

## Sun Software Basic Service Plan - Colombia

### 1. Scope

This Service provides Customer with online access to software updates, upgrades, bug fixes and other deliverables as described in Section 2, below.

### 2. Tasks and Deliverables

#### Maintenance Assistance

##### Support.

"Covered Software" is the binary software instance or instances of a named software package for which Customer has paid the applicable fee in connection with this Service. Any other software instances for the named software package or any other software packages are excluded from this Service. This service includes online access to updates, upgrades, bug fixes and knowledge databases for the benefit of Covered Software only. Customer must have a valid license to use the Covered Software. The Service is related to the normal functioning of the Covered Software (Support).

### 2.2 Software Releases and Patches

**Software Enhancement Releases.** Unless otherwise specified by Sun, Customer will receive each enhancement release for Covered Software only, at such time, if any, as they are made commercially available. Enhancement releases and software documentation will be made available via electronic download. Enhancement releases and software documentation may be used only for the benefit of Covered Software.

**Patches and Maintenance Release Access.** Unless otherwise specified by Sun, Customer will receive patches and maintenance releases for Covered Software, at such time, if any, as they are made commercially available. Patches and maintenance releases will be made available via electronic download, and may be used only for the benefit of the Covered Software.

### 2.3 Connected Services

**Online Support Center Access.** Customer will receive access to the Online Support Center, which access may be used for the benefit of Covered Software only, which allows Customer to perform multiple functions via the web, for example:

- maintain support contract Contacts;
- obtain selected Covered Software updates.

Feature availability may vary by country. Sun may make service substitutions

and modifications to the Online Support Center at any time. Use of the Online Support Center is subject to the sun.com Terms of Use.

**SunSolve[SM] Online.** Customer is granted 7x24 access to SunSolve Online, which access may be used for the benefit of Covered Software only, for Customer's internal use only, subject to the license terms in Customer's Agreement with Sun and any additional agreements entered into between Sun and Customer for the use of SunSolve Online. SunSolve Online provides access to both the SunSolve Knowledge Database and the SunSolve Patch Database. SunSolve Online includes the following:

- informational articles, reference guides and technical documents to help sustain and improve functionality, availability and system performance;
- help desk support articles, bug and patch reports with information for troubleshooting previously identified hardware and software issues;
- software patches for Sun-supported Covered Software;
- SunSolve EarlyNotifier[SM] service, which allows Customer to request to be notified when a SunSolve document is revised or updated.

**Services, Support, and Software Notifications.** Customer will receive periodic Services, Support and Software Notifications from Sun via electronic means or otherwise. All information will be provided in English.

### **3. Customer Responsibilities**

Provide the name and telephone number of an employee to act as the designated point of contact for the purposes of this Service. OR Assign a project manager to ensure Sun gets the support and assistance it needs to provide the Services.

Conduct proper integration and testing of software applications prior to using Covered Software. Specifically, testing should include stress, volume, end to end, and functional testing. The configuration of the testing environment should be identical to that of the applicable Covered Software and Sun supported hardware environment.

Perform prescribed system maintenance, including but not limited to, installing patches, updating software or firmware, maintaining file systems, and tracking proactive diagnostic information.

Provide Sun with a valid Covered Software support contract number, Covered Software product identification code, and any other information reasonably requested by Sun, in order to demonstrate service entitlement prior to service delivery.

Use patches, new product deliverables, and other service deliverables which may be provided, for the benefit of Covered Software only. No license for any other use or application is granted and any other use or application is prohibited.

#### 4. Additional Provisions

**Additional Fee Services.** For an additional fee, Customer may purchase the following additional services, where available:

- **Additional Media.** Additional copies of physical media for Software Enhancement Releases of Covered Software.

**Exclusions.** This Service includes only the deliverables described above and does not include phone technical support. For additional services, please contact your Sun sales representative.

**Backup.** Backup data on a frequent and responsible basis. Sun does not backup Customer data and accepts no responsibility for data that may be corrupted or lost.

**Right to Discontinue Support.** It may become necessary as part of Sun's product lifecycle to discontinue support according to Sun's then-current End Of Service Life Policy and, therefore, Sun reserves the right to discontinue support for certain software products or versions during the duration of the contract in accordance with such End Of Service Life Policy. Sun's End Of Service Life Policy is posted on Sun's web pages.

#### A. INDEMNIFICATION

1. Sun will defend or settle, at its option and expense, any legal proceeding brought against Customer during the term for which Customer has paid for the Service described herein, to the extent it is based on a claim brought by a third party that the use of any Sun-written code within any Solaris 10 Operating System software included in the Covered Code (the "Sun Code") infringes or misappropriates (i) such third party's Berne Convention copyrights, or (ii) registered patent rights or trade secret rights in any country where Sun has a subsidiary (collectively, an "IP Claim"), and will indemnify Customer against all damages and costs (including reasonable attorneys' fees) attributable exclusively to such claim awarded by the court finally determining the case.

2. Sun's indemnification obligation set forth in Section 1 above is conditioned upon Customer (i) providing written notice to Sun within thirty (30) days of learning of an IP Claim; (ii) providing all available information and assistance to Sun at Sun's reasonable expense and not compromising or settling the IP Claim; and (iii) providing Sun sole control of the defense and settlement of the IP Claim.

3. Should the Sun Code become or, in Sun's opinion, be likely to become the subject of an IP Claim pursuant to Section 1 above Sun, at its option, may (i) procure for Customer, at no additional cost to Customer, the right to continue to use the Sun Code, (ii) replace or modify the Sun Code, at no additional cost to Customer, to make such Sun Code non-infringing, provided that substantially similar functionality and performance is obtained with the replacement or modified software, or (iii) if the right to continue to use the Sun Code cannot be procured under commercially reasonable terms, or such Sun Code cannot be replaced or modified at commercially reasonable time and expense, remove the Sun Code from the Solaris 10 Operating System and require Customer to immediately return such Sun Code to Sun; in the case of (iii), Sun will continue to provide the Service for the balance of the Solaris 10 Operating System. Sun's performance of (i), (ii) or (iii) above shall be Customer's sole and exclusive remedies for infringement of intellectual property rights of any third party.

4. Notwithstanding the foregoing, Sun shall have no obligation to indemnify and defend Customer or to pay costs, damages or attorneys' fees for any claim based upon (i) the combination, operation, or use by Customer of the Solaris 10 Operating System with other equipment, code, programs or data not supplied by Sun if such infringement would have been avoided but for the combination, operation or use of the Solaris 10 Operating System with other equipment, code, programs or data; or (ii) use by Customer of other than the then-latest version of the Solaris 10 Operating System, if such infringement could have been avoided by the use of the latest version of the Solaris 10 Operating System and such latest version had been made available to Customer; or (iii) modifications by Customer of the Solaris 10 Operating System in the event such infringement is caused by such modifications; or (iv) use by Customer of the Solaris 10 Operating System outside the scope of the granted license(s).

#### B. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT ALLOWED BY ANY APPLICABLE LAW, SUN'S LIABILITY TO INDEMNIFY AND DEFEND UNDER SECTION A (INDEMNIFICATION) ABOVE SHALL NOT EXCEED \$100,000 IN THE AGGREGATE FOR ALL CLAIMS. IN NO EVENT WILL SUN BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS IN CONNECTION WITH ITS OBLIGATION UNDER SECTION A (INDEMNIFICATION) ABOVE.

**Additional Fee Services.** For an additional fee, Customer may purchase the following additional services, where available:

- **Service Account Manager.** Sun will assign a Sun Account Manager (part time/assigned or full time/dedicated positions available). The Sun Account Manager may also provide available information on known bugs, potential system issues, and currently available software updates (patches). The Sun Account Manager will provide a semi-annual account review of Customer's service activity and requirements as requested by Customer. These services are provided during Sun's normal local business hours, excluding public holidays.
- **Additional Media.** Additional copies of physical media for Software Enhancement Releases of Covered Software.

In the event that Customer purchases the above-described Services from Sun, this Service Listing or SOW is incorporated by reference in and subject to the terms of the agreement which has been most recently entered into by the parties and under which Customer may order products and services from Sun ("Agreement"). Sun is not obligated to perform the Services described in this Service Listing or SOW unless Customer has an Agreement with Sun and has received an order confirmation from Sun accepting Customer's purchase order or electronic order for the Services. This Service Listing or SOW does not constitute an offer by or invitation to contract with Sun. The Services described above are subject to availability and unless otherwise stated, are only available within the above-referenced country. Any reference to "Customer" in this Service Listing refers to the party that enters into the Agreement with Sun. Such party may be referred to in the Agreement as "Company", "Customer" or other appropriate term.

Last Revised: March 2007