



SUN MICROSYSTEMS EQUIPMENT TRANSFER, DONATION AND SOFTWARE LICENSE AGREEMENT

This EQUIPMENT TRANSFER AND SOFTWARE LICENSE AGREEMENT, including Exhibits ("Agreement"), is entered into by and between SUN MICROSYSTEMS, INC., a Delaware corporation having its principal place of business at 4150 Network Circle, Santa Clara, CA 95054, or the Sun subsidiary identified in Exhibit A ("Sun"), and the Company identified in Exhibit A as of Effective Date identified in Exhibit A.

RECITALS

Sun wants to give Company at no charge certain Sun computer hardware ("Hardware"), and license certain Sun software ("Software") (collectively, the "Sun Products," as listed in Exhibit A) ; and

Company wants to own the Hardware and license the Software for the purposes stated in Exhibit A.

Sun and Company therefore agree as follows:

1. Conditions of Transfer and License. Sun hereby transfers ownership of the Hardware and licenses the Software to Company subject to the following conditions:

1.1 Limitation on Use and Resale. The Sun Products are not to be resold, transferred by Company or re-shipped outside the country without Sun's prior written approval. At the point where Company is no longer using the product and decides to retire the equipment, Company will contact Sun to coordinate proper recycling.

1.2 Software License(s). Company's use of the Software is governed by the Software license(s) applicable to the Software (the "Software Licenses"); provided. No distribution of the Software is permitted. Sun retains all right, title and ownership of the Software. Company may not transfer the Software License to any third party without Sun's prior written approval.

1.3 Risk of Loss. Company assumes any and all risk associated with the Sun Products, including any duty to insure the Sun Products against any loss or damage whatsoever, as of the Effective Date.

1.4 No Support. Except as provided pursuant to Section 4, Sun has no duty to provide Company with any technical support for the Sun Products. If the Company is interested in Software or Hardware technical support beyond the included hardware Warranty, Sun encourages the Company to procure that from Sun separately.

1.5 Publicity. The terms and conditions of this Agreement are confidential. Any disclosures by either party about the existence of this Agreement, its terms and conditions, and the activities contemplated herein are subject to the disclosing party obtaining the written approval of the other party. Notwithstanding the foregoing, Sun may publicize Company's receipt and use of the Sun Products based on a documented project results update that the Company will provide to Sun.

1.6 Acknowledgement. The Company acknowledges that no goods or services were provided to Sun in exchange for this equipment donation.

1.7 Products & Freight. The Sun Hardware being transferred may be new or previously used. Sun reserves the right to substitute similar product in the event of a supply shortfall. Sun manages the freight from Sun to the Donee.

2. Proprietary Rights. Sun retains for itself all intellectual property and other proprietary rights in and to the Sun Products, including all designs, engineering details, schematics, drawings and other similar data pertaining to the Sun Products ("Proprietary Information") which may be provided to Company under this Agreement in Sun's discretion. Proprietary Information which Sun may furnish to Company shall be in Company's possession pursuant only to a restrictive, nontransferable, nonexclusive license under which Company may use such Proprietary Information solely for the purposes of operating, servicing and repairing the Sun Products for the purposes permitted by this Agreement and for no other purpose. Company shall not, without the express written consent of Sun, provide, disclose, transfer or otherwise make available any Proprietary Information, or copies thereof, to any third party.

3. Exclusions. Except as expressly provided in the Software License: a) no licenses, immunities or other rights are granted under any Sun copyright, trade secret, or know-how by implication, estoppel or otherwise; and b) no rights, licenses or immunities are granted under any Sun patent (including but not limited to any patent claims reading upon combinations of

any Company product in combination with any Sun product) or any third party intellectual property, directly or by implication, estoppel or otherwise.

4. Warranty Disclaimer. WHERE SPECIFICALLY IDENTIFIED IN EXHIBIT A AS PROVIDED WITH WARRANTY, THE SPECIFIED THE SUN PRODUCTS ARE PROVIDED WITH THE WARRANTY DESCRIBED AT <http://www.sun.com/service/warranty/index.xml> THE TERMS OF WHICH ARE INCORPORATED BY THIS REFERENCE; OTHERWISE THE SUN PRODUCTS AND PROPRIETARY INFORMATION ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, SUN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ON SUN PRODUCTS AND PROPRIETARY INFORMATION FURNISHED HEREUNDER, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

5. Limitation of Liability. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, SUN'S LIABILITY FOR CLAIMS RELATING TO THE SUN PRODUCTS OR THIS AGREEMENT, WHETHER FOR BREACH OR IN TORT, IS LIMITED TO ONE DOLLAR (\$1.00). IN NO EVENT WILL SUN BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, (INCLUDING LOSS OF PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), EVEN IF SUN HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. FURTHER, LIABILITY FOR SUCH DAMAGES IS EXCLUDED, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

6. TERM AND TERMINATION

6.1 Term. This Agreement will come into force on the Effective Date and will remain in effect unless terminated.

6.2 Termination. Either party may terminate this Agreement ten (10) days following notice to the other party of a material breach, if the other party has not remedied such breach within such ten (10) day period.

6.2 No Liability for Termination. The right of termination provided herein is absolute, and the party terminating shall not be liable to the other for damages of any kind, including incidental or consequential damages, damages for loss of prospective business or loss of continuing business, or otherwise which arise due to a termination in accordance with the provisions of this Section. This does not relieve either party from responsibility for damages caused by its actions or breaches of the Agreement, but only for damages related to or resulting from the termination of the business relationship. In the event of termination by Sun under Sec. 6.2 above, Company shall promptly pay to Sun the fair market value of the Sun Products as of the Effective Date.

7. Export. The Sun Products and Proprietary Information and related technical data are subject to U.S. export control laws and may be subject to export or import regulations of other countries. Company will comply with all such laws and regulations, and obtain all licenses to export, re-export or import as may be required. Company will not export or re-export the Sun Products, Proprietary Information or related technical data 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. Company represents and warrants that it will not use or provide the Sun Products for nuclear, missile, or chemical biological weaponry end uses.

8. Nuclear Applications. Company acknowledges that the Sun Products are not designed or intended for use in the design, construction, operation or maintenance of any nuclear facility, and Company represents and warrants that it will not use the Sun Products for such purposes.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California and controlling U.S. Federal Law. No choice of law rules of any jurisdiction apply. Any action must be brought and venued exclusively in the United States District Court for the Northern District of California or the California Superior Court for the County of Santa Clara, as appropriate.

9. Taxes. Company shall be solely responsible for any and all taxes whatsoever associated with this Agreement.

10. Survival. Rights and obligations under this Agreement which by their nature should survive, will remain in effect after termination or expiration hereof.

11. Severability. If any provision of this Agreement is held to be unenforceable, this Agreement will remain in effect with the provision omitted, unless omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate.

12. Partial Invalidity. If any provision of this Agreement is held to be unenforceable, This Agreement will remain in effect with the provision omitted, unless omission would frustrate the intent of the parties, in which case this Agreement will immediately terminate.

13. Force Majeure. A party is not liable under this Agreement for non-performance caused by events or conditions beyond that party's reasonable control, if the party makes reasonable efforts to perform.

14. Waiver. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

15. Assignment. 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.

16. Relationship. This 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.

17. Complete Understanding. The Agreement, together with all Exhibits hereto, is the parties' entire agreement relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties, and prevails over any conflicting or additional term of any subsequent communication between the parties relating to its subject matter during the term of this Agreement. No modification to this Agreement is binding, unless in writing and signed by an authorized representative of each party.

18. Non-Profit Status. The Company acknowledges that it is a certified Non-Profit organization or qualified educational institution within the country the product will be used and that the use of the Product is compliant with local law;

Country _____

State _____

Code _____

19. Company represents and warrants that Sun's donation shall in no way violate local customs, tax, corrupt practice, bribery or gift law ("Local Law"), and agrees to defend (at Sun's option) and to indemnify Sun, against all claims, suits or demands that this donation violates any such Local Law.

This Agreement has been signed by the authorized representatives of the Company.

COMPANY _____

By: _____

Name: _____

Title: _____

Date: _____



**EXHIBIT A TO THE
SUN MICROSYSTEMS
EQUIPMENT TRANSFER AND SOFTWARE LICENSE AGREEMENT
SUN PRODUCTS**

1. Sun Subsidiary:

Name: Sun Microsystems, Inc.

Address: 15 Network Circle , Menlo Park, CA 94025, USA

2. COMPANY

Name: _

Main Address:1

Ship To Address (if different from Main Address including City/State/Zip/Country)

3. EFFECTIVE DATE: _____ ("Effective Date")

4. SUN PRODUCTS:

A. Hardware

* Includes base software license

B. Software
