

Sun Software Premium Service Plan - United States

1. Scope

Under this service, Sun will provide Customer with 7x24 online and telephone support for malfunctions of Covered Software and other deliverables 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. If the Solaris Operating System software ("Solaris OS") is part of Covered Software, Solaris OS must be running on a Covered System. "Covered System" means a system for which Customer has (i) paid the applicable Service fee and (ii), has provided to Sun the serial number and/or other identifying and entitlement information as requested by Sun and in the manner specified by Sun. Malfunctions caused by other software code are excluded, and no developer, custom code, or architectural support is provided under this Service. Sun will use commercially reasonable efforts to provide this Service.

2. Sun's Tasks and Deliverables

2.1 Maintenance Assistance

- **Support.** Online and telephone support twenty-four (24) hours per day, seven (7) days per week, including public holidays. Customer can request support by accessing the SunSpectrum Member Support Center at <http://www.sun.com/support> and/or by telephone through local access phone numbers, located here: <http://www.sun.com/contact/support.jsp>.
- **Customer-Defined Urgency and Response .**
Customer must designate a primary user who will assign qualified personnel (described in Section 3, below) as "Contacts" within Customer's Organization. Only a Contact may request support and assign, subject to Sun's concurrence, support priorities in accordance with the following guidelines:
 - Priority 1 - Urgent (software is not operational) - Customer's request for Support will be transferred to the first available engineer.

Priority 1 calls may include, but are not limited to: Software/application hang (unable to save work in progress); software/application functionality failure causes data losses; software/application malfunction causes restart, hang, or suspend; a security breach or vulnerability is identified.
 - Priority 2 - Serious (software is not operating with full capability but is still operational) - Sun will respond to Customer's request for Support within two (2) hours of Sun's receipt of Customer's request.

Priority 2 calls may include, but are not limited to: Impaired or broken functionality with significant impact to applications; frequent software/application failure, but no data loss; significant software/application performance degradation.
 - Priority 3 - Not Critical (software is up and running with limited or no significant impacts) - Sun will respond to Customer's request for Support within four (4) hours of Sun's receipt of Customer's request.

Priority 3 calls may include, but are not limited to: Bugs which cause limited or no direct impact to performance and functionality; request to replace a bug work-around; limited impact defective functionality; software performance support questions.
- **Components Supported.** If Covered Software includes the Linux Operating System, this Service covers only the Linux Operating System software components supported by the Independent Software Vendor ("ISV") or other entity which owns the covered Linux Operating System software.

- **Usage Support.** Customer may request reasonable assistance for questions about documented features of Covered Software that can be answered based on the information available in Sun's information repositories accessible by Sun customers with support contracts and without specific knowledge of Customer's configuration and environment.
- **Sun VIP Interoperability Support.** Customer will receive interoperability assistance through a predefined mutual call-handling procedure and issue management process between Sun and participating cooperative support vendors. The issue management process consists of Sun working collaboratively with a participating third party vendor to perform troubleshooting and fault isolation of a Customer interoperability issue.

Customers must hold (i) a contract with Sun entitling Customer to appropriate levels of support, and (ii) a comparable support contract with the other respective vendor(s) covering the products involved with the interoperability issue. Customer may go to <http://www.sun.com/service/sunvip/> to view cooperative support vendors or contact its Sun sales representative for more information.

2.2 Software Releases and Updates

- **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. If available, software version releases and documentation will be made available via electronic download and may be used only for the benefit of Covered Software. For Solaris OS, Covered Software must be running on Covered System only. **(See Note 1)**
- **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 will be made available via electronic download and may be used only for the benefit of Covered Software. For Solaris OS, Covered Software must be running on Covered System only;**(See Note 1)**

Note 1: Access for software releases and patches for the Linux Operating System, VMWare, and MySQL software are provided through the original provider's support website.

2.3 Connected Services

- **Sun Connection Service.** If Sun Connection Service software is part of the Covered Software, Customer will receive access electronically over the Internet to the Sun Connection service ("Knowledge Service"), which is for Customer's internal use only in connection with the Sun Connection Service software. If available, software updates will be made available electronically via the Sun Connection service. The Service allows the Customer to update a Covered System either locally or via the web, including:
 - notifications of available system updates relevant to Covered System;
 - view all available updates for Covered System;
 - update a single Covered System via a local client; and
 - update multiple Covered Systems via a Sun-hosted web service.

Feature availability may vary. The Sun Connection service is subject to change. Sun may make service substitutions and modifications to the Sun Connection service at any time in its sole discretion and without prior notice.

- **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:

- submit a support request;
- view the status of an existing support request;
- maintain support contract contacts;
- update software registration information;
- obtain selected updates for Covered Software; For Solaris OS, Covered Software must be running on Covered System only;
- access available releases for Embedded Software and Software Components running on Covered System only;
- 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.

- **SunSolve Online Program.** Customer is granted 7x24 access to the SunSolve database for Customer's internal use and for the benefit of the Covered Software subject to the terms and conditions of the SunSolve License Agreement. For Solaris OS, Covered Software must be running on Covered System only. Customer will be required to register for an online account and to accept the SunSolve License Agreement online in order to access the SunSolve database. Customer agrees and acknowledges that such SunSolve License Agreement will govern Customer's access to and use of the SunSolve database. SunSolve Online includes the following:
 - Informational articles, reference guides and technical documents to help sustain and improve functionality, availability and system performance of Sun products;
 - Help desk support articles, bug and software update (patch) reports with information for troubleshooting previously identified Sun hardware and software issues;
 - Software updates for Covered Software; For Solaris OS, Covered Software must be running on Covered System only
- **Services, Support, and Software Notifications.** Customer will receive periodic Services, Support and Software Notifications from Sun via electronic means or otherwise, as determined by Sun. All information will be provided in English.

2.4 Learning Services

- **SunSpectrum eLearning Library Plan.** Sun will provide Customer access to select education modules from the SunSpectrum eLearning Library plan for training. Available training modules can be found at <http://www.sun.com/training/sunspectrum.html>.
- **Sun Learning Service Credits. (See Note 2)** Sun will designate and deliver a set of educational services designed to help improve employee technical competency during each twelve month period Customer's support contract is in effect. Each such set must be used within that twelve month period. These educational services will focus on understanding a Customer's existing skills, assessing Customer's learning needs, and delivery of blended learning services that help address the identified needs. The educational services delivered may include any service from Sun's complete education portfolio (excludes Corporate Learning Pass). The number of credits will not exceed the greater of 2% of the Customer's annual contract value or \$50,000 (or equivalent in local currency) in any 12 month period.

Note 2: Sun Learning Service credits will be delivered to Customer when its support contract meets an annual SunSpectrum plan contract value minimum. A support contract value is determined by calculating the net annual SunSpectrum plan contract value for all Covered Systems on one service contract. If Customer's support contract does not meet the annual minimum contract value, these educational services will not be provided. Customer may go to <http://www.sun.com/service/support/localinfo.html> to view the applicable

contract value minimum or contact its Sun sales representative for more information.

2.5 Additional Solaris Support Provisions

The following are additional provisions applicable only to Solaris Operating System software ("Solaris OS") support:

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- If Customer replaces any instance of the Solaris OS Covered Software with any instance of the OpenSolaris Operating System software ("OpenSolaris OS"), that instance of OpenSolaris OS becomes part of Covered Software, and Customer will receive online support for OpenSolaris OS as described in Sun's OpenSolaris Essentials Service Listing ("OpenSolaris Essentials"). For an additional fee, Customer may elect to receive the OpenSolaris Production level of support for the OpenSolaris OS ("OpenSolaris Production"). For full details of OpenSolaris Essentials and OpenSolaris Production, please see <http://www.sun.com/servicelist>.
- **Updates for Solaris OS.** If Solaris OS is part of Covered Software, and unless otherwise specified by Sun, Customer will be entitled to receive Solaris Named Releases, Solaris Updates and Software Updates for Solaris OS, at such time, if any, as such items are made commercially available by Sun. **(See Note 3, below.)** If available, Solaris Named Releases, Solaris Updates and Software Updates will be made available electronically via the Sun Connection Service and may be used only for the benefit of Covered Software running on Covered Systems. Solaris Updates and Software Updates are not available for OpenSolaris OS (if included in Covered Software) under this Service. In addition, Connected Services are not available for OpenSolaris OS. The Service allows the Customer to update Covered Software or Covered Systems either locally or via the web, including:
 - Notifications of available system updates relevant to Solaris OS if included in the Covered Software;
 - View all available Solaris Named Releases, Solaris Updates and Software Updates for Solaris OS if included in the Covered Software;
 - Update Covered Software on a single system via a local client; and
 - Update Covered Software on multiple systems via a Sun-hosted web service.

Note 3: For definitions of Solaris Named Releases, Solaris Updates, and Software Updates, see <http://www.sun.com/service/subscriptions/entitlements.xml>.

- **Web Learning Center for Solaris Operating System.** If Solaris Operating System software is part of Covered Software, Sun will provide Customer one or more web based training courses for Solaris Operating System software selected for Customer by Sun. There may be limitations on the countries in which courses may be used, and the courses may consist of courses available at no charge to the general public. A self-assessment will be provided for some of the Solaris system and network administration courses.

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.

- **Qualified Personnel.** Customer will ensure personnel who place calls for support regarding Covered Software are certified or trained on Covered Software to diagnose and resolve Covered Software malfunctions with direction by Sun ("Contacts"). Contacts who place calls for support regarding the Solaris Operating System or for software running on the Solaris platform must be Certified Solaris Administrators (minimum levels I and II) or otherwise qualified by Sun.
- **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.
- **Case Data.** Customer will provide Sun with a reproducible test case or sufficient information to enable Sun to duplicate or replicate reported issues. Covered Software may not be supported by Sun on all hardware or software platforms or Sun may not be able to duplicate or replicate the issue on all platforms. Therefore, it is Customer's responsibility to determine, prior to purchase, whether the software is supported by Sun on Customer's platform.
- **Remedial Actions.** Customer will promptly implement any remedial actions suggested by Sun. Software issues arising out of Customer's failure to implement remedial actions may result in additional time and materials charges for resolution.
- **Service Reach.** Customer will use software updates (patches), Solaris Named Releases, Solaris Updates and Software Updates, new product deliverables, and other service deliverables with Customer's Covered Software running. For Solaris OS, Covered Software must be running on Covered System only. No license for any other use or application is granted and any other use or application is prohibited.
- **Implementation Files and Documentation.** Customer will provide Sun with complete and properly structured implementation files and documentation if Sun determines in its sole discretion that such materials are required to provide the Service.
- **Sun Connection Customer's Responsibilities.** The following Customer's responsibilities are applicable if Sun Connection Service software is part of Covered Software:
 - **Connectivity.** Customer is responsible for all telecommunications, remote connectivity, security, and Internet access, and all related fees, in connection with Customer's use of Sun Connection Service software and the Knowledge Service.
 - **Client-Side Licenses.** Customer is responsible for procuring and purchasing the necessary licenses and rights to use, and for supporting, any required client-side hardware, software, service, and other technology and system requirements for use of the Sun Connection Service software and Knowledge Service as specified by Sun in the administrative guide and other applicable documentation.
 - **Supported Distributions' Licensors.** Customer is solely responsible for procurement and purchase of licenses and/or subscriptions to Supported Distributions and Components, including the rights to obtain and use any patches, packages and updates thereto, from the applicable licensor.
 - **Download and Installation.** Customer is responsible for successful download and installation of the Sun Connection Service software prior to use of the Knowledge Service.
- **Registration.**
 - (a) Using the Sun Connection Inventory Channel, Customer agrees to electronically register supported Sun products (hardware and software) and to transmit registration and inventory data to Sun, within a reasonable

period of time not to exceed thirty (30) days from (i) Customer's receipt of the applicable product, (ii) initiation of the Service, or (iii) Sun's notification that a Sun product already in use by Customer has been added to the applicable product list, whichever is applicable. The current applicable product list is available at <http://www.sun.com/service/registration/>. The Sun Connection Inventory Channel service can be accessed at the following URL: <http://sunconnection.sun.com/inventory/>.

(b) Customer agrees and acknowledges that Customer's delay in registering supported Sun products and transmitting registration and inventory data to Sun as described above may result in Sun's delay or inability to perform the Service. Registration may require the installation of additional software on Customer's system. Information about installation requirements can be found at the following URL <http://sunconnection.sun.com/inventory/>.

(c) Sun will keep all information obtained from Customer via the registration process confidential, and will not disclose such information to any third party.

(d) The registration process may vary by country. Sun reserves the right to modify the method of registration, inventory, entitlement and service delivery as necessary.

4. Additional Provisions

- **Resolution.** Sun will use commercially reasonable efforts to resolve Customer's service requests. However, there are service requests for which a resolution will not be reasonably possible.
- **Limitations on Support.** Sun has no obligation to provide Service for issues caused by Customer's: (i) accident, neglect, misuse or modification of the software; (ii) failure to follow installation environment recommendations; (iii) use of the software on any systems other than those hardware and software platforms supported by Sun with respect to the Covered Software; or (iv) failure to incorporate or implement any software update or workaround previously provided by Sun which would correct or mitigate the issue(s).
- **Non-Sun Platform Support.** For Sun software on non-Sun platforms the following additional Customer responsibilities and limitations apply:

Sun will diagnose malfunctions with Covered Software on a non-Sun Platform (non-Sun hardware, non-Sun operating systems, or other non-Sun software that is underlying Software, i.e., middleware) and determine whether it is caused by the Covered Software or by the unsupported non-Sun Platform.

The following conditions are applicable in determining support obligations from Sun:

- Only qualified configurations as listed in the release notes/product description or on the product specific Sun web sites are supported.
- The Covered Software installed is unmodified as shipped from Sun, having had only software updates provided by Sun and vendor-specific drivers applied.
- Sun works only on malfunction resolution if the malfunction can be reproduced on original Sun platforms (i.e., Sun sold platforms, not non-Sun systems with Sun UltraSPARC processor) or on Sun's reference platforms for the qualified configurations. If Sun cannot reproduce the malfunction on these platforms it is in Sun's sole discretion whether to provide additional support and to ask the Customer to send in its platform for further investigation.

If Sun determines the malfunction is in the Covered Software, Sun will continue to provide Support and, if possible, resolution of the malfunction will be provided in the same fashion and with the same limitations as if the Covered Software were running on a Sun platform or on a Sun reference platform.

- **Right to Reduce or Discontinue Support.** It may become necessary as part of Sun's product lifecycle to reduce support levels or discontinue support according to Sun's then-current End Of Service Life Policy and, therefore, Sun reserves the right to reduce or discontinue support for certain Covered Software Software (or versions thereof) during the term of the contract in accordance with such End Of Service Life Policy. Sun's End Of Service Life Policy is posted at: <http://www.sun.com/service/eosl>.
- **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. 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 Covered Software.
- **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 the Solaris 10 Operating System and used on the Covered Systems (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 Covered Software 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) and/or other than on the Covered Systems.

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.

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