commercial item" as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) of the DoD FAR Supplement and its successors. All U.S. Government end users acquire the software with only those rights set forth in this Agreement. Manufacturer is Sycamore Networks, Inc., 220 Mill Road, Chelmsford, MA 01824.

Unpublished - rights reserved under the copyright laws of the United States.

6. **Limited Warranty.** The Seller offers a limited warranty on the Products. See Sycamore Networks Support, Warranty and Repair & Return Policy for Network Access Products (www.sycamorenet.com) DOC-001-00006 in Exhibit B for details.
7. **All sales are final and refunds will not be granted.**
8. **Exclusion of Warranties and Limitation of Liability**

EXCEPT AS STATED ABOVE, SELLER MAKES NO OTHER WARRANTIES. SELLER HEREBY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION CAUSED BY, PERTAINING TO OR ARISING OUT OF ANY DEFECTIVE PRODUCT, HARD WARE, SOFTWARE OR SERVICE IS LIMITED TO REPAIR OR REPLACEMENT, AT SELLER'S OPTION, OF THE PRODUCT DURING THE APPLICABLE WARRANTY PERIOD.

IN NO EVENT SHALL SELLER BE LIABLE TO ANY PERSON, FIRM, PARTY OR ENTITY (INCLUDING BUT NOT LIMITED TO BUYER OR ITS SUCCESSORS, PERMITTED ASSIGNS OR SUBROGEEES) FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT OR SPECIAL DAMAGES OR LIABILITIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, LOSS OF PROFITS, LOSS OF USE, LOSS OF OPPORTUNITIES OR LOSS OF DATA, WHETHER CAUSED BY BREACH OF CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE OR WHETHER ARISING FROM THE PRODUCTS, HARDWARE, SOFTWARE OR SERVICES OR THE USE, SALE, PURCHASE, LICENSING, INSTALLATION, PERFORMANCE, FAILURE OR INTERRUPTION OF THE PRODUCTS, HARDWARE, SOFTWARE OR SERVICES OR OTHERWISE. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF SELLER WAS

NOTIFIED OF THE POSSIBILITY, LIKELIHOOD OR CERTAINTY THAT SUCH DAMAGES, LOSSES, LIABILITIES OR THE LIKE WOULD BE INCURRED. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE NET PURCHASE PRICE OR LICENSE FEE PAID BY BUYER FOR THE AFFECTED PRODUCT, HARDWARE, SOFTWARE OR SERVICE CAUSING THE DAMAGE, LOSS OR LIABILITY. IF THE PERTINENT JURISDICTION DOES NOT ALLOW SUCH LIMITATIONS AS WRITTEN, THEN THE MAXIMUM PERMISSIBLE LIMITATIONS SHALL APPLY.

Seller shall not be liable for any loss, damage, expense or charge of any kind resulting from any failure or delay in shipment, delivery, or installation from any cause beyond Seller's control, including, but not limited to, provisions of law or governmental regulations; accident, explosion, fire windstorm, flood or other casualty; strike, lockout, or other labor difficulty; riot, war insurrection; shortage or inability to secure labor or other services, raw materials, production or transportation facilities; or for delays or failures by any third parties. All shipping dates provided at any time by Seller are approximate and Seller shall not be liable in any way for failure to ship in accordance with any shipping date furnished by Seller

9. **Intellectual Property Rights.** Except as described in this Agreement, Seller does not grant and Buyer acknowledges that it shall have no right, license or interest in any of the patents, copyrights, trademarks, or trade secrets owned, used or claimed by Seller. All applicable rights to such patents, copyrights, trademarks, and trade secrets are and will remain the exclusive property of Seller. Subject to the rights expressly granted to Buyer by this Agreement, title to and ownership of the intellectual property rights contained in the Products or any part of the Products and Seller's Confidential Information shall remain Seller's property.

10. **Changes/Availability of Products.** Seller shall promptly inform Buyer as soon as is reasonably practicable after Seller schedules discontinuance of production or modification of any Product. Seller, in its sole discretion, may discontinue production or modify any Product at any time. Seller agrees to

offer support services for any discontinued hardware product and the most recent release of software for such Product for a period of five (5) years from the last date of the last shipment of the discontinued product to Seller. Seller also agrees to offer a one-time buy of field replacement units ("FRUs") for any discontinued product for a period of ninety (90) days following the announcement of any discontinuance.

At any time prior to shipment, Seller may make changes in the Products in whole or in part to be supplied to the Buyer hereunder to include electrical or mechanical design refinements that Seller deems appropriate, or as required by law or concerns of safety, without obligation to modify or change any Product previously delivered or to supply Products in accordance with earlier specifications.

11. **Patent and Copyright Indemnification.** Subject to the limitations this section below, Seller agrees (a) to assume the defense of Buyer against all claims brought by a third party and all judicial or governmental actions that the Products as delivered by Seller under this Agreement infringe or misappropriate any U.S. patent rights, copyrights, trade secrets, or trademarks of such third party, and (b) to indemnify and hold Buyer harmless from and against all final awards of damages in favor of a third party based upon claims and judicial or governmental determinations that the Products as delivered by Seller under this Agreement infringe or misappropriate any U.S. patent rights, copyrights, trade secrets, or trademarks of such third party. Seller's obligation hereunder is predicated upon Buyer's prompt notification to Seller of any actual or threatened claim, Buyer's full cooperation, at Seller's expense, in the defense thereof and the granting to Seller of the sole control over the defense or settlement of the claim.

In the event that the use or sale of all or any portion of the Products is enjoined, or, in Seller's judgment, may be enjoined, as a result of a suit based on alleged infringement or misappropriation of the third party intellectual property rights, Seller agrees to either: (a) procure for Buyer the right to continue to use the Product, or (b) replace or modify the infringing or misappropriating Product so that it becomes non-infringing. In the event that the foregoing alternatives cannot be reasonably accomplished by Seller, Seller

shall direct Buyer to return the Product to Seller and upon receipt of the Product(s), Seller shall reimburse Buyer for the price originally paid by Buyer less depreciation of the Product calculated on a straight-line basis over a five (5) year period. Upon Seller's fulfillment of the alternatives set out in this section, Seller shall be relieved of any further obligation or liability to Buyer as a result of any such infringement or misappropriation.

Regardless of any other provisions of this Agreement, this section shall not apply (a) to any designs, specifications or modifications originating with or requested by Buyer, or (b) to the combination of any Product with other equipment, software or products not supplied by Seller if such infringement or misappropriation would not have occurred but for such combination, or (c) Buyer's failure to install an update provided at no additional charge, where the update would have avoided the infringement claim.

THIS SECTION STATES SELLER'S ENTIRE LIABILITY TO BUYER AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY PATENT RIGHTS, COPYRIGHTS, TRADE SECRETS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS.

12. **Confidentiality.** For purposes of this Agreement, "Confidential Information" shall mean all information (a) identified in written or oral format by the disclosing party as confidential, trade secret or proprietary information and, if disclosed orally, summarized in written format within ten (10) days of disclosure, or (b) that in any event the receiving party should reasonably be expected to judge as confidential, trade secret or proprietary.

Notwithstanding the foregoing, "Confidential Information" shall not include any information which the receiving party can show: (a) is now or subsequently becomes legally and publicly available without breach of this Agreement by the receiving party, (b) was rightfully in the possession of the receiving party without any obligation of confidentiality prior to receiving it from the disclosing party, (c) was rightfully obtained by the receiving party from a source other than the disclosing party without any obligation of confidentiality, (d) was developed by or for the receiving party independently

and without reference to any Confidential Information and such independent development can be shown by documentary evidence, or (e) is disclosed pursuant to an order of a court or governmental agency as so required by such order, provided that the receiving party shall first notify the disclosing party of such order and afford the disclosing party the opportunity to seek a protective order relating to such disclosure.

Both Parties agree not to use such Confidential Information except in their performance under this Agreement. In addition, each party shall treat and protect such information in the same manner as it treats its own information of like character, but with not less than reasonable care. Both parties agree to take appropriate measures by instruction and written agreement prior to disclosure of Confidential Information to their employees to prevent unauthorized use or disclosure. The obligations of this section with regard to Confidential Information shall continue for a period of three (3) years after termination or expiration of this Agreement, except that the period with respect to any Confidential Information identified as a trade secret shall be perpetual. Confidential Information must be returned by the receiving party upon termination or expiration of this Agreement.

In the event of a breach of any of the foregoing provisions, both parties agree that the harm suffered by the disclosing party would not be compensable by monetary damages alone and, accordingly, that the disclosing party shall, in addition to other available legal or equitable remedies, be entitled to seek an injunction against such breach.

No public announcement or other disclosure concerning the existence or terms of this Agreement shall be made by either party without first obtaining the written approval of the other party and agreement upon the nature and text of such announcement, such approval and agreement not to be unreasonably withheld. This section shall not apply to (a) any disclosure to a third party which a party determines is reasonably necessary in connection with any financing, strategic transaction, acquisition or disposition involving such party, provided that the third party signs a non-disclosure agreement with terms and conditions substantially similar to this section, or (b) any disclosure which a party reasonably determines is required by applicable law, regulation, regulatory

authority, legal process or the rules of any stock market on which the securities of such party are listed or quoted for trading.

13. **Termination.** Either party may terminate this Agreement at any time, without cause, upon thirty (30) days' prior written notice to the other party.

This Agreement may be terminated for cause by either party in the event that the other party: (a) shall become insolvent; (b) commits an act of bankruptcy; (c) seeks an arrangement or compromise with its creditors under any statute or otherwise; (d) is subject to a proceeding in bankruptcy, receivership, liquidation or insolvency and same is not dismissed within thirty (30) days; (e) makes an assignment for the benefit of the creditors; (f) admits in writing its inability to pay its debts as they mature; or (g) ceases to function as a going concern or to conduct its operations in the normal course of business.

If Buyer defaults under this Agreement, and does not cure such default within thirty (30) days of receipt of Seller's written notice, Seller shall have the right to take any or all of the following actions: (a) declare this Agreement to be in default and all amounts payable under this Agreement shall become immediately due and payable; (b) suspend delivery to Buyer and/or performance of services until the default is cured by Buyer; (c) proceed by court action to enforce performance and/or recover damages; and/or (d) terminate this Agreement. If Seller continues to make shipments after Buyer's default, Seller's action shall not constitute a waiver of any rights or remedies, or affect Seller's legal remedies under this Agreement.

The termination or expiration of this Agreement shall in no case relieve either party from its obligation to pay to the other any sums accrued, due or to become due under this Agreement prior to the effective date of such termination or expiration.

14. **Entire Agreement.** The parties acknowledge that this Agreement expresses their entire understanding and agreement, and that there have been no warranties, representations, covenants or understandings made by either party to the other except such as are expressly set forth in this section. The parties further acknowledge that this Agreement supersedes, terminates and otherwise

renders null and void any and all prior or contemporaneous agreements or contracts, whether written or oral, entered into between the Buyer and the Seller with respect to the matters expressly set forth in this Agreement.

Buyer's submission of a purchase order constitutes Buyer's acceptance of these Standard Terms and Conditions of Sale. Any term or condition stated by Buyer in any prior or subsequent proposal, purchase order or other communication differing in any way from the terms hereof shall be deemed a material alteration of these terms and is hereby objected to and rejected by Seller. Neither Seller's shipment of goods nor failure to object, specifically or otherwise, to any additional or conflicting provisions contained in any order, acceptance or other communication from Buyer shall be construed as a waiver of these conditions, or acceptance of any such provisions. No terms or conditions in any way altering or modifying any provision of these Standard Terms and Conditions of Sale shall be binding upon Seller. No modification or alteration of any provision of these Standard Terms and Conditions of Sale shall result from Seller's acknowledgment of Buyer's purchase order, shipment of goods, or other affirmative action of Seller toward performance under Seller's quote or under any purchase order or other communication submitted by Buyer.

15. General.

Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, but neither party shall have the right to assign or otherwise transfer its rights under this Agreement without receiving the express prior written consent of the other party, such consent not to be unreasonably withheld. Either party may, however, assign this Agreement in the event of a merger or a sale of all or substantially all of such party's assets or stock, to which assignment both parties consent now. Sycamore may use subcontractor to perform all or a portion of its rights, duties and obligations under this Agreement.

Notices. All notices, demands or consents required or permitted under this Agreement will be in writing and will be delivered, sent by facsimile or mailed certified return receipt requested to the respective parties at the

addresses set forth above or at such other address as such party will specify to the other party in writing. Any notice required or permitted to be given by the provisions of this Agreement will be conclusively deemed to have been received on the day it is delivered to that party by U.S. Mail with acknowledgment of receipt or by any commercial courier providing equivalent acknowledgment of receipt.

Governing Law. This Agreement, and all rights and obligations of the parties will be governed by the Uniform Commercial Code as enacted by the State of Washington. Any disputes hereunder will be heard in the appropriate federal and state courts located in Washington.

Legal Action. Notwithstanding the above, no action, regardless of form, arising out of the transactions under this Agreement, may be brought by either party more than two (2) years after the cause of action accrues.

Force Majeure. Neither party shall be held responsible for any delays or failure in performance caused in whole or in part by fires, strikes, floods, embargoes, labor disputes, delays or failures of subcontractors, component shortages, acts of sabotage, riots, accidents, delays of carriers, voluntary or mandatory compliance with any governmental act, regulation or request, acts of God or by public enemy, or any other causes beyond such party's reasonable control. If such contingency shall occur, the defaulting party may elect to either (a) suspend this Agreement for the duration of the delaying cause, or (b) extend the duration of this Agreement by the length of time the contingency endured, or the non-defaulting party may terminate this Agreement upon giving the other party ninety (90) days' prior written notice.

Survival. All provisions of this Agreement which by their nature must survive termination in order to achieve the fundamental purposes of this Agreement shall, except as otherwise provided herein, survive the expiration or earlier termination of this Agreement for any reason, including but not limited to the following Sections: Payment, License of Software Products and Firmware, Patent and Copyright Indemnification, Intellectual Property Rights, Limitation of Liability, Confidentiality, Termination and General.

Export Compliance. Neither party shall export, directly or indirectly, any technical data acquired from the other party pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

Foreign Corrupt Practices Act. Buyer agrees to comply with the terms of the United States Foreign Corrupt Practices Act (the "FCPA") and indemnify and hold harmless Sycamore (including its directors, officers, employees, agents, representatives, affiliates, and subcontractors) from and against any demands, claims, or final awards of damages based in whole the violation of the FCPA by Buyer or its direct or indirect affiliates (including its directors, officers, employees, agents, representatives, affiliates, and subcontractors).

Federal Programs. Seller is an equal employment opportunity employer and is a federal contractor. Consequently, the parties agree that, to the extent applicable, they will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973 and also agree that these laws are incorporated herein by this reference

16. **Term:** The term of this Vendor Contract shall commence on the Effective date the same and shall expire in seven (7) years
17. **Overages/Underages:** Shipments shall correspond with the Purchase Order/Vendor Contract; any unauthorized advance or excess shipment is returnable at Seller's expense.
18. **Price Warranty:** The Seller warrants that prices shown on this Purchase Order/Vendor Contract are complete, and that no additional charge of any type shall be added without the Buyer's express written consent.
19. **Warranties:** The Seller warrants that all goods comply with the Sellers specifications. All goods comply with all applicable safety and health standards established for such products; all goods are properly packaged; and all appropriate instructions or warnings are supplied.

20. **Date Warranty:** Seller warrants that any Software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date;.
21. **Non-Discrimination in Contracting:**
- A. Seller shall utilize affirmative efforts to promote and encourage participation by women and minority businesses on subcontracting opportunities within the Contract scope of work. Seller agrees to such efforts as a condition of the contract.
- B. **Record-Keeping:** Seller shall maintain, for at least 12 months after the expiration or earlier termination of this Contract, relevant records and information necessary to document Seller affirmative efforts to achieve women and minority business participation, including solicitations to subSellers and suppliers, all subSeller and supplier proposals received, and all subSellers and suppliers actually utilized under this Contract. Seller shall with a thirty (30) day prior written request have the right to inspect such records.
- C. Seller shall ensure that all employees, particularly supervisors, are aware of, and adhere to their obligation to maintain a working environment free from discriminatory conduct, including but not limited to harassment and intimidation of minorities, women, or WMBE businesses.
- D. **Non-Discrimination:** Seller shall not create barriers to open and fair opportunities for WMBEs to participate in any Buyer contract and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.
- F. **Sanctions for Violation:** Any violation of the mandatory requirements of the provisions of this section, or a violation of SMC Ch. 14.04, SMC Ch. 14.10, SMC Ch. 20.45, or other local, state or federal non-discrimination laws, shall

be a material breach of contract for which the Seller may be subject to damages and sanctions provided for by the Contract and by applicable law. Sellers in violation of this shall be subject to debarment from Buyer contracting activities in accordance with SMC Ch. 20.70.

22. Equal Employment Opportunity and Outreach.

- A. Seller shall not discriminate against any employee or applicant for employment because of race, religion, creed, age, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, age, color, sex, national origin, marital status, political ideology, ancestry, sexual orientation, gender identity, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, promotion, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship. The Seller shall post in conspicuous places, available to employees and applicants for employment, notices as provided by Seattle setting forth the provisions of this nondiscrimination clause.
- B. Seller shall furnish to the Director of Executive Administration (or his/her designee), upon request and on such form as may be provided therefore, a report of the affirmative action taken by the Seller in implementing the requirements of this section, and will permit access to the Seller's records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director of Executive Administration for the purposes of investigation to determine compliance with the requirements of this section.
- C. If, upon investigation, the Director of Executive Administration finds probable cause to believe that the Seller has failed to comply with any of the requirements of this section, the Seller shall be so notified in writing. The Director of Executive Administration shall give the Seller an opportunity to

be heard, after ten calendar days' notice. If, after the Seller's opportunity to be heard, the Director of Executive Administration still finds probable cause, he/she may suspend the Contract, pending compliance by the Seller with the requirements of this section.

23. **Equal Benefits.**

A. Compliance with SMC Ch. 20.45: The Seller shall comply with the requirements of SMC Ch. 20.45 and Equal Benefits Program Rules implementing such requirements, under which the Seller is obligated to provide the same or equivalent benefits ("equal benefits") to its employees with domestic partners as the Seller provides to its employees with spouses. At Seattle's request, the Seller shall provide complete information and verification of the Seller's compliance with SMC Ch. 20.45. Failure to cooperate with such a request shall constitute a material breach of this Contract. (For further information about SMC Ch. 20.45 and the Equal Benefits Program Rules call (206) 684-0430 or review information at [http://Buyerofseattle.net/contract/equalbenefits/.](http://Buyerofseattle.net/contract/equalbenefits/))

B. Remedies for Violations of SMC Ch. 20.45: Any violation of this Paragraph A. shall be a material breach of Contract for which the Owner may:

- a. Require the Seller to pay actual damages for each day that the Seller is in violation of SMC Ch. 20.45 during the term of the Contract; or
- b. Terminate the Contract; or
- c. Disqualify the Seller from bidding on or being awarded a Buyer contract for a period of up to five (5) years; or
- d. Impose such other remedies as specifically provided for in SMC Ch. 20.45 and the Equal Benefits Program Rules promulgated there under.

24. **Publicity:** Neither party shall not advertise or publish the fact that the other party has contracted to purchase-sell items to the other party without the other parties prior written approval.

25. **Insurance:** Unless specified otherwise in the contract attachments, Seller shall maintain at its own expense at all times during the term of this Purchase Order/Vendor Contract the following insurance with limits of liability

consistent with those generally carried by similarly situated enterprise: (1) **Commercial General Liability** insurance, including premises/operations, products/completed operations, personal/advertising injury, contractual liability, fire legal/tenant liability, stop gap/employer's liability and independent Sellers liability; (2) if any vehicle is used in the performance of this Purchase Order/Vendor Contract, **Automobile Liability** insurance, including coverage for owned, non-owned, leased or hired vehicles, watercraft and aircraft, as appropriate; and (3) **Worker's Compensation** ("Industrial Insurance") as required by Title 51 of the Revised Code of Washington. The insurance as provided under items (1) and (2) above shall include by endorsement the Buyer of Seattle as an additional insured (as respects item (1), per ISO form CG 20 10 or CG 20 26 or equivalent additional insured endorsement wording, or equivalent blanket additional insured policy wording) and such additional insured status for the Buyer shall apply as respects the full limits of all valid and collectible Automobile Liability, whether primary, excess, contingent, or otherwise; shall be primary insurance as respects the Buyer, and any other insurance or self-insurance maintained by the Buyer shall be excess and non-contributory with the Seller's insurance; and, shall be placed with insurers with not less than an A-VII A.M. Best's rating unless insurance has been procured under the provisions of chapter 48.15 RCW (Unauthorized "Surplus Lines" Insurers).

26. **Compliance with Law:**

General Requirement: The Seller, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter, Municipal Code, and ordinances of The Buyer of Seattle; and rules, regulations, orders, and directives of their respective administrative agencies and officers.

Licenses and Similar Authorizations: The Seller, at no expense to the Buyer, shall secure and maintain in full force and effect during the term of this Purchase Order/Vendor Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.

Taxes: All prices set forth herein are exclusive of any applicable value-added,

excise, sales, use or consumption taxes, customs duties or other governmental charges. Except for taxes based on Vendor's net income, Buyer shall pay any applicable sales, use, excise, or other taxes, or amounts levied in lieu of such taxes, now or later imposed under the authority of any federal, state or local taxing authority, based on or measured by (i) charges set forth in this Agreement or (ii) upon sales of the Products to Buyer or their use, which will be separately stated as a single line item and included on each invoice, unless Buyer provides Vendor with a certificate exempting Buyer from the payment of such taxes. The Seller shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Purchase Order/Vendor Contract; taxes levied on its property, equipment and improvements; and taxes on the Seller's interest in this Purchase Order/Vendor Contract.

27. **Americans with Disabilities Act:** The Seller shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Purchase Order/Vendor Contract. In particular, if the Seller is providing services, programs, or activities to Buyer employees or members of the public as part of this Purchase Order/Vendor Contract, the Seller shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Purchase Order/Vendor Contract.
28. **Adjustments:** The Buyer, with reasonable written notice, may make reasonable changes in the place of delivery, installation; the method of shipment or packing; labeling and identification; and ancillary matters that Seller may accommodate without substantial additional expense to the Buyer.
29. **Amendments:** Except for adjustments authorized above, modifications or amendments to the Purchase Order/Vendor Contract may only be made by a change order or by written document signed by or for both parties.
30. **Waiver:** Either parties failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the parties waiver of

any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

31. **Remedies Cumulative:** Remedies under this Purchase Order/Vendor Contract are cumulative; The use of one remedy shall not be taken to exclude or waive the right to use another.
32. **Severability:** Any invalidity, in whole or in part, of any provision of this Purchase Order/Vendor Contract shall not affect the validity of any other of its provisions.
33. **Gratuities:** The Buyer may, by written notice to the Seller, terminate Seller's right to proceed under this Purchase Order/Vendor Contract upon one (1) calendar day's notice, if the Buyer finds that any gratuity in the form of entertainment, a gift, or otherwise was offered or given by the Seller or any agent thereof to any Buyer official, officer or employee.
34. **Disputes:** Any dispute or misunderstanding that may arise under this Contract concerning Seller's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the Seller's Project Manager and Seattle's Project Manager, or if mutually agreed, referred to the Buyer's named representative and the Seller's senior executive(s). Either party may discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights of either party to terminate the contract for cause or convenience.
35. **Major Emergencies or Disasters:** The following provision shall be in effect only during major emergencies or disasters when the Buyer has activated its Emergency Operations Center and the Seller has been given notice by the Buyer that such activation has occurred. The Buyer is committed to preparing thoroughly for any major emergency or disaster situation. As part of its commitment, the Buyer is contracting with the Seller under the following terms and conditions: Seller shall provide to the Buyer, upon the Buyer's request, such goods and/or services at such time as the Buyer determines. In

the event the Seller is unable to meet the delivery date commitment due to circumstances beyond the reasonable control of the Seller, the Seller shall make such delivery as soon as practicable. If the Seller is prevented from making such delivery to the requested delivery location due to circumstances beyond its reasonable control, the Seller shall immediately assist the Buyer in whatever manner is reasonable to gain access to such goods and/or services. In the event that the Seller is unable to provide such goods and/or services as requested by the Buyer, the Seller may offer to the Buyer limited substitutions for its consideration and shall provide such substitutions to the Buyer as required above, provided the Seller has obtained prior approval from the Buyer for such substitution. The Seller shall charge the Buyer the price determined in this Purchase Order/Vendor Contract for the goods and services provided, and if no price has been determined, it shall charge the Buyer a price that is normally charged for such goods and/or services (such as listed prices for items in stock). In the event that the Buyer's request results in the Seller incurring unavoidable additional costs and causes the Seller to increase prices in order to obtain a fair rate of return, the Seller shall charge the Buyer a price not to exceed the cost/profit formula found in this Purchase Order/Vendor Contract. The Seller acknowledges that the Buyer is procuring such goods and/or services for the benefit of the public. The Seller, in support of public good purposes, shall consider the Buyer as a customer of first priority and shall make its best effort to provide to the Buyer the requested goods and/or services in a timely manner. For purposes of this Purchase Order/Vendor Contract, a "major emergency" or "disaster" shall include, but is not limited to a storm, high wind, earthquake, flood, hazardous material release, transportation mishap, loss of any utility service, fire, terrorist activity or any combination of the above.

36. **Pricing:** Seller agrees to sell products at a discount and from the "Manufacture's List Price" provided in Exhibit A. This discount shall be firm-fixed throughout the contract period. At any time, the Seller may sell products at a higher discount due to order quantities or special market conditions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate by their duly authorized representatives as of the effective date written below.

SYCAMORE NETWORKS, INC.

CITY OF SEATTLE

By: A. Gray ^{mm} By: Michael Heas
Name: R. Gray Name: MICHAEL HEAS
Title: CFO Title: SENIOR BUYER
Effective Date: 4/25/07 Date: 4-25-07

Exhibit A

Sycamore Product Price List and Discounts

DISCOUNT SCHEDULE

City of Seattle
mmk

~~THE~~ shall receive discounts off the unit prices for all Products provided under the Agreement in accordance with the following discount schedule:

For Cumulative Invoiced Amounts Exceeding:	Discount:
\$0.00	26% on hardware

Such discounts shall apply to the Price for the hardware or software Products invoiced hereunder to City of Seattle by Sycamore. Orders booked and shipped prior to the end of April 2007 will be sold at 30% discount.

The Sycamore Access product price list is herein incorporated by reference.

Exhibit B

Sycamore Warranty Policy DOC-001-0006

The Sycamore Access product warranty policy is herein incorporated by reference.