

## SUN TERMS AND CONDITIONS OF SERVICE

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY. BY CLICKING ON THE "ACCEPT" BUTTON, BELOW, YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT AS OF THE DATE YOU CLICK THE "ACCEPT" BUTTON. IF YOU DO NOT AGREE TO ALL THESE TERMS, SELECT THE "DECLINE" BUTTON AT THE END OF THIS AGREEMENT. IF YOU SELECT THE "DECLINE" BUTTON, YOU WILL NOT HAVE ACCESS TO SERVICES PROVIDED BY SUN MICROSYSTEMS, INC.

The Sun Terms and Conditions of Service, together with any Exhibits and Appendices hereto (collectively, the "Agreement") is made between Sun Microsystems, Inc. and the individual or entity accepting this Agreement ("Customer") and is made as of the date that Customer indicates acceptance of this Agreement by clicking ACCEPT where indicated below. This Agreement governs the sale and delivery of Services by Sun to Customer. Customer agrees that this Agreement governs if Customer is purchasing Services from Sun via any mechanism (including Sun Store), unless the order is for Services for which Customer has already signed a separate purchase agreement with Sun, in which case that separate purchase agreement governs the transaction (except, as applicable, the restrictions in Section 3 below).

If you are accepting this Agreement on behalf of an entity, you represent and warrant that you have the authority to do so.

1. DEFINITIONS. In this Agreement, the following terms shall have the meanings set forth below:

"Confidential Information" means any information disclosed by one party to another under each Agreement which is, prior to or at the time of disclosure, clearly identified in writing as confidential or proprietary.

"Exhibit" means any exhibit to the Agreement.

"Services" means any offering in Sun's Service List (each offering, a "Service Listing"), which is located at <http://www.sun.com/service/servicelist>.

"Sun Trademarks" means all names, marks, logos, designs, trade dress and other brand designations used by Sun in connection with Services.

2. CONFIDENTIAL INFORMATION. A party receiving Confidential Information (the "Recipient") under this Agreement must keep it confidential using the same degree of care that it exercises with respect to its own information of like importance but in no event less than reasonable care, and may use it only for the purposes for which it was provided under the Agreement. Confidential Information may be disclosed only to those employees or contractors who have a need to know such information and who are obligated to the Recipient under similar confidentiality restrictions, and only for the purposes for which it was provided under the Agreement. These obligations do not apply to information which:

(a) is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;

(b) is or becomes known to the public through no act or omission of the Recipient; or

(c) the Recipient develops independently without using Confidential Information of the other party.

Confidential Information may be disclosed to the extent required by a valid court or governmental order, if the Recipient has given the other party prior written notice and provides reasonable assistance so as to afford the other party the opportunity to seek protective relief.

3. RESTRICTIONS ON SALE.

3.1 Customer may resell Services purchased from Sun only if: (a) Customer is a Sun-authorized reseller under a current and valid reseller agreement with Sun for that Service; and (b) Customer includes its applicable reseller number in the order fulfillment form. The applicable reseller agreement governs such Customer's purchase and resale of Services that Customer acquires from Sun and resells (including Productivity Status Report submission).

3.2 If Customer does not meet the requirements above for resale, then Customer represents and warrants to Sun that it intends to use the Sun Services for its own personal or internal use (i.e., it is an "end user"), and does not intend to and will not provide, lease, or resell Services, directly or indirectly, to any third party.

4. EXPORT LAWS. Services, materials, tools, and technical data delivered by Sun may be subject to U.S. export controls or the trade laws of other countries. Customer agrees to strictly comply with all export control regulations and acknowledges that it has the responsibility to obtain such

licenses to export, re-export or import as may be required. Customer agrees not to export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws. Customer will not use Services, materials, tools, and technical data for nuclear, missile, or chemical biological weaponry end uses.

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

#### 6. WARRANTY

6.1 Warranties. Any warranty for the Services is set out in the respective Appendix.

6.2 EXCEPT AS SPECIFIED IN THIS AGREEMENT, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

#### 7. LIMITATION OF LIABILITY

7.1 Each party acknowledges the full extent of its own liability to the other arising from: death or personal injury resulting from negligent acts or omissions; or claims for non-payment; or the non-excludable statutory rights of consumers (for example, under laws providing for strict product liability).

7.2 Subject to 7.1 above and the exceptions identified in any Exhibit and to the extent not prohibited by applicable law each party's maximum aggregate liability for all claims relating to each Agreement, whether for breach of contract, breach of warranty or in tort, including negligence, will be limited to one million US dollars (U.S. \$1,000,000) per Agreement; and

7.3 Neither party will be liable for any indirect, punitive, special, incidental or consequential damages in connection with or arising out of the Agreement (including, without limitation, loss of business, revenue, profits, goodwill, use, data, electronically transmitted orders, or other economic advantage), however they arise, whether in breach of contract, breach of warranty or in tort, including negligence, and even if that party has previously been advised of the possibility of such damages and whether or not such damages are foreseeable.

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

#### 8. TERMINATION AND EXPIRATION

8.1 Sun may terminate this Agreement if Customer fails to cure any material breach of this Agreement within fifteen (15) days of being notified in writing of such breach.

8.2 Customer will not be entitled to any refund in the event of a termination pursuant to Section 8.1 above.

8.3 On termination or expiration of the Agreement, each party will deliver to the other any property or Confidential Information of the other in its possession or control, in good condition, reasonable wear and tear excepted.

9. NO SOFTWARE LICENSE. This Agreement does not grant a license to use the Solaris Operating System or any other Sun software product. Use of any Sun software product shall be governed by the license agreement corresponding to such software product.

#### 10. GENERAL

10.1 All disputes will be governed by the laws of California. The venue for litigation will be the appropriate courts located in Santa Clara County, California. Choice of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods will not apply to any dispute under the Agreement.

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

10.3 All written notices, including by electronic mail or facsimile, required by the Agreement must be delivered in person or by means evidenced by a delivery receipt or acknowledgment and will be effective upon receipt.

10.4 The Agreement is not intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

10.5 If any provision of the Agreement is held invalid by any law or regulation of any government or by any court or arbitrator, such provision shall be enforced to the maximum extent permitted to effect the intent of the parties, and such invalidity will not affect the enforceability of other provisions.

10.6 Rights and obligations under the Agreement which by their nature should survive, will remain in effect after termination or expiration of the Agreement.

10.7 Any express waiver or failure to exercise promptly any right under the Agreement will not create a continuing waiver or any expectation of non-enforcement. To be enforceable, a waiver must be in a writing signed by an authorized representative of the waiving party.

10.8 No modification to the Agreement will be binding, unless in writing and manually signed by an authorized representative of each party.

10.9 The Agreement constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior and contemporaneous oral and written communications, proposals, conditions, representations and warranties and prevails over any conflicting or additional terms contained in any quote, purchase order, acknowledgment, or other communication between the parties relating to its subject matter.

## PURCHASING EXHIBIT

### 1. INTERPRETATION

1.1 Definitions. The following terms shall have the meanings set forth below.

"Appendix" means any Appendix to this Exhibit. "Deliverable" means in relation to any Services, the specific items to be delivered in connection with the applicable Service Listing.

"Order" means an order for Services, which may be submitted by Customer to Sun in hard copy form, ("Purchase Order"), or in electronic form ("Electronic Order").

"Order Confirmation" means a written or electronic acknowledgment or invoice issued by Sun.

"Price List" means, in relation to any Order, the applicable Price List determined in accordance with Section 3 of this Exhibit, as the same may be modified by Sun from time to time.

"Service Contract" means an Order for Services that has been accepted by Sun.

1.2 Order of Precedence. In the event of any inconsistency between the elements of the Agreement, the following order of precedence will apply (indescending order):

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

### 2. ORDERING

#### 2.1 Ordering Procedure

(a) Customer may order Services by either: (i) submitting an Electronic Order in the manner directed by Sun; or (ii) submitting a Purchase Order to Sun (and Customer acknowledges that Electronic Orders for certain Services may need to be supplemented by a Purchase Order), in each case specifying the Services required and referencing the Agreement. By doing so, Customer agrees that the Order is

governed by the Agreement.

(b) Sun may accept the Order by: (i) issuing an Order Confirmation to Customer; or (ii) initiating performance of the Services required in the Order.

(c) The identification of the Services in the Order, Service Contract and any Order Confirmation, together with any applicable Service Listings and the Agreement, will create a binding contract between Customer and Sun for the purchase of those Services.

2.2 Renewal of Service Contracts. Subject to Section 3.2 (a) below and if Sun identifies a Service as automatically renewable, Customer's Service Contract will renew automatically for successive one (1) year terms.

2.3 Electronic Ordering. For the purposes of placing Electronic Orders and using electronic tools and services, Customer represents and warrants that: (a) it will keep confidential any unique user id and password which Sun assigns to Customer; and (b) all of Customer's employees who submit orders or use tools or services are authorized by Customer to do so.

### 3. PRICING AND PAYMENT TERMS

3.1 Applicable Price List. The Price List applicable to an Order under this Exhibit depends on the Services ordered and on the country of delivery of Services (the "Destination Country"). Unless otherwise specified in the Schedule, the Price List is:

(a) The Sun country Price List in effect in the country in which the Order is accepted if: (i) both the Destination Country and such country accepting the Order are within the European Economic Area, or (ii) all sales under this Exhibit are related to a single country (i.e., the country accepting the order and the Destination Country are always the same country); otherwise subparagraph (b) below shall apply.

(b) The Sun international Price List in effect in the Destination Country; provided that the Sun country Price List in effect in the Destination Country for the relevant Services will apply if such international Price List does not list the relevant Services.

3.2 Pricing and Payment Arrangements.

(a) Sun may modify the prices and/or discounts set forth in a renewable Service Contract upon renewal of any such Service Contract, or annually for Service Contracts with a term of more than one year.

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

(c) Where Customer has appropriate credit arrangements with Sun, Customer shall pay all invoices within thirty (30) days of the date of invoice. In all other cases, Customer shall pay cash in advance of shipment or performance.

### 4. INTELLECTUAL PROPERTY RIGHTS

4.1 Pre-existing Technology. Each party shall retain all intellectual property rights in and to its pre-existing technology.

4.2 License Terms.

(a) Sun agrees to grant to Customer a license to use Deliverables under the terms set out in the Appendices.

(b) Sun or its independent audit firm may, upon reasonable notice, request, access, examine and audit the records, systems, facilities and records of Customer to ensure compliance with any license granted by Sun including the Compliance records described in Section 5.3 below (no more than one time per year unless an audit indicates that Customer is in breach of the Agreement, in which case Sun may conduct an extra audit within six (6) months) to the extent necessary to determine Customer's compliance with Sun's license grants and Customer's compliance with U.S. trade laws. Any audit will be performed with Sun giving Customer written notice reasonably in advance and such audits will be conducted during Customer's regular business hours and in a manner that avoids unreasonable interference with Customer's business operations. All information obtained from Customer pursuant to this section will be subject to the Confidentiality section of this Agreement and any other confidentiality, security and privacy obligations to which Customer is legally bound (which will be made available in hard copy to Sun).

(c) Customer acknowledges that any breach or threatened breach of any license involving unauthorized use of Sun's intellectual property will result in irreparable harm to Sun for which damages may not be an adequate remedy. In addition to the rights and remedies otherwise available at law, Sun is entitled to equitable relief, including injunction, in the event of such breach, without the necessity of posting a bond.

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

(e) Breaches of any license granted under this Exhibit are excluded from the Limitation of Liability provision of this Agreement.

## 5. CUSTOMER OBLIGATIONS

5.1 Cooperation. Customer will cooperate with Sun and will provide safe and timely access to its premises and computer equipment, including remote access, adequate working space, facilities and any other services, personnel, information or materials that Sun personnel may reasonably require to perform Sun's obligations.

5.2 Compliance with Data Privacy Laws. Customer will comply with all applicable laws regarding collection and use of data under this Agreement. Customer consents to Sun's use and processing of Customer's data and will ensure that, where it provides Sun with data relating to a third party, it has obtained that third party's consent to Sun's use and processing of such data.

5.3 Compliance Records. Customer agrees to maintain records of its compliance with the licenses granted by Sun under this Agreement. Customer also agrees to maintain records of its compliance with U.S. trade laws and other applicable export and trade laws as well as the following: (i) identification and serial numbers of any Sun products or other Sun technologies exported and re-exported (actual or planned); (ii) origination and destination entities and locations with respect to the actual or planned exports and re-exports and the dates thereof.

## 6. INTELLECTUAL PROPERTY CLAIMS

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

(a) gives written notice of the IP Claim to the Indemnifying Party promptly after learning of the IP Claim;

(b) gives the the Indemnifying Party sole control of the defense and settlement of the IP Claim;

(c) provides to the Indemnifying Party, at the expense of the the Indemnifying Party, all available information and assistance; and

(d) does not compromise or settle the IP Claim.

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

(a) obtain for the Indemnifying Party the right to use such provided materials and/or services;

(b) replace or modify such materials and/or services in such a way that (i) they become non-infringing and non-misappropriating and (ii) they substantially perform in the same manner or substantially provide the same results, or there is no material adverse effect in their overall performance; or

(c) if neither (a) nor (b) is reasonably achievable, remove such provided materials and/or services and refund to the Indemnified Party the original price paid therefor less net benefits realized by the Indemnified Party through accumulated depreciation or expensing thereof, up until the date of removal.

6.3 Exceptions. Notwithstanding anything to the contrary, and for the avoidance of doubt, Sections 6.1 and 6.2 do not apply to, and neither party has any obligation or liability of any kind for, any

IP Claim arising from:

- (a) compliance by the Indemnifying Party with the designs or specifications of the Indemnifying Party;
- (b) modification of such provided materials and/or services that are not specifically authorized by a future written authorization signed by a Vice President of the Indemnifying Party;
- (c) use of an allegedly infringing version of such provided materials and/or services, if the alleged infringement could have been avoided by the use of a different version made available to the Indemnified Party;
- (d) a combination comprising such provided materials and/or services in combination with any third party services, hardware, software, data, or other materials;
- (e) a violation of the Indemnifying Party's license grant; or
- (f) any separate or component hardware, software or other materials to the extent it comprises any third party open source or freeware technology, or any derivatives or other adaptations thereof, and any combination that includes any of the foregoing.

6.4 Exclusive Remedy. This Section 6 states the entire liability of each party (as Indemnifying Party) and the exclusive remedies of each party (as Indemnified Party) for any proceedings or claims that any services, hardware, software, data or other materials infringe or misappropriate a third party's intellectual property rights.

## 7. WARRANTY

7.1 Warranties. Sun warrants Services as provided in the Appendix 1.

7.2 NO IMPLIED WARRANTIES. Except as expressly provided in this Exhibit, all express or implied conditions, representations and warranties, including any implied warranty or condition of merchantability, satisfactory quality, and fitness for a particular purpose and any warranty of non-infringement, are hereby excluded to the maximum extent permitted by law.

## 8. NUCLEAR APPLICATIONS

Customer acknowledges that Services are not designed or intended for use in the design, construction, operation or maintenance of any nuclear facility.

## 9. PUBLICITY

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

## 10. ASSIGNMENT AND SUBCONTRACTING

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

- (a) Sun may assign their right to receive payment; and
- (b) Sun may use subcontractors in the performance of its obligations, in which case Sun will remain responsible for the performance by such subcontractors.

## APPENDIX 1 TO THE PURCHASING EXHIBIT

### ADDITIONAL PROVISIONS RELATING TO SERVICES

#### 1. INTELLECTUAL PROPERTY OWNERSHIP AND LICENSE TERMS FOR SERVICE DELIVERABLES

1.1 Deliverables. Subject to Section 4.1 of the main text of the Exhibit, Sun shall own all intellectual property in the Deliverables. Rights not expressly granted under any Service Contract are reserved to Sun.

1.2 License Terms.

(a) General Scope of Licenses. Sun grants to Customer a non-exclusive and non-transferable license to use Deliverables for its internal use only, subject to: (i) any restrictions set out in the Order or Order Confirmation as to the permitted number of users and CPUs; and (ii) any supplemental license terms accompanying the Deliverable.

(b) License Restrictions. Except as otherwise permitted by applicable law, Customer may not: (i) make copies of Deliverables, other than for archival purposes; or (ii) modify, decompile, or reverse-engineer Deliverables.

## 2. SERVICE WARRANTIES

2.1 Warranty. Sun warrants that Services will be performed in a good and workmanlike manner.

2.2 Exclusive remedy. Customer's sole and exclusive remedy and Sun's entire liability for breach of the above warranty will be re-performance of Services.

2.3 Claims. Any claim for breach of the above warranty must be made in writing and Sun must be notified within 90 days of performance of the Services at issue.

## 3. CHARGING ARRANGEMENTS FOR SERVICES

3.1 Charges and Invoices. The charges for Services are as set out in the Price List. Charges for systems support Services shall be invoiced monthly, quarterly or annually in advance as agreed between the parties as stated in the Service Contract. Invoices for other Services shall be rendered upon completion of such Services or monthly in the event the duration of services exceeds one month.

3.2 Acceptance. Deliverables and Services are deemed accepted upon delivery.

3.3 Items Not Included in Charges. Unless otherwise specified in the applicable Service Listing, the stated charges are exclusive of the following items (for which Customer is responsible):

- (a) all sales and other taxes based upon the value of the Services;
- (b) reasonable travel expenses associated with consulting services in the amount actually incurred by Sun;
- (c) reasonable and necessary out-of-pocket expenses associated with consulting services;
- (d) costs incurred by Customer or its employees in connection with their participation in educational services;
- (e) transportation and insurance charges incurred as a result of providing Services to remote Customer sites; and
- (f) the costs of operating supplies and accessories.

## 4. MISCELLANEOUS

4.1 Service Availability. Services may not be available in certain locations, and Deliverables may vary between locations. Services are subject to availability of qualified Sun personnel and facilities and may be subject to additional costs or terms or to payment of minimum applicable fees. Sun may modify the Service Listings at any time, but will continue to provide Deliverables as set out in the relevant Service Listing in effect on the date the relevant Order Confirmation was issued until expiration or renewal of the relevant Service Contract. Sun may make Service substitutions and modifications that do not cause a materially adverse effect in overall Service performance.

4.2 Limitations on Use of Service. Customer acknowledges that Services are solely for Customer's internal use, and Customer may not provide, lease, or resell Services, directly or indirectly, to any third party, unless, and only to the extent that, Customer is authorized by Sun in writing to do so.

## 5. Promotion Terms and Conditions

Sun may offer discounts and or no charge promotions to customers. Promotions have time limit expirations identified on promotion cards. Promotions will be consumed by using Sun's e commerce site by putting in promotion code in box requesting promo number upon user check out. All rules in this document apply to promotions.

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