

Sun Software Basic Service Plan - United States

1. Scope

This Service provides Customer with online access to software updates, upgrades, bug fixes and other deliverables of Covered Software as described in Section 2, below (“Service”). For the purposes of this service listing, "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.

2. Tasks and Deliverables

2.1 Maintenance Assistance

- **Support**

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 Release Access** Unless otherwise specified by Sun, Customer will be entitled to receive each version release for Covered Software, at such time, if any, as they are made commercially available by Sun. If available, software version releases and documentation will be made available via electronic download.
- **Software Update (Patch) Access.** Unless otherwise specified by Sun, Customer will be entitled to receive software updates for Covered Software, at such time, if any, as such updates are made commercially available. If available, software updates (patches) will be made available via electronic download and may be used only for the benefit of Covered Software.

2.3 Connected Services

- **SunSpectrum Member Support Center.** Customer will receive access to applicable resources in the SunSpectrum Member Support Center, which access may be used for Covered Software. Such access will allow Customer to perform multiple functions via the Internet, for example:
 - maintain support contract contacts;
 - update software registration information;
 - obtain selected updates for Covered Software
 - access the SunSolve patch library and bug information; and
 - access the Sun knowledge database.
- Feature availability may vary by country. Sun may make Service substitutions and modifications to the SunSpectrum Member Support Center at any time and without prior notice. Use of the SunSpectrum Member Support Center is subject to the SunSpectrum Member Support Center License Agreement.
- **SunSolveOnline Program.** 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;
- **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

- **Integration and Testing.** Customer will 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.
- **Customer Access.** Customer must designate a primary user who is responsible for granting Customer's employees access to the SunSpectrum Member Support Center ("Access"). This responsibility can be delegated within the Customer organization to enable as many approvers as needed for Access to the SunSpectrum Member Support Center.
- **System Maintenance.** Customer will perform prescribed system maintenance, including but not limited to, installing software updates, updating software or firmware, maintaining file systems, and tracking proactive diagnostic information.
- **Contract Information.** If Sun is not able to obtain entitlement information through the registration process, at Sun's request Customer will provide Sun with a valid Covered Software support contract number, Covered Software product identification code, Covered System serial number and/or any other identifying information, and any other information reasonably requested by Sun, in order to demonstrate Service entitlement prior to Sun providing the Service.
- **Service Reach.** Customer will use software updates, Solaris Named Releases, Solaris Updates and Software Updates, new product deliverables, and other service deliverables with Customer's Covered Software. 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.
- **Indemnification**
 - 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.

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 current agreement under which Customer may order products and services from Sun ("Agreement") or, if there is none and the Services are nevertheless delivered by Sun, the delivery of those Services will be governed by the Sun General Terms and its Purchasing Exhibit together with all applicable Appendices thereto. 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 or geography. 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.